

ANNUAL POLICY REPORT ON MIGRATION AND ASYLUM 2011: IRELAND

Corona Joyce

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The European Migration Network

The aim of the European Migration Network (EMN) is to provide up-to-date, objective, reliable and comparable information on migration and asylum at Member State and EU-level with a view to supporting policymaking and informing the general public.

The Irish National Contact Point of the European Migration Network, EMN Ireland, is located at the Economic and Social Research Institute (ESRI).

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The Economic Research Institute was founded in Dublin in 1960, with the assistance of a grant from the Ford Foundation of New York. In 1966 the remit of the Institute was expanded to include social research, resulting in the Institute being renamed The Economic and Social Research Institute (ESRI).

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The opinions presented in this report are those of the author and do not represent the position of the Irish Department of Justice and Equality, the European Commission Directorate-General Home Affairs, or the Economic and Social Research Institute.

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Glossary of Abbreviations and Irish Terms

Dáil	Parliament, lower House
DETI	Department of Enterprise Trade and Industry
EASO	European Asylum Support Office
ERF	European Return Fund
Gardaí/Garda Síochána	Police
GNIB	Garda National Immigration Bureau
IBC/05	Irish Born Child Scheme 2005
IBIS	Irish Border Information System
I-BOC	Irish Border Operations Centre
ICI	Immigrant Council of Ireland
IHRC	Irish Human Rights Commission
I/NGO	Intergovernmental Non- Governmental Organisation
INIS	Irish Naturalisation and Immigration Service
IRC	Irish Refugee Council
MRCI	Migrant Rights Centre Ireland
NASC	The Irish Immigrant Support Centre
NERA	National Employment Rights Authority
ORAC	Office of the Refugee Applications Commissioner
Oireachtas	Parliament, both houses
RAT	Refugee Appeals Tribunal
Tánaiste	Deputy Prime Minister
Taoiseach	Prime Minister
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UNHCR	United Nations High Commissioner for Refugees

Executive Summary

Census 2011

Central Statistics Office (CSO) initial releases from the 2011 Census show that the number of Irish residents born outside Ireland continues to increase and stood at 766,770 in 2011, accounting for 17 per cent of the population. The largest increases related to Romanian (up 110 per cent), Indian (up 91 per cent), Polish (up 83 per cent), Lithuanian (up 40 per cent) and Latvian (up 43 per cent) nationals. The number of non-Irish nationals, increased by 124,624 persons, or 30 per cent, to 544,357. Regarding ethnicity, significant increases occurred within most of the non-Irish ethnic groups, with 'Other White' rising by almost 43 per cent between 2006 and 2011. An 87 per cent rise in the 'Other Asian' group included persons of Indian and Filipino origin, with a rise of eight per cent more persons of stated Chinese ethnicity. Inward migration to Ireland by non-Irish nationals in the year to April 2011 was 33,674 (significantly less than Census 2006 when 93,200 were recorded) and from a large selection of countries, primarily Poland (3,825), UK (4,549), France (1,777), Lithuania (1,706), Spain (1,606) and the USA (1,563).¹

Certificates of Registration

A total of 161,225 Certificates of Registration had taken place as of year-end 2011,² with 128,900 non-EEA nationals with permission to remain in Ireland at the end of 2011.³ Nationals of India (17,582), Nigeria (14,771), Brazil (14,380), China (14,116) and the Philippines (11,988) constituted the largest main country groupings of persons registering during 2011.⁴ The majority of stamps were issued under Stamp 4 (73,026) followed by Stamp 2 (41,718).

Political Developments

A general election took place in Ireland in February 2011, with the 29th Government of Ireland formed in March 2011. The Department of Justice and Law Reform became the Department of Justice and Equality, with Alan Shatter T.D. appointed as Minister for Justice, Equality and Defence in March 2011. No Minister of State for Integration was appointed, and responsibility for integration matters was transferred from the Office of the Minister for Integration in the Department of Community, Equality and Gaeltacht Affairs to the Office for the Promotion of Migrant Integration (OPMI) in the Department of Justice and Equality. The Department of Enterprise, Trade and Innovation

¹ Central Statistics Office (2012). *Commentary - Usual Residence, Migration, Ethnicity and Living Arrangements*. Available at www.cso.ie.

² This figure refers to the cumulative number of registrations in 2011. Eurostat data show a total of 128,104 Third Country Nationals with a valid permission to stay as of the end of 2011 and refer to permissions for three months or more only.

³ Department of Justice and Equality (2012). *Annual Report 2011*. Available at www.justice.ie.

⁴ Irish Naturalisation and Immigration Service (May 2012).

was renamed as the Department of Jobs, Enterprise and Innovation, with Richard Bruton T.D. becoming associated Minister. The 2011 Programme for Government Common Statement⁵ included a number of commitments in the area including: to promote integration; to explore a new agreement on visitor visas with the UK; to allow postgraduate students to be allowed to work in Ireland for a year after completion of studies, with ‘high-value’ research students allowed to bring their families to Ireland if staying for more than two years; the establishment of a DNA database which will be also used to ‘enhance’ EU cooperation in the area of asylum and immigration; the introduction of ‘comprehensive reforms’ of the immigration, residency and asylum systems including the setting out of rights and obligations in a ‘transparent’ way and creation of a statutory appeals system; and the processing of citizenship applications within a ‘reasonable’ time.⁶ The transfer of passport services from the Department of Foreign Affairs to an ‘Independent Executive Agency’ under the aegis of the Department of Justice and Equality was also to be considered.

Legislation

In terms of published legislation, the *Immigration, Residence and Protection Bill 2010* fell with the change of Government in 2011 and was subsequently restored by the new Government on 23 March 2011. By year end the Bill had not yet been enacted.⁷ The *Female Genital Mutilation Bill 2011* was introduced in January 2011 with the aim of prohibiting female genital mutilation and related offences (including an extra-territorial aspect) and to act as a deterrent. In addition, provisions for the protection of victims during legal proceedings were also included. The Bill was subsequently passed with amendments in March 2012 following much parliamentary discussion.

The *Civil Law (Miscellaneous Provisions) Act 2011* was signed into law in August 2011 and provides for a number of amendments to immigration and citizenship law. Section 33 of the Act amends the *Irish Nationality and Citizenship Act 1956* to provide for citizenship ceremonies, to take account of recognition in Irish law of civil partnerships in Irish law by the *Civil Partnership Act 2010* and to allow fees to be charged for naturalisation applications. Section 34 of the Act of 2011 amends the *Immigration Act 2004* to take account of the decision of the High Court in *E.D. v. D.P.P. [2011]*⁸ which found that Section 12 of the *Immigration Act 2004* is inconsistent with Articles 38.1 and 40.4.1 of the Constitution of Ireland. Section 11 of the 2004 Act is amended to require that non-nationals presenting at the border be in possession of a valid passport or other equivalent

⁵ Government of Ireland (2011). *Programme for Government 2011*. Available at http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf.

⁶ As summarised in Appendix II of the Department of Justice and Equality (2011). *Strategy Statement 2011-2014*. Available at www.justice.ie.

⁷ The Bill was subsequently withdrawn in 2012.

⁸ *E.D. v. D.P.P. [2011]* IEHC 110.

document, and that when requested to do so by an immigration officer, must furnish their passport or identity document and such further information as required. Section 12 is amended to require that every non-national in the State shall produce on demand by a Garda Síochána a valid passport or identity document. Section 19 is amended to allow for the charging of fees in respect of applications under the *Immigration Acts*.

Some eleven pieces of secondary legislation relating to immigration and international protection were introduced during 2011:

- The *European Communities (Asylum Procedures) Regulations 2011 (S.I. No. 51 of 2011)* give further effect in Irish law to *Directive 2005/85/EC* ('The Procedures Directive'), particularly in respect of transposing the Directive's minimum standards in relation to the asylum interview and on appeal; safe countries of origin; the time in which the Commissioner will issue a decision; and, in respect of the process regarding fresh asylum applications.
- The *Refugee Act 1996 (Asylum Procedures) Regulations 2011 (S.I. No. 52 of 2011)* transposed certain aspects of *Directive 2005/85/EC* regarding asylum procedures, particularly regarding minors; safeguards in respect of the conduct of the asylum interview, and regarding the language of notices to asylum applicants.
- As well as giving effect to *Directive 2004/38/EC* regarding waiving the visa requirement for Third Country Nationals with EU residence cards, the *Immigration Act 2004 (Visas) Order 2011 (S.I. No. 146 of 2011)* repealed *The Immigration Act 2004 (Visas) Order 2009 (S.I. No. 453 of 2009)* and provided a new list of the countries the nationals of which do, and do not, require Irish visas for entry or transit.
- In June 2011, the Minister for Justice, Equality and Defence signed the *Irish Nationality and Citizenship (Amendment) Regulations 2011 (S.I. No. 284 of 2011)* which relates to changes in naturalisation forms, in particular to facilitate minor applicants. The commencement date for these changes was 24 June 2011.
- The *Immigration Act 2004 (Visas) (No. 2) Order 2011 (S.I. No. 345 of 2011)* was signed in June 2011, gave effect to the Short-Stay Visa Waiver Programme from 1 July 2011. It also gave continuing effect to *Directive 2004/38/EC* in that non-nationals who are family members of a European Union citizen and holders of a 'Residence card of a family member of a Union citizen' as referred to in Article 10 of *Directive 2004/38/EC* of the European Parliament and of the Council of 29 April 2004, are not subject to an Irish visa requirement. It also provided a new list of the countries the nationals of which do, and do not, require Irish visas for entry or transit. The provisions of this S.I. were in turn incorporated into the *Immigration Act 2004 (Visas) (No 2) Order 2011 (S.I. No. 345 of 2011)* which in turn repealed *S.I. No. 146 of 2011*.

- In July 2011, the Minister for Justice, Equality and Defence signed the *Immigration Act 2004 (Travel Document Fee) Regulations 2011 (S.I. No. 403 of 2011)*, providing for a fee for travel papers for non-Irish nationals with permission to be in the State.
- In July 2011, the Minister for Justice and Equality signed the *Refugee Act 1996 (Travel Document And Fee) Regulations 2011 (S.I. No. 404 of 2011)*, which introduced a fee for travel documents for refugees.
- In July 2011, the Minister for Justice and Equality signed the *European Communities (Eligibility For Protection) (Amendment) Regulations 2011 (S.I. No. 405 of 2011)*, which amended *S.I. No. 518 of 2006*, transposing *Directive 2004/83/EC*, and which introduced a fee for travel documents for those eligible for subsidiary protection.
- In September 2011, the Minister for Justice, Equality and Defence signed the *Immigration Act 2004 (Registration Certificate Fee) Regulations 2011 (S.I. No. 449 of 2011)*, which waived fees for registration for certain non-Irish nationals, including minors, spouses of Irish citizens, refugees and victims of human trafficking, with permission to be in the State.
- In November 2011, the Minister for Justice, Equality and Defence signed the *Irish Nationality and Citizenship Regulations 2011 (S.I. No. 569 of 11)* which relates to the introduction of a non-refundable fee of €175 for all applications for a certificate of naturalisation, as well as changes to forms, in particular to facilitate applicants who are the civil partners of Irish citizens. The commencement date for these changes was 10 November 2011.⁹
- The *European Communities (Communication of Passenger Data) Regulations 2011 (S.I. No. 597 of 2011)* sought to give effect to *Directive 2004/82/EC*, requiring air carriers to provide advance passenger data to Irish Immigration authorities for the purposes of improving border control and combating illegal immigration. The Regulations apply to all inbound flights to Ireland from outside the EU and to all passengers on those flights. Airlines will be required to provide data on passengers as available via machine-readable passports and to transmit this to Irish authorities after check-in is completed in order for checks against ‘watch lists’ for persons of concern to take place. Data may only be stored for 24 hours or for up to three years in cases of persons of concern or until they cease to be in such a category.

During 2011 the Department of Justice and Equality published a Strategy Statement 2011-2014 in which they committed to focusing on providing ‘an immigration system with appropriate policies which meets the needs of a changing society and which facilitates to the greatest extent possible national economic development’ and to promote ‘equality and integration in Irish

society in order to further economic growth, social inclusion and fairness'. Specific programme commitments referred to included; policies to support and facilitate the integration of legally-resident immigrants into Irish society via stakeholder consultation, a review of approaches to migrant integration, development of anti-racism measures, and promotion of integration measures. Plans to develop the Irish immigration system to contribute to economic recovery included a focus on increased number of tourists from countries covered by the Short-Stay Visa Waiver Programme concerning the UK, new residence permissions granted to entrepreneurs, and a tailoring of the General Permission to Remain regime 'to maximise economic activity'. Maintenance of the asylum and immigration system was to be achieved via the retention of the 'integrity' of the Common Travel Area (CTA). Proposed provisions in the Immigration, Residence and Protection Bill were to be implemented and improved application processing for citizenship was also noted. A review of the *National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009-2012* was planned for, with a new plan to be developed.¹⁰

Universal Periodic Review (UPR)

During 2011 Ireland had its human rights record reviewed under the United Nations Universal Periodic Review (UPR) procedure. The State presented a number of updates and commitments including their intention to reduce the processing time for citizenship applications to six months and to reduce overall 'unacceptable' delays in part of the system while simplifying procedures. A number of recommendations¹¹ related to migration and asylum were put forth by other Member States including the establishment of a 'consolidated framework' related to immigration and asylum issues and that of an independent appeals body (UK); the enacting of laws to protect the 'well-being' of separated and unaccompanied minors in conformity with international standards (Uruguay); the extension of the remit of the Ombudsman for Children to asylum-seeking children (Netherlands); the ability for all asylum decisions to be reviewed and subject to 'independent judicial supervision' (Mexico); and the taking of 'necessary measures' to avoid the detention of asylum seekers' (Brazil). Brazil and Iran expressed concern at the accessibility of the healthcare system to migrants, refugees and asylum-seekers. Ukraine highlighted 'variations in standards' among privately operated direct provision centres.

Common Travel Area (CTA)

On 20 December 2011, Ireland and the UK signed a joint agreement reinforcing the Common Travel Area (CTA) between both countries and providing a

¹⁰ Department of Justice and Equality (2011). *Strategy Statement 2011-2014*. Available at www.justice.ie.
¹¹ Overall, 127 recommendations were made by Member States; Ireland accepted 62, declined to accept 15, and 'undertook to further examine 50'. See Department of Justice and Equality (2012). *Annual Report 2011*. Available at www.justice.ie.

‘platform for greater cooperation on immigration matters’.¹² It aims to identify persons with no legal right to enter the CTA before they arrive at the border while facilitating legitimate travel, preventing abuse and developing ways to challenge the ‘credibility of visa and asylum applications where appropriate’. The return of unlawfully entering persons to their country of origin is also envisioned. The Agreement places a focus on visa information exchange between both countries, particularly with regard to ‘high risk’ countries and to include fingerprint biometrics and other biographical details.¹³ Development of an electronic border management system is planned as early as possible.¹⁴

During 2011 Operation Gull, a joint UK and Irish initiative with respect to irregular migration continued to take place. The Operation has a focus on decreasing illegal migration between both countries via Northern Ireland with UK Border Agency immigration officers in Northern Ireland checking the status of passengers arriving from, or departing for, the UK for routes believed to be most at risk.

Asylum & Immigration Strategic Integration Programme (AISIP)

The Irish Naturalisation and Immigration Service (INIS) Asylum & Immigration Strategic Integration Programme (AISIP) went live in October 2011. With an aim of providing a ‘whole of system’ approach, it will combine over 20 stand-alone and disparate IT systems (involving 69 separate types of applications and transactions) into one system and will record over 800,000 transactions per year.¹⁵

Labour Market

Some 5,200 employment permits were issued to non-EEA nationals during 2011, with 3,184 new permits and 2,016 renewals issued. Some 1,007 permits were refused and 201 withdrawn. The largest nationality groupings of permits issued included India (1,646), the Philippines (753), the USA (493), Romania (327) and China (253). Ireland continued to apply restrictions on access to the labour market for Romanian and Bulgarian nationals during 2011.¹⁶ A total of 76,220 non-Irish nationals were present on the Live Register in December 2011,

¹² Irish Naturalisation and Immigration Service (20 December 2011). ‘Ireland-UK Accord to Further Secure the Common Travel Area’. *Press Release*. Available at www.inis.gov.ie.

¹³ In December 2011 a memorandum was also signed regarding the exchange of information such as fingerprint biometrics and biographical details. This memorandum will have the effect that the visa application data, from nine specified countries, will be automatically shared between the Irish Naturalisation and Immigration Service (INIS) and the UK Border Agency (UKBA). The countries concerned are: Bangladesh; China; Ghana; India; Iran; United Kingdom; Nigeria; Pakistan and Sri Lanka. Continued cooperation will also take place on establishing the immigration histories and identification of failed asylum seekers for the purpose of reaching final decisions in respect of such cases and, where appropriate, facilitating returns to countries of origin.

¹⁴ Irish Naturalisation and Immigration Service (December 2011). ‘Ireland-UK Accord to Further Secure the Common Travel Area’. *Press Release*. Available at www.inis.gov.ie.

¹⁵ Dáil Éireann Debate Vol. 751 No. 4 (17 January 2012).

¹⁶ In general, nationals of such countries must hold an employment permit to access the labour market at first instance.

a slight decrease on December 2010 figures when 76,645 non-Irish nationals were present.

A number of developments related to economic migration occurred in recent years and many continued to have effect during 2011. Administrative arrangements for eligible individuals who have been in possession of work permits for at least five years, or who have been made redundant, continued to be available during 2011 on a more mainstreamed basis. Following a number of changes to provisions for holders of employment permits and permits under the 'Green Card' scheme in 2009 and 2010, no subsequent amendments occurred in 2011 with prior amendments continuing in effect. During 2011, certain changes introduced in 2010 continued to operate. These included changes regarding renewal of immigration permissions for holders of a Green Card employment permit for two years; and for previous holders of Green Card permits who had been granted a 'Stamp 4' for 12 months and are due for renewal.

A *National Skills Bulletin 2011*¹⁷ was published in July 2011 and there was no change in the list of occupations for which new work permits will not be issued. No labour shortages existed in the Irish labour market and skill shortages continued to be confined to senior positions, skilled professionals and particularly 'niche' areas such as positions with foreign languages (e.g. Nordic). The Bulletin showed many of the skills shortages from 2009 and 2010 persisting, although in small numbers and related to specialised high-skill areas such as IT, engineering, science, finance, sales, healthcare, transport and management and with 'significant experience, niche area expertise and/or specific skill mix'.

Regarding the recognition of qualifications, the *Qualifications and Quality Assurance (Education and Training) Bill 2011* was introduced in July 2011. It will provide for the amalgamation of responsibilities currently under the National Qualifications Authority of Ireland (NQAI), the Higher Education and Training Awards Council (HETAC) and the Further Education and Training Awards Council (FETAC).

During 2011 Ireland continued to participate in *Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting Third Country Nationals for the purposes of scientific research*. Some 443 research Hosting Agreements¹⁸ were issued during 2011, with 248 new agreements and 195 renewals.¹⁹ Ireland participated in discussions regarding a review of this Directive during the year also.

¹⁷ Expert Group on Future Skills Needs (2011). *National Skills Bulletin 2011*. FÁS: Dublin.

¹⁸ While each Hosting Agreement represents a single researcher, each researcher may be involved in more than one Hosting Agreement.

¹⁹ Irish Naturalisation and Immigration Service (INIS) (July 2012).

Family Reunification

Applications for family reunification (family members or a civil partner) in respect of 501 persons with refugee status were received by the Irish Naturalisation and Immigration Service (INIS) during 2011, with approvals issued for 560 persons. Family reunification for some 233 persons was refused during 2011. Applications for 260 persons were withdrawn or deactivated.²⁰ ORAC notes that some 244 applications for family reunification were made by declared refugees during 2011. The main countries of nationality of applications were Somalia, Nigeria, Iraq, Sudan and Afghanistan. A total of ten applications (representing ten persons) for family reunification by holders of subsidiary protection²¹ were received by INIS during 2011, with seven cases approved.²² INIS received 627 applications for residence on the basis of marriage or civil partnership to an Irish national during 2011, with 483 cases approved.²³

Following on from the *Zambrano* judgment by the European Court of Justice (ECJ), during 2011 the Department of Justice and Equality announced that it would examine all cases with a link to the *Zambrano* judgment to see whether criteria were met. If so, permission to remain in Ireland would be granted to parents to work in the State without an employment permit and/or to set up a business. The Department highlighted that the judgment may be particularly relevant to three categories of Third Country Nationals, namely parents of an Irish citizen child waiting for a decision under Section 3 of the *Immigration Act 1999 (as amended)*; parents of an Irish citizen child with permission to remain in Ireland under Stamps 1, 2 or 3 conditions;²⁴ and parents of an Irish citizen child who have either been deported from Ireland or have left on foot of a

²⁰ Irish Naturalisation and Immigration Service (May 2012).

²¹ As provided for under the European Communities (Eligibility for Protection) Regulations, 2006.

²² Irish Naturalisation and Immigration Service (September 2012).

²³ *Ibid.*

²⁴ Categories of Stamps are as follows:

Stamp number 1: issued to non-EEA nationals who have an employment permit or business permission.

Stamp number 1A: issued to a person permitted to remain in Ireland for the purpose of full-time training with a named body (main category concerns non-EEA nationals studying accountancy) until a specified date. Other employment is not allowed.

Stamp number 2: issued to non-EEA national students who are permitted to work under certain conditions.

Stamp number 2A: issued to non-EEA national students who are not permitted to work.

Stamp number 3: issued to non-EEA nationals who are not permitted to work.

Stamp number 4: issued to people who are permitted to work without needing an employment permit or business permission: non-EU EEA nationals, spouses and dependants of Irish and EEA nationals, people who have permission to remain on the basis of parentage of an Irish child, Convention and Programme refugees, people granted leave to remain, non-EEA nationals on Intra-Company transfer, temporary registered doctors, non-EEA nationals who have working visas or work authorisations.

Stamp number 4 (EU FAM): issued to non-EEA national family members of EU citizens who have exercised their right to move to and live in Ireland under the *European Communities (Free Movement of Persons) Regulations 2006*. People holding this Stamp are permitted to work without needing an employment permit or business permission, and they can apply for a residence card under the 2006 Regulations.

Stamp number 5: issued to non-EEA nationals who have lived in Ireland for at least eight years and who have been permitted by the Minister for Justice, Equality and Defence to remain in Ireland without condition as to time. Holders of this Stamp do not need an employment permit or business permission in order to work.

Stamp number 6: can be placed on the foreign passport of an Irish citizen who has dual citizenship, and who wants their entitlement to remain in Ireland to be endorsed on their foreign passport.

Deportation Order. In the latter case, the Department announced that applications for a visa would have to be processed via the applicants' country of origin; that evidence of a 'clear link' to the judgment would be required; and that DNA evidence of a biological link to an Irish citizen child(ren) may be requested.²⁵ In a review of the first 16 months of Government published in 2012, Minister Shatter noted that Departmental officials had examined 'all cases before the courts (140, involving 134 applicants) involving Irish citizen dependent children to which the *Zambrano* judgement' applied. Of the applicants '120 have had their Deportation Order revoked and have either been granted permission to reside in the State, or invited to make a Visa application to re-enter the State'. In addition, a total of '97 cases have been settled', and a total of '764 parents have to date been granted Irish residency rights'.²⁶

'Marriages of Convenience'

During 2011 the issue of suspected marriages of convenience continued to attract debate. A 2011 case before the Irish courts, *Izmailovic & Anor v. The Commissioner of An Garda Síochána*, found that 'marriages of convenience' are not unlawful in Irish law and the Gardaí are not empowered to prevent their solemnisation if they suspected it was for immigration purposes.²⁷ In June, the Minister for Justice, Equality and Defence cited 'serious concern' about 'highly irregular patterns of marriage in Ireland', involving EU nationals exercising their freedom of movement and Third Country Nationals. In a press release in June, the Minister provided an example of almost 400 applications for residence in Ireland by non-EEA nationals on foot of their marriage to Latvian nationals during 2010, and noted that the predominant nationality of the Third Country Nationals concerned was Pakistani, followed by Ukrainian and Indian. The Minister acknowledged the role of the Gardaí in dealing with this area and the increase in inter-disciplinary cooperation and provisions related to such marriages contained in the *Immigration, Residence and Protection Bill 2010*.²⁸ At the UN Universal Periodic Review for Ireland, Latvia recommended the passing of legislation on the issue to criminalise the organisers and facilitators of such marriages and that the *Civil Registration Act 2004* be amended to empower Registrars and An Garda Síochána to intervene.²⁹ During 2011 a total of 2,376 EU Treaty Rights applications were received, with 1,600 of those applications based on marriage to an EU national.³⁰ Some 1,405 permissions

²⁵ Irish Naturalisation and Immigration Service (2011). *European Court of Justice Judgment in the Zambrano case*. Available at <http://www.inis.gov.ie/en/INIS/Pages/WP11000037>.

²⁶ Department of Justice and Equality (July 2012). *Alan Shatter, T.D., Minister for Justice, Equality and Defence reports on work done during first 12 months of Government*. Available at www.justice.ie.

²⁷ Joyce, C. (2012). *Misuse of the Right to Family Reunification: Ireland*. Available at www.emn.ie and www.esri.ie.

²⁸ Irish Naturalisation and Immigration Service (9 June 2011). 'Sham marriages leading to abuses of EU freedom of movement rights'. *Press Release*. Available at www.inis.gov.ie.

²⁹ United Nations Human Rights Council (October 2011). 'Draft report by the Working Group on the Universal Periodic Review Ireland'. Available at www.rightsnow.ie.

³⁰ Irish Naturalisation and Immigration Service, provisional figures (November 2011).

were granted during the year, with 1,100 related to applications based on marriage to an EU national.

International Students

Non-EEA national students who were registered to study in Ireland accounted for approximately a quarter (30,500) of all non-EEA nationals registered in the State in 2011. The majority of persons within this number were pursuing degree programmes (37 per cent), followed by language courses (22 per cent), further education non-degree courses (32 per cent) and other such as secondary school and accountancy training (9 per cent).³¹ A new immigration regime for international students took effect from 1 January 2011 and saw the introduction of a differentiated approach between 'Degree Programme' courses and those at the 'Language or Non Degree Programme' level, and the introduction of maximum periods of residence in the State on foot of a student permission according to type of course followed. In general, non-EEA student permission will be limited to seven years in total for degree-level students.³² Eligible education providers must be included on a State-administered 'Internationalisation Register'. Interim arrangements for current students affected by the change were also announced, including a six-month concession period applicable in cases for timed-out students to regularise their status.³³ Students who had exceeded their allowed duration of stay after 1 January 2011 were offered a number of options. In the case of language and non-degree students who had completed three years were permitted to register only if they were commencing a non-language course at NFQ Level 5 or 6 or a degree-level course. The seven year maximum time remains. Students whose permission expired between 1 January and 30 September 2011 were entitled to a six-month extension during which they would be allowed to work for 40 hours a week. In addition, they were permitted to apply for an employment permit or Green Card from within Ireland. Degree-level students who had completed their seven years of residence were permitted to register only if starting their second year (or later) of a programme. They would also be allowed to complete their course. In the case of students whose educational body had not met the criteria for the Internationalisation Register, who had exceed the three year time limit, and whose registration was due to expire prior to 1 July 2011, they were permitted to enrol for a course of this type for one year. Permission was granted in cases where the seven year time limit would not be exceeded.³⁴ A subsequent extension of permission was announced for certain categories of

³¹ Department of Justice and Equality (2012) *Annual Report 2011*. Available at www.justice.ie.

³² Except in cases where the course is at PhD level or a programme of study of long duration or where the Minister of Justice and Law Reform is satisfied that 'special circumstances exist'.

³³ Department of Justice and Law Reform (December 2010). 'Internationalisation Register New Arrangements to Apply from 01 January'. Available at www.inis.gov.ie.

³⁴ Irish Naturalisation and Immigration Service (2011). 'Special Extension of Residence for Timed-Out Students from 1 October 2011 - Notice of Special Extension of Residence for Timed-Out Students from 1 October 2011'. Available at www.inis.gov.ie.

non-EEA students whose permission to remain in Ireland expired after 1 October 2011, with a three-month extension offered for students legally resident in Ireland for seven years up to 1 January 2011 and who had either availed of the earlier six-month extension and kept their permission up to date, or availed of the Third-Level Graduate Scheme.

Regarding access to the labour market for students, the Third-Level Graduate Work Scheme was extended to twelve months for those at Level 8 or above of the National Framework of Qualifications and to six months for those with Level 7 qualifications based on the Framework.³⁵ An overall review by the Interdepartmental Committee on Student Immigration on access to the labour market by non-EEA students took place during 2011.

Visa Waiver Programme

In May 2011 the Government announced Ireland's first formal visa waiver programme.³⁶ Commencing on 1 July 2011, the short-stay Visa Waiver Programme was launched as a pilot until the end of October 2012. The Programme was described as providing for visa-free travel to Ireland for persons in possession of a valid U.K. visa and who are either nationals of one of the countries covered by the scheme, have entered the UK on a UK 'C' General visa or been granted leave to remain in the UK for up to 180 days. Tourists, business persons (including 'C' long-term, multi-entry business visas), sportspersons and academics are included, while holders of transit visas, long-term student visas and family reunification visas are not covered. Qualifying persons will be permitted to remain in Ireland for a maximum of 90 days or the duration remaining on their UK leave to remain if shorter. Nationals of primarily 'emerging' markets are catered for under the Programme including Eastern Europe (Belarus, Montenegro, Russian Federation, Serbia, Turkey and Ukraine), Middle East (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the U.A.E.) and Asia (India, Kazakhstan, China and Uzbekistan).³⁷ Long-term nationals who are long-term legal residents in the U.K. will require a visa but without a fee stipulation.³⁸

Religious Ministers and Lay Volunteers

Updated immigration arrangements concerning religious ministers and lay volunteers came into effect from 1 January 2011.³⁹ Persons granted permission

³⁵ Irish Naturalisation and Immigration Service (January 2011). *New Immigration Regime for Full Time Non-EEA Students - Guidelines for Degree Programme Students*. Available at www.inis.gov.ie.

³⁶ The Immigration Act 2004 (Visas) (No. 2) Order 2011 (*S.I. No. 345 of 2011*) subsequently gave effect to the Programme from 1 July 2011.

³⁷ Irish Naturalisation and Immigration Service (2011). 'The Irish Short-Stay Visa Waiver Programme Information Note'. Available at www.inis.gov.ie.

³⁸ See Irish Naturalisation and Immigration Service (11 May 2011). 'Alan Shatter T.D., Minister for Justice, Equality and Defence announces Ireland's first formal Visa Waiver Programme as an integral part of the Government's Job Initiative'. *Press Release*. Available at www.inis.gov.ie.

³⁹ Irish Naturalisation and Immigration Service (2010). *Ministers of Religion and Lay Volunteers*. Available at www.inis.gov.ie.

to enter Ireland as a religious minister or lay person on or after 1 January 2011 will now be permitted to remain in Ireland for a maximum of three years and will be issued with a ‘Stamp 3’⁴⁰ immigration permission. Employment in the general labour market is not permitted; the person must be self-sufficient; have private health insurance (either on a personal or group scheme basis); and not be considered as a possible threat to public security. In the case of religious ministers, family reunification may be possible on a case-by-case basis (in cases of a spouse/partner and child under 18 years of age, and where a child may attend a State school) and a possible extension of immigration permission may be possible.⁴¹

‘Leave to Remain’ in Ireland

During 2011 a total of 1,968 persons were granted leave to remain in Ireland overall, including cases granted following their consideration under Section 3 of the *Immigration Act 1999 (as amended)* and persons who relied primarily on the *Zambrano* judgment to advance their cases to remain in the State.⁴² Of this overall number, the majority of grants referred to nationals of Nigeria (852 cases), China (104 cases), Democratic Republic of Congo (75 cases), Ghana (67 cases) and Pakistan (53 cases).⁴³

Migrant Integration

Overall during 2011, the Office for the Promotion of Migrant Integration (OPMI) paid grants of €181,994 to local authorities, €253,206 to sporting bodies and €806,675 to other national organisations. 23 projects continued during 2011 under the European Refugee Fund and the European Fund for the Integration of Third Country Nationals.⁴⁴ Examples of funding included a ‘Workplace Diversity Initiative’; an immigration law expert within an NGO to train volunteers on citizenship matters; and initiatives to promote greater migrant participation in the sporting life of communities, local migrant fora, volunteer English language classes etc. In March 2011 the Garda (Police) Racial, Intercultural and Diversity Office (GRIDO) hosted the Annual Garda Diversity Consultation Day.

Citizenship

In June 2011 it was announced that a series of changes to the citizenship application process in Ireland was to take place to enable ‘*more efficient and streamlined processing times*’. Applications are generally to receive a decision within six months, with a simplified application form introduced. Citizenship

⁴⁰ Stamp 3 category means that a person is permitted to remain in Ireland on conditions that the holder does not enter employment, does not engage in any business or profession and does not remain later than a specified date.

⁴¹ Irish Naturalisation and Immigration Service (2011). *Ministers of Religion and Lay Volunteers*. Available at www.inis.gov.ie.

⁴² Irish Naturalisation and Immigration Service (November 2012).

⁴³ *Ibid.*

⁴⁴ Department of Justice and Equality (2012) *Annual Report 2011*. Available at www.justice.ie.

ceremonies were also set up. Other changes announced during 2011 included accelerated checking procedures for certain categories of applicants (such as spouses of Irish citizens and recent grantees of long-term residency) where similar checks have already taken place.⁴⁵ In a year-end review of 2011 activities, the Minister for Justice, Equality and Defence highlighted the completion of preparations for an English language and civics test for naturalisation applicants during 2012 as a key priority.⁴⁶

European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex)

Ireland's cooperation with European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) continued during 2011, with a financial contribution of €250,000. Ireland participated in a total of seven joint European return operations organised by Frontex during the year, and was the lead partner in two of these. Ireland continued to participate in meetings of the Frontex Risk Analysis Network, and participated in border guard training in the area of biometrics, common curriculum, false documents and return.

Deportation, Dublin Regulation Transfers and Voluntary Return

In 2011 some 280 persons were removed from the State by way of deportation orders made under Section 3 of the *Immigration Act 1999*.⁴⁷ The main country of nationality of deportation orders effected in 2011 was Nigeria (124 persons), Moldova (21 persons), South Africa (21 persons), Georgia (18 persons) and Pakistan (18 persons).⁴⁸ Some 2,543 persons were refused entry to Ireland at ports of entry and returned to the place from which they had come.⁴⁹ A total of 41 EU nationals were transferred from Ireland on foot of an EU Removal Order.⁵⁰ Some 144 transfer orders were effected during 2011 under the Dublin Regulation.⁵¹ A total of 475 persons were assisted to return home voluntarily during 2011,⁵² with 402 persons in receipt of assistance from the International Organization for Migration (IOM) office in Dublin and 73 availing of administrative assistance from the Irish Naturalisation and Immigration Service (INIS).⁵³

⁴⁵ Irish Naturalisation and Immigration Service (June 2011). 'Minister Shatter introduces major changes to citizenship application processing regime'. *Press Release*. Available at www.inis.gov.ie.

⁴⁶ Irish Naturalisation and Immigration Service (January 2012). 'Immigration in Ireland 2011 - a year-end snapshot - major changes and more to follow. Minister Shatter outlines plans for 2012'. *Press Release*. Available at www.inis.gov.ie.

⁴⁷ Department of Justice and Equality (2012). *Annual Report 2011*. Available at www.justice.ie.

⁴⁸ Irish Naturalisation and Immigration Service (May 2012).

⁴⁹ Department of Justice and Equality (2012). *Annual Report 2011*. Available at www.justice.ie.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² Department of Justice and Equality (2012). *Annual Report 2011*. Available at www.justice.ie.

⁵³ Irish Naturalisation and Immigration Service (May 2012).

Trafficking

Amendments during 2011 to the *Administrative Arrangements for Victims of Trafficking* included clarification on the scope of application of the Arrangements, its application to persons under 18 years and clarification as to the process followed when a person is refused a declaration of refugee status.⁵⁴ In January 2011, the Blue Blindfold⁵⁵ awareness campaign was launched in Northern Ireland and a public information campaign was also launched in Dublin. A *Guide to Procedures for Victims of Human Trafficking* was produced and made available online.⁵⁶ In 2011, some 53 cases of alleged human trafficking involving 57 persons were reported to An Garda Síochána.⁵⁷ Of this number, 37 persons were alleged victims of sexual exploitation (34 were female, three were male); 13 were alleged victims of labour exploitation (nine were female, four were male); two persons were alleged victims of both sexual and labour exploitation (one was female, one was male); and five were victims of uncategorised exploitation (four were female, one was male). The majority of referred alleged cases of human trafficking related to persons from Africa, (with 23 cases from Western Africa, three from Southern Africa, two from North Africa and one from East Africa) and Europe (with nine cases from EU countries excluding Ireland, six from Ireland and two from non-EU European countries). Some eight cases related to persons from Asia and three from Latin America. Some four cases went before the courts in Ireland, with three cases sent to the Director of Public Prosecutions (DPP). One case resulted in a conviction related to trafficking in human beings obtained under the *Criminal Law (Sexual Offences) Act 1993*, and in one case the claim of trafficking was withdrawn. Some four convictions took place during 2011 with regard to offences relating to the trafficking of human beings in Ireland. Two were secured under the *Child Trafficking and Pornography Act 1998*;⁵⁸ one conviction was secured under the *Criminal Law (Human Trafficking) Act 2008* and one conviction was secured under the *Criminal Law (Sexual Offences) Act 1993*. Ireland was involved also in a number of international human trafficking investigations in 2011. Work took place on draft Memoranda of Understanding with Nigeria and the UK during 2011 also.⁵⁹

The 2011 US State Department *Trafficking in Persons Report 2011* saw Ireland remain a Tier 1 country,⁶⁰ fully complying with the minimum standards for the

⁵⁴ The Administrative Arrangements were to be given legislative effect in the *Immigration, Residence and Protection Bill 2010*.

⁵⁵ See previous reports in this series for further information.

⁵⁶ Department of Justice and Equality (2012). *Annual Report 2011*. Available at www.justice.ie.

⁵⁷ All data are from Anti-Human Trafficking Unit, Department of Justice and Equality (2012). *Annual Report of Trafficking in Human Beings in Ireland for 2011*. Available at www.justice.ie.

⁵⁸ The first case as amended by Section 6 of the *Criminal Law (Sexual Offences) (Amendment) Act 2007* and as substituted by Section 3(2) of the *Criminal Law (Human Trafficking) Act 2008*.

⁵⁹ Anti-Human Trafficking Unit, Department of Justice and Equality (2012). *Annual Report of Trafficking in Human Beings in Ireland for 2011*. Available at www.justice.ie.

⁶⁰ Tier 1 classification indicates countries which fully comply with Trafficking Victims Protection Act's (TVPA) minimum standards.

elimination of trafficking. The 2011 report noted that it was a ‘destination, source and transit country’ for women, men and children in both cases of sexual exploitation and forced labour. The report made a number of recommendations including the increased implementation of the *Criminal Law (Human Trafficking) Act 2008*, the institutionalisation and improvement of identification of victims of trafficking, including potential forced labour victims; the pursuance of a victim-centred approach, and the implementation of measures to educate consumers on forced labour trafficking.⁶¹

Visa

During 2011, some 136,944 visa applications were received by Ireland,⁶² with some 83,437 applications for entry visas and 53,507 applications for re-entry visas.⁶³ The *Annual Report 2011* of the Department of Justice and Equality noted that some 91 per cent of all applications for entry visas were approved. The main country of nationality of persons applying for visas during 2011 was India (16 per cent), Russia (13 per cent), China (11 per cent), Nigeria (7 per cent) and Turkey (5 per cent).⁶⁴

Schengen

During 2011, Ireland participated in aspects of the second generation Schengen Information System (SIS II), namely policy and judicial cooperation. Ireland continued to operate biometric data collection (‘e-Visa’) as part of the visa application process in Nigeria and indicated its intention to expand this collection system to certain other countries, notably Pakistan. During 2011 the UK and Ireland developed a number of initiatives with regard to training, sharing of immigration liaison officer resources, immigration information and biometric exchanges.⁶⁵

International Protection

The overall refugee recognition rate during 2011 was 4.9 per cent. Some 1,290 applications for asylum were received by the Office of the Refugee Applications Commissioner (ORAC) in 2011. The largest nationality groups concerned nationals of Nigeria (182 applications), Pakistan (175 applications), China (142 applications), DR Congo (70 applications) and Afghanistan (67 applications).⁶⁶ Some 26 applications for asylum were received from unaccompanied minors during 2011. During 2011, a total of 5.8 per cent of all applications (75 applications) represented persons in detention.⁶⁷ Some 1,834 cases were

⁶¹ US State Department (2011). *Trafficking in Persons Report 2011*. Available at www.state.gov.

⁶² Department of Justice and Equality (2012). *Annual Report 2011*. Available at www.justice.ie.

⁶³ Irish Naturalisation and Immigration Service (May 2012).

⁶⁴ Department of Justice and Equality (2012). *Annual Report 2011*. Available at www.justice.ie.

⁶⁵ *Ibid.*

⁶⁶ Office of the Refugee Applications Commissioner (February 2012). *Monthly Statistical Report December 2011*. Available at www.orac.ie.

⁶⁷ Office of the Refugee Applications Commissioner (2012). *Annual Report 2011*. Available at www.orac.ie.

finalised during 2011 and some 61 positive recommendations took place during 2011 at first instance.⁶⁸ A total of 1,010 sets of fingerprints were sent to EURODAC during 2011, with 13 per cent (135 cases) showing that applicants had submitted an application for asylum in another Member State.⁶⁹ During 2011, 144 transfer orders were effected under the Dublin Regulation.⁷⁰ Some 1,106 appeals were received by the Refugee Appeals Tribunal during 2011 under new and older procedures. A total of 1,378 appeals were completed during the year, including cases relating to the Dublin Regulation.⁷¹ Some 99 per cent of recommendations made by the Refugee Applications Commissioner under manifestly unfounded and accelerated decisions were affirmed during 2011 (relating to six positive cases), and some 94 per cent of all recommendations relating to decisions under the Dublin Convention/Regulation were upheld (relating to five positive cases).⁷²

Regarding the judicial review of cases, at the end of 2011 some 238 cases related to ORAC were on hand. The Office received 79 new legal challenges during the year.⁷³ A total of 234 applications for judicial review against decisions of the Refugee Appeals Tribunal were filed during the year.⁷⁴ The Courts Service *Annual Report 2011* noted that 59 per cent of the 1,193 applications for judicial review in the High Court during 2011 related to asylum, immigration and refugees (703 cases), representing a decrease of 25 per cent on corresponding figures for 2010. The majority of these judicial reviews related to interim asylum-related orders (147), followed by liberty to apply for judicial review granted (129), and final orders - miscellaneous (117). The waiting time for the High Court in asylum cases was 30 months for pre-leave and five months post-leave. The average waiting time for the priority list (in which asylum lists are included) in the Supreme Court was eight months.⁷⁵

A total of 99 referrals to the Dublin-based Team for Separated Children Seeking Asylum took place during the year, with 31 minors subsequently reunited with caregivers and 42 accommodated in residential units.⁷⁶ In January 2011, the Health Service Executive (HSE) confirmed that all unaccompanied minors were now cared for in either foster placements or residential units following the closure of hostel accommodation on 31 December 2010. The HSE also stated that it aims to provide a dedicated social worker for each unaccompanied minor.⁷⁷ A national policy regarding transfers of unaccompanied minors is in place and since early 2011, 'quality matching' with foster families on a national

68

Ibid.

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Office of the Refugee Applications Commissioner (2012). *Annual Report 2011*. Available at www.orac.ie.

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Department of Justice and Equality (2012). *Annual Report 2011*. Available at www.justice.ie.

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Refugee Appeals Tribunal (2012). *Annual Report 2012*. Available at www.refappeal.ie.

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Ibid.

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Office of the Refugee Applications Commissioner (2012). *Annual Report 2011*. Available at www.orac.ie.

74

Refugee Appeals Tribunal (2012). *Annual Report 2011*. Available at www.refappeal.ie.

75

The Courts Service (2012). *Annual Report 2011*. Available at www.courts.ie.

76

Social Work Team for Separated Children Seeking Asylum, Health Service Executive (June 2012).

77

The Irish Times (10 January 2011). 'Number of missing children falls as new policies adopted'. Available at www.irishtimes.com.

basis has taken place. Prior to turning 18 years, all unaccompanied minors are allocated a leaving and after care worker. After turning 18 years, the HSE continues to offer a limited service on an as needed / as requested basis. The issue of unaccompanied minors missing from State care continued to provoke public debate during 2011, with a newspaper article asserting that three unaccompanied minors missing from HSE care during 2011 had not been traced.⁷⁸

Ireland continued to participate in the UNHCR led Resettlement Programme for vulnerable refugees during 2011, with some 994 persons resettled in Ireland under this Programme since 2000. During 2011, 45 persons were resettled from Eritrea (nine persons), Ethiopia (six persons), Iraq (six persons), Morocco (one person) and Sudan (23 persons).⁷⁹ This includes the relocation of nine persons, for resettlement purposes, from Malta to Ireland.⁸⁰

Some 13 grants of subsidiary protection were made during 2011 with 889 applications during the year.⁸¹

During 2011 the system of direct provision accommodation continued to prompt much media and parliamentary debate. Some 917 persons were newly accommodated in direct provision during 2011, with a contracted capacity of 5,984⁸² persons and 5,423 persons in occupancy at year end.⁸³ Some 3,040 persons had been in direct provision for over 36 months at this time.⁸⁴ The *Annual Report 2011* by the Reception and Integration Agency (RIA) notes that €69.5 million was spent during 2011. A coalition of NGOs, the NGO Alliance Against Racism, provided a shadow report to the United Nations Committee on the Elimination of Racial Discrimination on areas where it believed the State is failing to meet its commitments under the Convention and called for a 'radical review' of the direct provision system. Later in 2011, a number of NGOs (including NASC, Doras Luimní and the Free Legal Advice Centre) criticised the continued absence of an 'adequate and transparent' complaints system.⁸⁵ The Irish Refugee Council 2011 report, *Direct Provision and Dispersal: Is there an alternative?*, called for a review of the system and recommended that the current policy of dispersal was detrimental to asylum seekers and should be replaced by 'a comprehensive reception policy'.

⁷⁸ *The Irish Times* (3 January 2012). 'Unescorted minors in care of HSE still missing'. Available at www.irishtimes.com.

⁷⁹ This refers to country of stated nationality.

⁸⁰ Information as received from the Office for the Promotion of Migrant Integration. Cited as 24 Sudanese persons residing in Tunisia, ten persons under international protection in Malta and two medical cases (relating to ten persons) in the Department of Justice and Equality (2012). *Annual Report 2011*. Available at www.justice.ie.

⁸¹ Irish Naturalisation and Immigration Service (November 2012).

⁸² Reception and Integration Agency (2012). *Monthly Statistics Report December 2011*. Available at www.ria.gov.ie.

⁸³ Reception and Integration Agency (2012). *Annual Report 2011*. Available at www.ria.gov.ie.

⁸⁴ Reception and Integration Agency (2012). *Monthly Statistics Report December 2011*. Available at www.ria.gov.ie. It is noted that this figure is taken from the Department of Justice and Equality AISIP database. As a result this figure does not correspond directly with RIA figures as provided in the December statistical report.

⁸⁵ *The Irish Times* (19 July 2011). 'System Needed for Complaints by Asylum Seekers, Say Groups'. Available at www.irishtimes.com.

Ireland continued to participate as a member of the European Asylum Support Office (EASO) management board during 2011.

External Relations

During 2011 Ireland participated in ongoing dialogue with India and China regarding promotion of business and trade. As part of this process, contact with diaspora organisations took place with regard to informal cooperation.⁸⁶ A second Global Irish Economic Forum took place in Dublin Castle on 7-8 October, 2011.

EU Legislation

Ireland is taking part in *Regulation 493/2011 of the European Parliament and of the Council amending Council Regulation 377/2004 on the creation of an immigration liaison officers network*. Ireland notified its intention to take part in *Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA* which was adopted on 5 April 2011 and for implementation by 6 April 2013. Work is ongoing regarding determination of measures necessary to implement the Directive on a domestic level.

In *Case C-431-10 Commission v. Ireland* ruled on 7 April 2011, the Court of Justice declared that Ireland failed to comply with *Directive 2005/85/EC*, and ordered the State to pay the costs of the action. The European Commission had brought proceedings against Ireland in the European Court of Justice for failure to transpose *Directive 2005/85/EC*. *The European Communities (Asylum Procedures) Regulations 2011 (S.I. No. 51 of 2011)* and the *Refugee Act 1996 (Asylum Procedures) Regulations 2011 (S.I. No. 52 of 2011)* were enacted shortly before the Court of Justice's ruling, the Minister for Justice made two statutory instruments with the aim of transposing provisions from the Directive.

In 2011 Ireland further transposed *Directive 2004/38/EC* by way of the *Immigration Act 2004 (Visas) Order 2011 (S.I. No. 146 of 2011)*. *Council Directive 2005/85/EC* was further transposed via the *European Communities (Asylum Procedures) Regulations 2011 (S.I. No. 51 of 2011)* and the *Refugee Act 1996 (Asylum Procedures) Regulations 2011 (S.I. No. 52 of 2011)*. *Council Directive 2004/82/EC* was enacted via the *European Communities (Communication of Passenger Data) Regulations 2011 (S.I. No. 597 of 2011)*. In 2011, the *European Communities (Eligibility For Protection) (Amendment) Regulations 2011 (S.I. No. 405 of 2011)* was signed, and this amended *S.I. 656 of 2006* to give further effect to the *Directive 2004/83/EC*.

Chapter 1

Introduction: Purpose and Methodology Followed

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

In accordance with Article 9(1) of Council Decision 2008/381/EC establishing the EMN, each EMN NCP is required to provide every year a report describing the migration and asylum situation in the Member State, which shall include policy developments and statistical data. The purpose of the EMN report is to continue to provide an insight into the most significant political and legislative (including EU) developments, as well as public debates, in the area of migration and asylum. The *EMN Annual Policy Report 2011* will cover the period 1 January 2011 to 31 December 2011.

Each Member State is tasked with documenting the state of implementation of EU legislation and the impact of European policy developments at national level. Nation-specific significant developments (political, legal, administrative, etc.) in the area of migration and asylum are to be described by each Member State. Finally, Member States are asked to comment on relevant debates. The National Reports will be used both to contribute to the European Commission's Annual Report on the implementation of the Pact and, as per previous reports, to the EMN Synthesis Report, in order to summarise and compare the findings in a comparative perspective useful for policymakers.

1.1 METHODOLOGY

1.1.1. Definition of a Significant Development

For the purpose of the *Annual Policy Report 2011*, specific criteria regarding the inclusion of significant developments and/or debates have been adopted to ensure standard reporting across all national country reports. On an EMN central level, the definition of a 'significant development/debate' within a particular year is an event that had been discussed in parliament and has been widely reported in the media. The longer the time of reporting in the media, the more significant the development. Developments will also be considered significant if such developments/ debates then led to any proposals for amended or new legislation.

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

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

1.1.2 Sources and Types of Information Used

The sources and types of information used include:

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

1.1.3 Statistical Data

Statistics, where available, were taken from published first-source material such as Government/Other Annual Reports and published statistics from the Central Statistics Office.

Where noted, and where not possible to access original statistical sources, data were taken from media articles based on access to unpublished documents.

1.1.4 Consulted Partners

In order to provide a comprehensive and reflective overview of national legislative and other debates, a representative sample of core partners were contacted with regard to input on a draft *Annual Policy Report 2011*:

- Anti-Human Trafficking Unit, Department of Justice and Equality
- Department of Justice and Equality
- Immigrant Council of Ireland (ICI)

- International Organization for Migration (IOM) Dublin
- Irish Refugee Council (IRC)
- Office of the Refugee Applications Commissioner (ORAC)
- Office for the Promotion of Migrant Integration (OPMI), Department of Justice and Equality
- Refugee Appeals Tribunal (RAT)
- UNHCR Ireland.

1.2 TERMS AND DEFINITIONS

All definitions for technical terms or concepts used in the study are as per the EMN Glossary, unless noted as other.

Chapter 2

General Structure of Political and Legal System in Ireland

2.1 GENERAL STRUCTURE OF THE POLITICAL SYSTEM AND INSTITUTIONAL CONTEXT

2.1.1 General Structure of the Political System

Ireland is a parliamentary democracy. The two houses of the Oireachtas (Parliament) are Dáil Éireann (the House of Representatives) and Seanad Éireann (the Senate). The Constitution was enacted in 1937 and it defines the powers and functions of the President, the Government and the Oireachtas. The Government is led by the Taoiseach (the Prime Minister, Enda Kenny T.D., as of year-end 2011) and Tánaiste (Deputy Prime Minister, Eamon Gilmore, as of year-end 2011). Each of the Dáil's 166 members is a Teachta Dála (T.D.), who is directly elected by the people. General elections take place at least once every five years. A general election took place in February 2011. At the end of 2011, the government was the 29th Government of Ireland which was formed on 9 March 2011. It comprised a coalition government of Fine Gael and the Labour Party.

As will be discussed in Section 3.1, a number of new appointments and new departmental names were announced in 2011. There were 16 government departments as of the end of 2011, with each headed by a Minister, or Prime Minister in the case of the Department of the Taoiseach.⁸⁷

2.1.2 Institutional Context

Three departments are involved in migration management in Ireland.

In addition, the Department of Health, which is responsible for administration of the Health Service Executive (HSE), is tasked with providing care for unaccompanied Third Country minors in the State.

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Department of Agriculture, Food and the Marine; Department of Arts, Heritage and the Gaeltacht; Department of Children and Youth Affairs; Department of Communications, Energy and Natural Resources; Department of Defence; Department of Education and Skills; Department of Environment, Community and Local Government; Department of Finance; Department of Foreign Affairs and Trade; Department of Health; Department of Jobs, Enterprise and Innovation; Department of Justice and Equality; Department of Public Expenditure and Reform; Department of Social Protection; Department of the Taoiseach; and Department of Transport, Tourism and Sport.

2.1.2.1 Department of Justice and Equality

The Department of Justice and Equality⁸⁸ is responsible for immigration management and the minister of that Department has ultimate decision making powers in relation to immigration and asylum. In addition the Anti-Human Trafficking Unit⁸⁹ is part of the Department. The Garda National Immigration Bureau (GNIB) is responsible for all immigration related to Garda (police) operations in the State and is under the auspices of An Garda Síochána and, in turn, the Department of Justice and Equality. The GNIB enforces deportations and border control, and carries out investigations related to illegal immigration and trafficking in human beings. An Garda Síochána has personnel specifically dealing with immigration in every Garda district, at all approved ports and airports and at a border control unit attached to Dundalk Garda Station.

The Irish Naturalisation and Immigration Service (INIS)⁹⁰ is responsible for administering the statutory and administrative functions of the Minister for Justice, Equality and Defence in relation to asylum, visa, immigration and citizenship processing, asylum, immigration and citizenship policy and repatriation. The INIS also brings the Reception and Integration Agency (RIA)⁹¹ under its aegis. The Reception and Integration Agency (RIA) is responsible for co-ordinating the provision of services to asylum seekers and those awaiting decisions on their applications for subsidiary protection/‘humanitarian leave to remain’. It also co-ordinates the provision of services such as health and education to asylum seekers in RIA accommodation. Since 2004 it has also been responsible for supporting the repatriation, on an ongoing basis and for the Department of Social Protection,⁹² of nationals of the 12 new EU Member States who fail the Habitual Residency Condition attached to social assistance payments and require assistance in returning to their country of origin. It also provides accommodation to suspected victims of trafficking pending a determination of their case and during the 60-day recovery and reflection period.

With regard to applications for asylum and decision-making regarding the granting of refugee status under the *Geneva Convention 1951*, a two-tier structure exists for asylum application processing, consisting of the Refugee Applications Commissioner (commonly referred to as the Office of the Refugee Applications Commissioner [ORAC]) and the Refugee Appeals Tribunal (RAT). These bodies have responsibility for processing first-instance asylum claims and for hearing appeals, respectively. Both bodies make recommendations on asylum claims and hearings to the Minister of the Department who makes the final decision on whether refugee status is granted or refused. Both ORAC and

⁸⁸ www.justice.ie.

⁸⁹ <http://www.justice.ie/en/JELR/Pages/WP09000005>.

⁹⁰ <http://www.inis.gov.ie>.

⁹¹ <http://www.ria.gov.ie>.

⁹² <http://www.welfare.ie>.

RAT have their own independent statutory existence. The Department also ensures they have input into the co-ordination of asylum policy.

The Refugee Applications Commissioner is also responsible for investigating applications by refugees to allow family members to enter and reside in the State and for providing a report to the Minister on such applications.

The Refugee Documentation Centre (RDC)⁹³ is an independent library and research service within the Legal Aid Board.⁹⁴ The Refugee Legal Service (RLS)⁹⁵ was established in 1999 to provide a comprehensive legal aid service for asylum seekers and falls within the remit of the statutory, independent body of the Legal Aid Board. Limited immigration advice is included under the remit of the Legal Aid Board.⁹⁶ Additionally, the Legal Aid Board provides legal services on certain matters to persons identified by the Human Trafficking Investigation and Co-ordination Unit of An Garda Síochána as ‘potential victims’ of human trafficking under the *Criminal Law (Human Trafficking) Act 2008*.

The Office for the Promotion of Migrant Integration (OPMI) also comes under the auspices of the Department of Justice and Equality.⁹⁷ With a focus on the promotion of the integration of legal immigrants into Irish society, the OPMI has a cross-Departmental mandate to develop, lead and co-ordinate integration policy across government departments, agencies and services. The OPMI also co-ordinates the resettlement of refugees admitted by Ireland under the United Nations Resettlement Programme and the administration of EU and national funding for the promotion of migrant integration.

2.1.2.2 Department of Jobs, Enterprise and Innovation

The Department of Enterprise, Trade and Innovation⁹⁸ administers the employment permit schemes under the general auspices of the Labour Force Development Division:

- The Economic Migration Policy Unit⁹⁹ contributes to the Department's work in formulating and implementing labour market policies by leading the development and review of policy on economic migration and access to employment in Ireland.
- The Employment Permits Section¹⁰⁰ implements a labour market driven employment permits system in order to fill those labour skills gaps which cannot be filled through domestic/EU supply. The Employment Permits Section processes applications for employment permits, issues guidelines,

⁹³ <http://www.legalaidboard.ie/lab/publishing.nsf/Content/RDC>.

⁹⁴ www.legalaidboard.ie.

⁹⁵ http://www.legalaidboard.ie/lab/publishing.nsf/Content/Refugee_Legal_Service.

⁹⁶ The Legal Aid Board website states that ‘Legal aid and advice is also provided in appropriate cases on immigration and deportation matters’. Available at <http://www.legalaidboard.ie>.

⁹⁷ www.integration.ie.

⁹⁸ www.djei.ie.

⁹⁹ <http://www.djei.ie/labour/migration/index.htm>.

¹⁰⁰ <http://www.djei.ie/labour/workpermits>.

information and procedures, and produces online statistics on applications and permits issued.

- The Office of Science, Technology and Innovation deals with the administration of applications from research organisations seeking to employ Third Country National researchers pursuant to *Council Directive 2005/71/EC on a specific procedure for admitting Third Country Nationals for the purposes of scientific research*.

2.1.2.3 The Department of Foreign Affairs

The Department of Foreign Affairs¹⁰¹ has responsibility for the issuance of visas via Irish Embassy consular services in cases where the Department of Justice and Equality does not have a dedicated Visa Office present within the country.¹⁰² The Department of Foreign Affairs has operative function only and is not responsible for visa policy or decisions, which are the remit of the Department of Justice and Equality.

2.2 GENERAL STRUCTURE OF THE LEGAL SYSTEM

As outlined in previous reports in this series, and notably by Quinn (2009), the modern Irish legal system is based on Common Law as modified by subsequent legislation and by the *Irish Constitution of 1937*. The Oireachtas, consisting of the President and the two Houses of the Oireachtas, Dáil Éireann and Seanad Éireann, is the only institution in Ireland with power to make laws for the State. Bills can either be initiated by Private Members' Bills or by Government and while a Bill may be commenced in either House, it must be passed by both to become law.

The First Stage of the legislative process is the initiation of a Bill (a proposal for legislation) by presentation in either the Dáil or the Seanad. There then follows a series of Stages during which the Bill is examined, debated and amended in both houses. At the Final, or Fifth Stage, a debate takes place on a motion of whether the Bill would now constitute good law. If passed in the motion, the Bill is then passed to the other House, the Seanad, with Second to Fifth stages repeated there. The Seanad has 90 days (or a longer time period if agreed by both Houses) to consider the Bill and either pass the Bill without amendment, return the Bill to the Dáil with amendments or reject the Bill completely. Once a Bill has been passed by both Houses, the Taoiseach presents a copy of the Bill to the President for signature. When the Bill comes to the President for signature, he or she considers whether the new Bill may conflict with the Constitution and may, after consultation with the Council of State, refer the

¹⁰¹ www.dfa.ie.

¹⁰² See Quinn (2009) for further discussion.

question of whether or not the Bill is constitutional to the Supreme Court. Once the President has signed the Bill it becomes an ‘Act’ and has legal force.¹⁰³

‘Statutory Instruments’, a secondary form of legislation, are typically not enacted by the Oireachtas, and allow persons or bodies to whom legislative power has been delegated by statute to legislate in relation to matters arising from the operation of the relevant primary legislation. Statutory instruments are often used to implement EU Directives.

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

As discussed in previous reports in this series, prior to the mid-1990s Irish asylum and immigration legislation was covered under the *Aliens Act 1935* (and Orders made under that Act),¹⁰⁴ together with the *EU Rights of Residence Directives* which came into effect after Ireland joined the European Union in 1973. Following a sharp rise in immigration flows from the mid-1990s, several pieces of legislation were introduced to deal with immigration and asylum issues in Ireland.

Regarding domestic legislation dealing with refugees and asylum seekers, the most notable piece of legislation is the *Refugee Act 1996*, as amended. In addition, *S.I. No. 518 of 2006* seeks to ensure compliance with *EU Directive 2004/83/EC*.¹⁰⁵ Ireland is also a signatory to the Dublin Convention, and is subject to the Dublin Regulation¹⁰⁶ which succeeded that Convention and which determines the EU Member State responsible for processing asylum applications made in the EU. Domestic immigration law in Ireland is based on various legislation, including the *Aliens Act of 1935* and Orders made under it, the *Illegal Immigrants (Trafficking) Act 2000*, and the *Immigration Acts 1999*,

¹⁰³ Quinn (2009) provides a discussion on the structure of the Irish legal system, specifically the place of immigration and asylum within it.

¹⁰⁴ *Aliens Order 1946 (S.I. No. 395 of 1946); Aliens (Amendment) Order 1975 (S.I. No. 128 of 1975).*

¹⁰⁵ *Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of Third Country Nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.* Quinn (2009) discusses both current and past development of legislation in great detail.

¹⁰⁶ *Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a Third Country National.*

2003 and 2004.¹⁰⁷ The *Immigration, Residence and Protection Bill 2010* constituted a single piece of proposed legislation for the management of both immigration and protection issues, and was restored following a change of government on 23 March 2011.¹⁰⁸ By year end the Bill remained within the Dáil and unenacted.¹⁰⁹ The *European Communities (Free Movement of Persons) (Amendment) Regulations 2008 (S.I. No. 310 of 2008)* was published in July 2008 and amends the 2006 Regulation stipulating that Third Country (non-EU) Nationals married to EU citizens must have resided in another Member State before moving to Ireland.

Regarding the situation of Ireland concerning an 'opt-in' provision regarding EU measures in asylum and migration, under the terms of the *Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty on the European Union (TEU) and to the TFEU*, Ireland does not take part in the adoption by the Council of proposed measures pursuant to Title IV of the EC Treaty unless Ireland opts into the measure. Ireland has given an undertaking to opt into measures that do not compromise the Common Travel Area with the UK, which also has an opt-in/opt-out facility.¹¹⁰

¹⁰⁷ See Quinn (2009) for further discussion on this issue, particularly legislative development.

¹⁰⁸ In 2012 the Minister for Justice and Equality announced his intention to republish the *Immigration, Residence and Protection Bill 2010* in 2013. The republished Bill will include several initiatives approved in the *Programme for Government 2011* including an independent appeals process.

¹⁰⁹ The Bill was subsequently withdrawn during 2012.

¹¹⁰ As noted in Quinn, E. and Kingston, G. (2012). *Practical Measures for Reducing Irregular Migration: Ireland*. Available at www.emn.ie and www.esri.ie.

Chapter 3

General Developments Relevant to Asylum and Migration

3.1 GENERAL POLITICAL DEVELOPMENTS

3.1.1 General Election

As indicated earlier, a general election took place in Ireland in February 2011. A new government, the 29th Government of Ireland, was formed in March 2011 and consisted of a coalition of Fine Gael and the Labour Party. Enda Kenny T.D. (Fine Gael) was nominated as Taoiseach (Prime Minister) at the beginning of March and a programme for Government, *Towards Recovery: Programme for a National Government 2011-2016*, was published later that month. A number of commitments to the area of international protection and migration are contained within the document including a commitment to introduce

comprehensive reforms of the immigration, residency and asylum systems, which will include a statutory appeals system and set out rights and obligations in a transparent way.

Also referenced are changes to the processing time of citizenship applications and establishment of a DNA database for use primarily in the investigation of serious crime but also to 'enhance cooperation within the EU in the area of asylum and immigration'.¹¹¹

3.1.2 Institutional Changes

Changes in the names and responsibilities of some departments also took place during 2011, with new ministers appointed to all positions. The Department of Justice and Law Reform became the Department of Justice and Equality (with effect from April 2011), with Alan Shatter T.D. appointed as Minister for Justice, Equality and Defence in March 2011. No Minister of State for Integration was appointed, and responsibility for integration matters was transferred from the Office of the Minister for Integration in the Department of Community, Equality and Gaeltacht Affairs to the Office for the Promotion of Migrant Integration (OPMI) in the Department of Justice and Equality. The Department of Enterprise, Trade and Innovation was renamed as the Department of Jobs, Enterprise and Innovation, with Richard Bruton T.D. becoming Minister with responsibilities for that area.

¹¹¹

Government of Ireland (March 2011). *Towards Recovery: Programme for a National Government 2011 - 2016*. Available at www.taoiseach.ie.

Other changes regarding departmental responsibility related to the Department of Social Protection (formerly the Department of Social and Family Affairs).

3.1.3 Budget 2012

The justice sector saw an overall decrease of €100 million in Budget 2012, with an allocation of €2.261 billion for the year.

3.1.4 Programme for Government

The 2011 *Programme for Government Common Statement* included a commitment to

*promote policies which integrate minority ethnic groups in Ireland, and which promote social inclusion, equality, diversity and the participation of immigrants in the economic, social, political and cultural life of their communities.*¹¹²

Specific commitments included: the exploration of a new agreement on visitor visas with the UK; allowing postgraduate students to be allowed to work in Ireland for a year after completion of studies, with ‘high-value’ research students allowed to bring their families to Ireland if staying for more than two years; the establishment of a DNA database which will be also used to ‘enhance’ EU cooperation in the area of asylum and immigration; the introduction of ‘comprehensive reforms’ of the immigration, residency and asylum systems including the setting out of rights and obligations in a ‘transparent’ way and creation of a statutory appeals system; the processing of citizenship applications within a ‘reasonable’ time; the promotion of policies which seek to integrate minority ethnic groups in Ireland including the participation of immigrants in the ‘economic, social, political and cultural life of their communities’; and the overall enhancement of Ireland’s role in EU judicial and home affairs cooperation.¹¹³ Reference was also made to considering the transfer of passport services from the Department of Foreign Affairs to an ‘Independent Executive Agency’ under the aegis of the Department of Justice and Equality.

3.2 MAIN POLICY AND/OR LEGISLATIVE DEBATES

3.2.1 Restoration of the *Immigration, Residence and Protection Bill 2010*

As referenced in previous reports in this series (notably the *Annual Policy Report 2010*), Immigration, Residence and Protection Bills were published in 2007, 2008 and 2010. The 2010 Bill fell with the change of government in 2011

¹¹² Government of Ireland (2011). *Programme for Government 2011*. Available at http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf.

¹¹³ As summarised in Appendix II of the Department of Justice and Equality (2011). *Strategy Statement 2011-2014*. Available at www.justice.ie.

and was subsequently restored by the new Government on 23 March 2011. By year end the Bill had not yet been enacted.¹¹⁴

3.2.2 *Female Genital Mutilation Bill 2011*

The *Female Genital Mutilation Bill 2011* was introduced in January 2011 with the aim of prohibiting female genital mutilation and related offences (including an extra-territorial aspect) and to act as a deterrent. The Bill was subsequently passed with amendments in March 2012 following much parliamentary discussion.

During discussions on the Bill, the Minister for Health, Dr. James Reilly, stated that the most up-to-date figures showed that some 3,183 women who had undergone female genital mutilation (FGM) were living in Ireland.¹¹⁵ The Minister noted that the definition of FGM in the Bill was based on the 'broad WHO definition [...] which includes type IV FGM' and that the Bill explicitly aimed to create an offence of removing a female from Ireland for the purpose of FGM. In addition, provisions for the protection of victims during legal proceedings were also included.

3.2.3 *Civil Law (Miscellaneous Provisions) Act 2011*

The *Civil Law (Miscellaneous Provisions) Act 2011* was signed into law in August 2011 and provides for a number of amendments to immigration and citizenship law.

Section 33 of the *Civil Law (Miscellaneous Provisions) Act 2011* amends the *Irish Nationality and Citizenship Act 1956* to provide for citizenship ceremonies, to take account of recognition in Irish law of civil partnerships in Irish law by the *Civil Partnership Act 2010* and to allow fees to be charged for naturalisation applications.¹¹⁶

¹¹⁴ The Bill was subsequently withdrawn in 2012.

¹¹⁵ Quoting a study by the NGO AkiDwa. In a press release upon passing of the Bill in 2011, AkiDwa stated that it was estimated that 'there are more than 3,000 women and girls living in Ireland who have undergone FGM. Most are from Nigeria, Somalia, Sudan, Egypt, Kenya and Sierra Leone.' AkiDwa (28 March 2012). 'Migrant Women Welcome Passing of Bill on Female Genital Mutilation'. *Press Release*. Available at www.akidwa.ie.

¹¹⁶ In summary, the principal amendments are as follows:
 Section 15 of the Principal Act is amended to provide expressly for formal citizenship ceremonies;
 Section 15A is amended to allow the Minister for Justice to waive the conditions for naturalisation in Section 15 for non-national civil partners as well as non-national spouses;
 Section 16 is similarly amended to include civil partners of Irish citizens within those deemed to be 'of Irish associations';
 Section 17 is amended to include express permission to charge fees for applications for naturalisation;
 Section 19 is amended to exclude those who obtain another citizenship by way of civil partnership from the category of persons from whom Irish citizenship may be revoked;
 Section 20 is amended to provide that civil partnership, like marriage, does not bring with it an entitlement to citizenship;
 Section 22 is amended to provide that the death of an Irish citizen or revocation of citizenship does not affect the subjects spouse, civil partner or children; and
 Section 23 is amended to provide that the marriage or civil partnership of an Irish citizen will not affect their entitlement to citizenship.

Section 34 of the Act of 2011 amends the *Immigration Act 2004* to take account of the decision of the High Court in *E.D. v. D.P.P. [2011] IEHC 110* which found that Section 12 of the *Immigration Act 2004* is inconsistent with Articles 38.1 and 40.4.1 of the Constitution (see Section 6.1.1.6.1).

Section 11 of the 2004 Act is amended to require that non-nationals presenting at the border be in possession of a valid passport or other equivalent document. When requested to do so by an immigration officer, non-nationals are required to furnish their passport or identity document and such further information as the officer may require. Failure to comply with these obligations is an offence. The new section also creates a defence of reasonable cause for non-compliance.

Section 12 is amended to require that every non-national in the State shall produce on demand by An Garda Síochána a valid passport or identity document. Again, failure to comply with this obligation is an offence, and a defence of reasonable cause for non-compliance is provided for.

Section 19 is amended to allow for the charging of fees in respect of applications under the *Immigration Acts*.

3.2.4 Statutory Instruments

Some eleven pieces of secondary legislation relating to immigration and international protection were introduced during 2011: *European Communities (Asylum Procedures) Regulations 2011 (S.I. No. 51 of 2011)*, *Refugee Act 1996 (Asylum Procedures) Regulations 2011 (S.I. No. 52 of 2011)*, *Immigration Act 2004 (Visas) Order 2011 (S.I. No. 146 of 2011)*, *Irish Nationality and Citizenship (Amendment) Regulations 2011 (S.I. No. 284 of 2011)*, *Immigration Act 2004 (Visas) (No. 2) Order 2011 (S.I. No. 345 of 2011)*, *Immigration Act 2004 (Travel Document Fee) Regulations (S.I. No. 403 of 2011)*, *Refugee Act 1996 (Travel Document And Fee) Regulations 2011 (S.I. No. 404 of 2011)*, *European Communities (Eligibility For Protection) (Amendment) Regulations 2011 (S.I. No. 405 of 2011)*, *Immigration Act 2004 (Registration Certificate Fee) Regulations 2011 (S.I. No. 449 of 2011)*, *Irish Nationality and Citizenship Regulations 2011 (S.I. No. 569 of 2011)*, and *European Communities (Communication of Passenger Data) Regulations 2011 (S.I. No. 597 of 2011)*. These are discussed throughout the rest of the report.

3.2.5 Department of Justice and Equality Strategy Statement 2011-2014

During 2011 the Department of Justice and Equality published a *Strategy Statement 2011-2014* in which they committed to focusing on providing ‘an immigration system with appropriate policies which meets the needs of a changing society and which facilitates to the greatest extent possible national economic development’ and to promote ‘equality and integration in Irish society in order to further economic growth, social inclusion and fairness’. Specific programme commitments referred to included policies to support and

facilitate the integration of legally-resident immigrants into Irish society via stakeholder consultation, a review of approaches to migrant integration and development of anti-racism and promotion of integration measures. Plans to develop the Irish immigration system to contribute to economic recovery included a focus on indicators relating to an increased number of tourists from countries covered by the Short-Stay Visa Waiver Programme concerning the UK; new residence permissions granted to entrepreneurs; and the General Permissions to Remain regime ‘tailored to maximise economic activity’. Maintenance of the asylum and immigration system was to be achieved via the retention of the ‘integrity’ of the Common Travel Area (CTA); implementation of the proposed provisions in the Immigration, Residence and Protection Bill; and improved application processing such as for citizenship. The review of the *National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009-2012* was planned for, with a new plan to be developed.¹¹⁷

3.2.6 UN Universal Periodic Review (UPR) ‘Draft report by the Working Group on the Universal Periodic Review Ireland’

During 2011, Ireland had its human rights record reviewed under the United Nations Universal Periodic Review (UPR) procedure, with a published report in October 2011. During the procedure the State presented a number of updates and commitments in the area, including their intention to reduce the processing time for citizenship applications to six months, and to reduce overall ‘unacceptable’ delays in part of the system, while simplifying procedures so that ‘decisions on asylum, protection and immigration can be taken speedily and in a transparent manner’.

In addition the Government noted that it was aware of difficulties regarding ‘sham marriages’ and noted the cooperation between An Garda Síochána and authorities in other jurisdictions. It highlighted provisions related to this within the draft *Immigration, Residence and Protection Bill* and that these were being ‘actively examined’ to identify any further amendments. The Government also noted that a co-ordinated approach by EU Member States is required to deal with the topic.

A number of recommendations¹¹⁸ related to migration and asylum were put forth including the establishment of a ‘consolidated framework’ related to immigration and asylum issues and that of an independent appeals body (UK); the enacting of laws to protect the ‘well-being’ of separated and unaccompanied minors in conformity with international standards (Uruguay); the extension of the remit of the Ombudsman for Children to asylum-seeking children (Netherlands); the ability for all asylum seekers to accede to the

¹¹⁷ Department of Justice and Equality (2011). *Strategy Statement 2011-2014*. Available at www.justice.ie.

¹¹⁸ Overall, 127 recommendations were made by Member States; Ireland accepted 62, declined to accept 15, and ‘undertook to further examine 50’. See Department of Justice and Equality (2012). *Annual Report 2011*. Available at www.justice.ie.

process of determination of their status and all decisions to be reviewed and subject to ‘independent judicial supervision’ (Mexico); and the taking of ‘necessary measures’ to avoid the detention of asylum seekers and to avoid ‘situations which may equate the condition of immigrants to that of felons’ (Brazil). In addition, the Czech Republic stated that it ‘remained concerned on Ireland[’s] immigration policy’ and Brazil expressed concern at racial profiling by law officials and the accessibility of the healthcare system to migrants, refugees and asylum-seekers. Iran expressed concern regarding the ‘lengthy detention periods for asylum seekers’ and also the same concern as Brazil regarding access to the healthcare system. Ukraine highlighted ‘variations in standards’ among privately operated direct provision centres. Latvia recommended the passing of legislation on the issue and recommended that the Civil Registration Act 2004 be amended to empower ‘the registers and the Garda (police) to intervene against sham marriages and to amend Criminal law to criminalize the organizers and facilitators of sham marriages.’

In response to the concern regarding racial profiling, the Minister for Justice, Equality and Defence stated that ‘the Gardaí did not engage in the practice, though officers on occasion checked an individual’s papers if suspicious they were in the State illegally’.¹¹⁹

The United Nations Human Rights Council received submissions from 60 Irish organisations for consideration by the working group on the UPR,¹²⁰ and the Department of Justice and Equality stated that they had received 120 submissions.¹²¹

3.2.7 Common Travel Area

On 20 December 2011, Ireland and the UK signed a joint agreement reinforcing the Common Travel Area (CTA) between both countries and providing a ‘platform for greater cooperation on immigration matters’.¹²² It was issued ‘in recognition of the protection of the Common Travel Area (CTA) arrangements’ and as a commitment to a ‘a joint programme of work on measures to increase the security of the external Common Travel Area border’.¹²³ The statement aims to work towards ‘joint standards for entry and ultimately enhanced electronic border systems’ with which to identify persons with no legal right to enter the CTA before they arrive at the border. It aims to facilitate legitimate travel within the CTA while preventing abuse of the common area and development of ways

¹¹⁹ *The Irish Times* (7 October 2011). ‘Shatter defends State record on rights’. Available at www.irishtimes.com

¹²⁰ *The Irish Times* (13 August 2011). ‘UN urged to examine Irish human rights lapses’. Available at www.irishtimes.com

¹²¹ Department of Justice and Equality (2012). *Annual Report 2011*. Available at www.justice.ie.

¹²² Irish Naturalisation and Immigration Service (20 December 2011). ‘Ireland-UK Accord to Further Secure the Common Travel Area’. *Press Release*. Available at www.inis.gov.ie.

¹²³ Irish Naturalisation and Immigration Service (December 2011). ‘Joint Statement by Mr. Damian Green, Minister of State for Immigration, the United Kingdom’s Home Department and Mr. Alan Shatter, Minister for Justice and Equality, Ireland’s Department of Justice and Equality Regarding Cooperation on Measures to Secure the External Common Travel Area Border’. Available at www.inis.gov.ie.

to challenge the *'credibility of visa and asylum applications where appropriate'*. It is also envisioned that the joint agreement will facilitate the return of unlawfully entering persons to their country of origin. It is intended that persons without a right to enter the CTA will be identified before they arrive at the border. The Agreement places a focus on visa information exchange between both countries, particularly with regard to 'high risk' countries and to include fingerprint biometrics and other biographical details. Development of an electronic border management system is planned as early as possible.¹²⁴ In the context of the agreement it was noted that close cooperation so far with regard to an exchange of data provided in 1,700 visa applications lodged in Nigeria with UK immigration records had resulted in identification of over 200 persons who had a previous 'adverse UK immigration history'. Other data sharing had shown that 500 of a 1,500 failed asylum claim sample in Ireland had been known to the UK Border Agency.

3.2.8 Asylum & Immigration Strategic Integration Programme (AISIP)

The Irish Naturalisation and Immigration Service (INIS) Asylum & Immigration Strategic Integration Programme (AISIP) went live in October 2011. With an aim of providing a 'whole of system' approach, it will combine over 20 stand-alone and disparate IT systems (involving 69 separate types of applications and transactions) into one system and will record over 800,000 transactions per year. The cost of the project was €9.3m for the development of the system and €3.9m on related project costs, such as hardware, software licences and other related costs. Approximately 500 staff received several days' training on the system.¹²⁵

3.3 BROADER DEVELOPMENTS IN ASYLUM AND MIGRATION

3.3.1 Census 2011

Central Statistics Office (CSO) initial releases from the 2011 Census show that the number of Irish residents who were born outside Ireland continues to increase and stood at 766,770 in 2011, an increase of 25 per cent on 2006, and accounting for 17 per cent of the population. The largest increases related to Romanian (up 110 per cent), Indian (up 91 per cent), Polish (up 83 per cent), Lithuanian (up 40 per cent) and Latvian (up 43 per cent) nationals. Between 2006 and 2011 the number of non-Irish nationals, increased by 124,624 persons, or 30 per cent, from 419,733 to 544,357. Within this number, the number of females increased by 39 per cent (76,500) since 2006, with an increase of 21.5 per cent (48,200) in non-Irish national males. Regarding ethnicity, significant increases occurred within most of the non-Irish ethnic

¹²⁴ Irish Naturalisation and Immigration Service (December 2011). 'Ireland-UK Accord to Further Secure the Common Travel Area'. *Press Release*. Available at www.inis.gov.ie.

¹²⁵ Dáil Éireann Debate Vol. 751 No. 4 (17 January 2012).

groups, with 'Other White' rising by almost 43 per cent between 2006 and 2011. An 87 per cent rise in the 'Other Asian' group included persons of Indian and Filipino origin, with eight per cent more persons of stated Chinese ethnicity. According to the Census, inward migration to Ireland by non-Irish nationals in the year to April 2011 was 33,674 (significantly less than Census 2006 when 93,200 were recorded) and from a large selection of countries, primarily Poland (3,825), UK (4,549), France (1,777), Lithuania (1,706), Spain (1,606) and the USA (1,563).¹²⁶

3.3.2 Habitual Residence Condition

Much media debate continued during 2011 regarding the implementation of a Habitual Residence Condition (HRC) regarding access to social welfare services with respect to both immigrants and returning Irish emigrants. As discussed in the *Annual Policy Report 2010*, the *Social Welfare and Pensions (No.2) Act 2009* of December 2009 introduced amendments to the Habitual Residence Condition regarding individuals either seeking or having been granted a protection status. Amendments specified that an individual must have a 'right to reside' in the State to satisfy the HRC and sets forth which persons will be regarded as having a right to reside and which persons will not. Individuals who had applied for asylum or a protection status in Ireland could not be considered as habitually resident while awaiting a determination. Overall, an individual 'who does not have a right to reside in the State' should not be regarded as habitually resident. Criticism of these amendments centred on the exclusion of those within the asylum system.

In a Parliamentary Question in March 2011 it was noted that when the Deciding Officer made a decision regarding satisfying the HRC, particularly in the case of returning Irish emigrants, they considered:

*'the purpose of the return, for example where a foreign residence permit has expired; the applicant's stated intentions as to why he or she is returning; verified arrangements which have been made in regard to returning on a long-term basis, for example, transfer of financial accounts and any other assets; termination of residence-based entitlements in the other country; assistance from Safe Home or a similar programme to enable Irish emigrants to return permanently; length and continuity of the previous residence in the State; the record of employment or self-employment in another state; and whether he or she has maintained links with the previous residence and can be regarded as resuming his or her previous residence rather than starting a new period of residence.'*¹²⁷

¹²⁶ Central Statistics Office (2012). 'Commentary - Usual Residence, Migration, Ethnicity and Living Arrangements'. Available at www.cso.ie. See also Lunn, P. (2012) in Section 4.1.1.8. ¹²⁷ Dáil Debate Vol. 728 No. 7 (30 March 2011).

Ireland's civil society Universal Periodic Review (UPR) stakeholder report, *Your Rights. Right Now*, was submitted to the UN on 21 March 2011 and outlined 36 recommendations for Ireland including the amending of Section 15 of the *Social Welfare and Pensions Act 2009* to ensure that 'residency while awaiting a decision on protection or immigration status is taken into account for the purposes of habitual residence'. It also noted a lack of available information and misapplication of the HRC. The inequality regarding receipt of child benefit by asylum seekers in receipt of payment prior to May 2004 and those after this date (when it was no longer applicable) was also highlighted.¹²⁸

3.4 INSTITUTIONAL DEVELOPMENTS

As discussed in Section 3.1, a general election and change of government took place in February 2011 with changes in the names and responsibilities of some departments taking place. New ministers were appointed to all positions. The Department of Justice and Law Reform became the Department of Justice and Equality (with effect from April 2011), with Alan Shatter T.D. appointed as Minister for Justice, Equality and Defence in March 2011. No Minister of State for Integration was appointed, and responsibility for integration matters was transferred from the Office of the Minister for Integration in the Department of Community, Equality and Gaeltacht Affairs to the Office for the Promotion of Migrant Integration (OPMI) in the Department of Justice and Equality. The Department of Enterprise, Trade and Innovation was re-designated as the Department of Jobs, Enterprise and Innovation, with Richard Bruton T.D. becoming Minister with responsibility for that area.

Chapter 4

Legal Immigration and Integration

4.1. ECONOMIC MIGRATION

Stated government policy in Ireland is to limit the issuance of new employment permits to highly-skilled, highly-paid positions, non-EEA nationals who are already legally resident in the State on valid employment permits, or where there is an officially recognised scarcity of workers of a particular type or qualification.

4.1.1 Developments within the National Perspective

4.1.1.1 Administrative, Legislative and Operational Developments

As indicated in previous reports in this series (notably the *Annual Policy Report 2009*), a number of developments related to economic migration occurred in recent years. Many of these developments, particularly with regard to employment permits holders, continued to have effect during 2011.

Administrative arrangements for eligible individuals who have been in possession of work permits for at least five years, or who have been made redundant, continued to be available during 2011 on a more mainstreamed basis. Initial arrangements for both groups were introduced in October 2009 and concerned persons working in Ireland in possession of a work permit or work authorisation (or combination of a work permit and a spousal/dependant permit) for at least five years and who have been made redundant. In November 2010 updated immigration arrangements concerning those eligible under the five year worker and redundancy policy were introduced with immediate effect,¹²⁹ and saw a consolidated set of policies introduced including a general scheme for current holders of work permits (including Spousal/Dependant permits) and work authorisations/visas for at least five consecutive years exempted from the requirement to hold a work permit on the next renewal of their immigration registration. Qualifying persons may work in any employment and will not be restricted to their current employer. In the case of redundancy, they are eligible to seek other employment. Qualifying

¹²⁹

Irish Naturalisation and Immigration Service (2010). *Policy for 5 year workers and redundant workers*. Available at <http://www.inis.gov.ie/en/INIS/Pages/Policy%20for%205%20year%20workers%20and%20redundant%20workers>.

persons are issued with a 'Stamp 4',¹³⁰ immigration permission on a one-year renewable basis. This applies equally to those who are still in employment and to those with a work permit who, having completed five years work, have since been made redundant. In the case of persons working in Ireland on a work permit for less than five continuous years and who have become redundant involuntarily, and those with five or more years residency but not eligible for the aforementioned waiver, a six-month 'grace period' is available under which they can seek alternative work without requirement for a labour market needs test to be applied.

Following a number of changes to provisions for holders of employment permits and permits under the 'Green Card' scheme in 2009 and 2010, no subsequent amendments occurred in 2011 with prior amendments continuing in effect.¹³¹

During 2011, changes introduced in 2010 regarding renewal of immigration permissions for holders of a Green Card employment permit holder for two years or previous holders of Green Card permits who were granted a 'Stamp 4' for 12 months and are due for renewal, continued to operate.¹³²

¹³⁰ Persons who satisfy the eligibility criteria for this concession will be issued a Stamp 4 immigration permission for one year signifying the right to be present in Ireland and to be employed without a work permit. Terms and conditions include:

- Permissions granted may be renewed annually.
- Persons granted the permission are expected to work and to support themselves and any dependants and, if made redundant, the person concerned must seek new employment.
- The holder of this permission cannot become an undue burden on the State.
- The holder of this permission will be free to work in any employment and will no longer be limited to the current employer. Should they subsequently be made redundant they are free to seek other employment.
- It is not long-term residence and it cannot be seen as any guarantee of permanent status.
- The Stamp 4 in this situation allows the person to establish a business or become self-employed.
- The concession is being made irrespective of whether the person is currently an applicant for Long-Term Residence. See <http://www.inis.gov.ie/en/INIS/Pages/Policy%20for%205%20year%20workers%20and%20redundant%20workers>.

¹³¹ Revised fees for employment permits were introduced in April 2009, the same month in which changes to arrangements for work permits and the 'Green Card' scheme were also announced. All taking effect from 1 June 2009, changes concerned revised eligibility requirements for new work permits (and in cases of Green Cards, certain categories removed) to apply to prospective first-time entrants to the Irish labour market from 1 June 2009; revised renewal procedures and fees; changes to eligibility for employment permits under the Spousal/Dependant Scheme; and the reintroduction of a Labour Market Needs Test. New arrangements regarding work permit holders on short-term assignments were also announced. Work permits for jobs paying less than €30,000 per annum are only granted in 'exceptional' cases and with regard to dependants, spouses and dependants of first-time work permit applicants whose applications were received on or after 1 June 2009, such persons cannot be considered for an employment permit under the Spousal/Dependant Scheme. In such cases, only spouses/dependants of Green Card holders and Researchers are eligible to apply for a Spousal/Dependant Permit. In addition, during 2011 all vacancies for which an application for a work permit is made required advertisement with the FÁS/EURES employment network for at least eight weeks, in addition to local and national newspapers for six days.

¹³² Green Card permit holders whose permits are due to expire after completion of two years working in Ireland are not required to apply for a renewal of their permit and can renew their immigration permission only. A renewable 'Stamp 4' residence permission is issued which entitles a person to work in Ireland without an employment permit and permission to establish a business or be self-employed. Previous Green Card permit holders in current possession of a 'Stamp 4' can apply for a renewal as required. Spouses and dependants are also provided with an immigration permission for two years rather than 12 months under the revised arrangements. See Irish Naturalisation and Immigration Service (2010). 'Renewal of Green Card Work Permit'. Available at http://www.inis.gov.ie/en/INIS/Pages/Renewal_of_Green_Card_Work_Permit.

4.1.1.2 Skill Shortages

A *National Skills Bulletin 2011*¹³³ was published in July 2011 and there was no change in the list of occupations for which new work permits will not be issued.

The 2011 Bulletin showed that no labour shortages existed in the Irish labour market and that skill shortages continued to be confined to senior positions, skilled professionals and particularly ‘niche’ areas such as positions with foreign languages (e.g. Nordic). The Bulletin showed many of the skills shortages from 2009 and 2010 persisting, although in small numbers and related to specialised high-skill areas such as IT, engineering, science, finance, sales, healthcare, transport and management and with ‘significant experience, niche area expertise and/or specific skill mix’.

4.1.1.3 Labour Migration

The number of employment permits issued to non-EEA nationals during 2011 was 5,200, with 3,184 new permits and 2,016 renewals issued. Some 1,007 permits were refused and 201 withdrawn. The largest nationality groupings of permits issued included India (1,646), the Philippines (753), the USA (493), Romania (327) and China (253).

A total of 76,220 non-Irish nationals were present on the Live Register in December 2011, a slight decrease on December 2010 figures when 76,645 non-Irish nationals were present. While the overall number of persons present on the Live Register decreased slightly (from 437,079 to 434,784) from December 2010 to December 2011, the proportion of non-Irish nationals remained constant at 17.5 per cent. All categories of non-Irish nationals decreased in terms of numbers between December 2010 and December 2011 with the exception of nationals from ‘Other’ countries (outside the EU27) which saw a slight increase in figures from 12,888 to 13,534 persons on the Live Register during this time period.¹³⁴

Ireland continued to apply restrictions on access to the labour market for Romanian and Bulgarian nationals during 2011. In general, nationals of such countries must hold an employment permit to access the labour market at first instance.¹³⁵

¹³³ Expert Group on Future Skills Needs (2011). *National Skills Bulletin 2011*. FÁS: Dublin. As outlined in Quinn (2010),¹³³ the Department of Enterprise, Trade and Innovation (DETI) publishes and keeps under review a list of occupations for which new work permits will not be issued.

¹³⁴ Central Statistics Office (January 2012). *Live Register, December 2011*. Available at www.cso.ie.

¹³⁵ Exclusions include persons in the State as an employment permit holder for an uninterrupted period of 12 months expiring on or after the 31 December 2006, and self-employed persons. In addition, Bulgarian and Romanian nationals who have graduated from an Irish third-level institution, and have obtained a qualification at Level 7 or higher (primary degree or above) in the National Framework of Qualifications, and who have worked for 12 months or more post-2007 on the basis of being a student, will not require an Employment Permit after graduation. Employment permit requirements apply only to the first continuous twelve months of employment in the State. At the end of this twelve month period a Bulgarian or Romanian national will be free to work in Ireland without any further need for an employment permit.

4.1.1.4 Qualification Recognition

Regarding the recognition of qualifications, the *Qualifications and Quality Assurance (Education and Training) Bill 2011* was introduced in July 2011. Seeking to provide for the establishment of a Qualifications and Quality Assurance Authority of Ireland, it will provide for the amalgamation of responsibilities currently under the National Qualifications Authority of Ireland (NQAI), the Higher Education and Training Awards Council (HETAC) and the Further Education and Training Awards Council (FETAC). At present, the National Qualifications Authority of Ireland (NQAI) is responsible for the recognition of academic international qualifications via the 'Qualifications Recognition - Ireland'.¹³⁶ An International Qualifications Database is maintained which contains information regarding foreign qualifications, education and training systems. It lists the foreign qualifications that have been processed to date by the NQAI and states the advice that has been issued regarding the comparability of the qualifications in Ireland. The NQAI has established a National Framework of Qualifications which facilitates the recognition process with each foreign qualification compared to an Irish qualification when recognised.¹³⁷ Professional qualifications are recognised via the relevant competent professional authority in Ireland.

4.1.1.5 Student Review

Regarding access to the labour market for students, the Third-Level Graduate Work Scheme was extended to twelve months for those at Level 8 or above of the National Framework of Qualifications and to six months for those with Level 7 qualifications based on the Framework.¹³⁸ An overall review by the Interdepartmental Committee on Student Immigration on access to the labour market by non-EEA students took place during 2011.

The Irish Naturalisation and Immigration Service (INIS) published *Guidelines for Non-EEA Students Registered in Ireland before 1 January 2011* during the year, in which it was noted that a six month 'special extension of their permission' would be provided to all 'timed-out students' who had exceeded their permitted duration of stay under the new regime and whose current immigration permission would expire between 1 January 2011 and 30 September 2011. It is non-renewable and students will be permitted to work under the same terms as during their academic holidays (40 hours per week) for the period. At the end of the time, the individual will be required to leave Ireland if they have not secured a different immigration permission.¹³⁹ A subsequent extension of permission was announced for certain categories of

¹³⁶ www.qualificationsrecognition.ie.

¹³⁷ www.nfq.ie.

¹³⁸ Irish Naturalisation and Immigration Service (January 2011). *New Immigration Regime for Full Time Non-EEA Students - Guidelines for Degree Programme Students*. Available at www.inis.gov.ie.

¹³⁹ Irish Naturalisation and Immigration Service (July 2011). *Guidelines for Non-EEA Students Registered in Ireland before 1 January 2011*. Available at www.inis.gov.ie.

non-EEA students whose permission to remain in Ireland expired after 1 October 2011. A three-month extension was offered for students legally resident in Ireland for seven years up to 1 January 2011 and who had either availed of the earlier six-month extension and kept their permission up to date, or had availed of the Third-Level Graduate Scheme.

INIS stated that the purpose of the time was to enable such students to either regularise their status in Ireland or make arrangements to leave Ireland.¹⁴⁰

4.1.1.6 'Researcher Directive' Hosting Arrangements

During 2011 Ireland continued to participate in *Council Directive 2005/71/EC* of 12 October 2005 on a specific procedure for admitting Third Country Nationals for the purposes of scientific research. Some 443 research Hosting Agreements¹⁴¹ were issued during 2011, with 248 new agreements and 195 renewals.¹⁴² During 2011 Ireland participated in discussions regarding a review of this Directive.

4.1.1.7 Non-EEA Recruitment

During 2011, recruitment campaigns initiated by the Health Service Executive (HSE) in India and Pakistan for non-consultant hospital doctors complied with World Health Organization (WHO) guidelines on ethical recruitment.

The issue of recruitment and retention of non-EEA doctors attracted much media discussion during 2011. In June 2011 a newspaper report cited the Health Service Executive (HSE) as stating that it had

*'found more than 420 experienced doctors during a recent trip to India and Pakistan who would be willing to come and work here if only they didn't have to jump through so many hoops to get on the medical register'.*¹⁴³

It was noted in the same article that the Minister for Health was considering an option to make it easier for non-EU doctors to come to work in Ireland. A further article in September 2011 stated that a number of doctors recruited from India and Pakistan to address severe shortages in public hospitals had returned home due to delays in their Medical Council registration.¹⁴⁴

4.1.1.8 Research

A Research Note contained in the Summer 2012 *ESRI Quarterly Economic Commentary* looked at the impact of the recession on migration by way of a

¹⁴⁰ Irish Naturalisation and Immigration Service (2011).

¹⁴¹ While each Hosting Agreement represents a single researcher, each researcher may be involved in more than one Hosting Agreement.

¹⁴² Irish Naturalisation and Immigration Service (July 2012).

¹⁴³ *The Irish Times* (21 June 2011). 'Health Agency Looks to Pakistan and India to Solve Doctor Shortage'. Available at www.irishtimes.com.

¹⁴⁴ *The Irish Times* (14 September 2011). 'Indian and Pakistan Doctors Opt to Go Home'. Available at www.irishtimes.com.

preliminary analysis of Census 2011 data. Lunn (2012) found that despite Ireland's ongoing recession, between 2006 and 2011, Ireland experienced 'further net inward migration'. This was higher among persons between their late twenties to thirties and children, with family circumstances and structures likely to have been important in migration decisions. Lunn notes that 'young families were either less likely to leave Ireland, more likely to arrive, or both, compared with the rest of the population'. Net inward migration was higher among women between 2006-2011 which Lunn attributes to changed job prospects in male-dominated industries during this time and possible reunification of family members with immigrants already working in Ireland. Net inward migration among working-age men fell substantially, with those in their twenties becoming net emigrants. Net inward migration among women in their early twenties increased during 2006 and 2011. Looking at a breakdown of migration by ethnicity as recorded, in contrast to any other age group of any ethnicity, persons aged between 20-29 in the White-Irish category were significant net emigrants over the five year intercensal timeframe. New arrivals in the White-Other group were mainly immigrants from Eastern Europe, with immigration dominating 'emigration for this group and for the Black-Asian group'.¹⁴⁵

4.1.2 Developments from the EU Perspective

4.1.2.1 FREEMO

During 2011 Ireland continued to participate in meetings of the Expert Group FREEMO on the Right of Free Movement of Persons (*Directive 2004/38 EC*).

4.2 FAMILY REUNIFICATION

4.2.1 Developments within the National Perspective

4.2.1.1 Statistics Related to Family Reunification

4.2.1.1.1 Convention Refugees

Applications for family reunification (family members or a civil partner) in respect of 501 persons with refugee status were received by the Irish Naturalisation and Immigration Service (INIS) during 2011, with approvals issued for 560 persons. Family reunification for some 233 persons was refused during 2011. Applications for 260 persons were withdrawn or deactivated.¹⁴⁶ Overall, ORAC notes that some 244 applications for family reunification were made by declared refugees during 2011. The main countries of nationality of applications were Somalia, Nigeria, Iraq, Sudan and Afghanistan. A total of 244

¹⁴⁵ Lunn, P. (2012). *The Impact of Recession on Migration: A Preliminary Analysis of Census 2011*. Research Note. Available at www.esri.ie.

¹⁴⁶ Irish Naturalisation and Immigration Service (May 2012).

cases were commenced and by year-end some 284 cases had been completed and some 126 cases remained outstanding.¹⁴⁷

4.2.1.1.2 Subsidiary Protection

A total of ten applications (representing ten persons) for family reunification by holders of subsidiary protection¹⁴⁸ in Ireland were received by INIS during 2011. Seven cases were approved.¹⁴⁹

4.2.1.1.3 Spouse of an Irish National

The Irish Naturalisation and Immigration Service (INIS) received 627 applications for residence on the basis of marriage or civil partnership to an Irish national during 2011. A total of 483 cases were approved during the same year.¹⁵⁰ Non-EEA nationals in possession of permission to remain in Ireland (excluding short-stay category 'C' visas) are generally able to present at the Garda National Immigration Bureau (GNIB) to apply for permission to reside in the State on the basis of marriage or civil partnership with an Irish national.

4.2.1.2 Proposed Changes

In an end of year review of immigration developments for 2011, the Minister for Justice, Equality and Defence noted that it was a key priority for 2012 to develop a 'comprehensive policy approach' for family reunification or settlement. It was stated that mindful of the need to retain the Government's discretion in relation to determining their approach to immigration, a 'clear statement of policy' would be of benefit to both prospective migrants and those involved in migration management. It was clarified that the focus of such an approach would be on cases involving non-EEA nationals as related to Irish and other non-EEA nationals.¹⁵¹

4.2.1.3 Case Law

4.2.1.3.1 Dependency is a matter of fact in family reunification applications

H.S.A. v. Minister for Justice, Equality and Law Reform, Unreported, High Court, Cooke J, 25 March 2011

The applicant, a Somali refugee, applied to have his sister, his children and his niece and nephews given permission to be reunited with him in Ireland. His children were granted permission, but his sister, niece and nephews were refused on the grounds that they were not 'dependent family members' of the applicant. The Minister found that the evidence of remittances submitted by

¹⁴⁷ Office of the Refugee Applications Commissioner (May 2011).

¹⁴⁸ As provided for under the *European Communities (Eligibility for Protection) Regulations, 2006*.

¹⁴⁹ Irish Naturalisation and Immigration Service (September 2012).

¹⁵⁰ *Ibid.*

¹⁵¹ Irish Naturalisation and Immigration Service (January 2012). 'Immigration in Ireland 2011 - a year-end snapshot - major changes and more to follow. Minister Shatter outlines plans for 2012'. *Press Release*. Available at www.inis.gov.ie.

the applicant did not support a finding of dependency and that the applicant would not in any case be able to support his sister, niece and nephew because of his severe ill health. The Court found that the Minister's finding that the family members in Ethiopia were not dependent was unreasonable having regard to the clear evidence of dependency. The Court further held that the issue of whether the applicant could support his family members in Ireland was not relevant to the assessment of dependency, but that the Minister could have regard to such a consideration in deciding whether to exercise his discretion in favour of an applicant.

4.2.1.3.2 Court procedure regarding declarations of validity of foreign marriages are not relevant for family reunification

M v. F, Unreported, Clark J, 27 May 2011

The Court held that the domestic legal procedure¹⁵² allowing the Circuit Court to declare a foreign marriage to be valid, as a means of determining the validity of marriages in family reunification cases, is inappropriate. The Court held it is for the Refugee Applications Commissioner to determine the status of an asserted marriage by consulting reliable country information. The Court stated that the validity of marriages contracted abroad by persons domiciled abroad can only be determined in accordance with the principles of private international law. While the Court was firmly of the view that the invitation to the applicant to bring such an application before the Circuit Court was inappropriate, and that the Department of Justice, rather than the applicant, was to blame for this, it nevertheless upheld the finding of the Circuit Court judge. Having considered the *lex loci* rule and having heard the facts of this case, this Court found that the applicant's marriage (in Zimbabwe) to the respondent was a valid marriage.

4.2.2 Developments from the EU Perspective

During 2011, the Department of Justice and Equality announced that they would be examining all cases with a link to the *Zambrano* judgment to see whether criteria were met and said that, if so, permission to remain in Ireland would be granted to parents to work in the State without an employment permit and/or to set up a business. The Department highlighted that the *Zambrano* judgment may be particularly relevant to three categories of Third Country Nationals: namely parents of an Irish citizen child who are waiting for a decision under Section 3 of the *Immigration Act 1999 (as amended)*; parents of an Irish citizen child who have permission to remain in Ireland under Stamps 1, 2 or 3 conditions;¹⁵³ and parents of an Irish citizen child who have either been

¹⁵² Section 29 of the *Family Law Act 1995*.

¹⁵³ Categories of Stamps are as follows:
Stamp number 1: issued to non-EEA nationals who have an employment permit or business permission.

deported from Ireland or who have left on foot of a Deportation Order. In the latter case, the Department announced that applications for a visa would have to be processed via the non-Irish national applicants' country of origin, and that evidence of a 'clear link' to the *Zambrano* judgment would be required. It was also stated that DNA evidence of a biological link to an Irish citizen child(ren) may be requested. The Department said that exclusions would be provided for in the case of 'serious and/or persistent criminal offences.'¹⁵⁴

In a review of the first 16 months of Government published in 2012, Minister Shatter noted that Departmental officials had examined 'all cases before the courts (140, involving 134 applicants) involving Irish citizen-dependent children to which the *Zambrano* judgement (which concerns only children born prior to the 2005 Citizenship Referendum)' applies. Of the applicants '120 have had their Deportation Order revoked and have either been granted permission to reside in the State, or invited to make a Visa application to re-enter the State'. In addition, a total of '97 cases have been settled', and '764 parents have to date been granted Irish residency rights'.¹⁵⁵

4.3 OTHER LEGAL MIGRATION

4.3.1 Developments within the National Perspective

4.3.1.1 Legislative Measures

4.3.1.1.1 *The Immigration Act 2004 (Registration Certificate Fee) Regulations 2011 (S.I. No. 449 of 2011)*

Stamp number 1A: issued to a person permitted to remain in Ireland for the purpose of full-time training with a named body (main category concerns non-EEA nationals studying accountancy) until a specified date. Other employment is not allowed.

Stamp number 2: issued to non-EEA national students who are permitted to work under certain conditions.

Stamp number 2A: issued to non-EEA national students who are not permitted to work.

Stamp number 3: issued to non-EEA nationals who are not permitted to work.

Stamp number 4: issued to people who are permitted to work without needing an employment permit or business permission: non-EU EEA nationals, spouses and dependants of Irish and EEA nationals, people who have permission to remain on the basis of parentage of an Irish child, Convention and Programme refugees, people granted leave to remain, non-EEA nationals on Intra-Company transfer, temporary registered doctors, non-EEA nationals who have working visas or work authorisations.

Stamp number 4 (EU FAM): issued to non-EEA national family members of EU citizens who have exercised their right to move to and live in Ireland under the *European Communities (Free Movement of Persons) Regulations 2006*. People holding this Stamp are permitted to work without needing an employment permit or business permission, and they can apply for a residence card under the 2006 Regulations.

Stamp number 5: issued to non-EEA nationals who have lived in Ireland for at least eight years and who have been permitted by the Minister for Justice, Equality and Defence to remain in Ireland without condition as to time. Holders of this Stamp do not need an employment permit or business permission in order to work.

Stamp number 6: can be placed on the foreign passport of an Irish citizen who has dual citizenship, and who wants their entitlement to remain in Ireland to be endorsed on their foreign passport.

¹⁵⁴ Irish Naturalisation and Immigration Service (2011). 'European Court of Justice Judgment in the *Zambrano* case'. Available at <http://www.inis.gov.ie/en/INIS/Pages/WP11000037>.

¹⁵⁵ Department of Justice and Equality (July 2012). 'Alan Shatter, T.D., Minister for Justice, Equality and Defence reports on work done during first 12 months of Government'. Available at www.justice.ie.

In September 2011, the Minister for Justice, Equality and Defence signed *S.I. No. 449 of 2011*, which waived fees for registration for certain non-Irish nationals, including minors, spouses of Irish citizens, refugees and victims of human trafficking, with permission to be in the State.

4.3.1.1.2 *The Immigration Act 2004 (Travel Document Fee) Regulations 2011 (S.I. No. 403 of 2011)*

In July 2011, the Minister for Justice and Equality signed *S.I. No. 403 of 2011*, providing for a fee for travel papers for non-Irish nationals with permission to be in the State.

4.3.1.1.3 *The Immigration Act 2004 (Visas) Order 2011 (S.I. No. 146 of 2011)*

As well as giving effect to *Directive 2004/38/EC* regarding waiving the visa requirement for Third Country Nationals with EU residence cards, this instrument repealed *The Immigration Act 2004 (Visas) Order 2009 (S.I. No. 453 of 2009)* and provided a new list of the countries the nationals of which do, and do not, require Irish visas for entry or transit.

4.3.1.1.4 *The Immigration Act 2004 (Visas) (No. 2) Order 2011 (S.I. No. 345/2011)*

This instrument, signed on 28 June 2011, gave effect to the Short-Stay Visa Waiver Programme from 1 July 2011. It also gave continuing effect to *Directive 2004/38/EC* regarding the waiving of the visa requirement for Third Country Nationals with EU residence cards; repealed *The Immigration Act 2004 (Visas) Order 2011 (S.I. No. 146 of 2011)*; and provided a new list of the countries the nationals of which do, and do not, require Irish visas for entry or transit.

4.3.1.2 Certificates of Registration

A total of 161,225 certificates of registration¹⁵⁶ had taken place as of year-end 2011,¹⁵⁷ with 128,900 non-EEA nationals with permission to remain in Ireland at the end of 2011.¹⁵⁸ Nationals of India (17,582), Nigeria (14,771), Brazil (14,380), China (14,116) and the Philippines (11,988) constituted the largest main country groupings of persons registering during 2011.¹⁵⁹

Looking at Stamps issued by category during 2011, the majority were issued under Stamp 4 with 73,026 issued. A total of 41,718 were issued under Stamp 2; 12,981 under Stamp 3; 11,759 under Stamp 1; 7,964 under Stamp 4 EUFAM;

¹⁵⁶ See footnote 155 for a description of 'Stamp' conditions.

¹⁵⁷ This figure refers to the cumulative number of registrations in 2011. Eurostat data show a total of 128,104 Third Country Nationals with a valid permission to stay as of the end of 2011 and refers to permissions for three months or more only.

¹⁵⁸ Department of Justice and Equality (2012) *Annual Report 2011*. Available at www.justice.ie.

¹⁵⁹ Irish Naturalisation and Immigration Service (May 2012).

7,038 were Unrecorded; 4,791 under Stamp 2A; 1,516 under Stamp 5; 397 under Stamp 1A; and 35 under Stamp 6.¹⁶⁰

4.3.1.3 Immigration Regime for Students

A new immigration regime for international students took effect from 1 January 2011.

A *New Immigration Regime for Full Time Non-EEA Students*¹⁶¹ report from the Interdepartmental Committee on Student Immigration in 2010 (in effect from 2011) contained more than 20 recommendations designed to

reform the student immigration regime in a manner that is better integrated with Ireland's immigration policy generally while providing a stronger regulatory framework for the sustainable development of the international education sector.

These recommendations include the introduction of a differentiated approach as between 'Degree Programme' courses and those at the 'Language or Non Degree Programme' level, and the introduction of maximum periods of residence in the State on foot of a student permission according to type of course followed. In general, non-EEA student permission will be limited to seven years in total for degree-level courses and three years for sub-degree level.¹⁶² Eligible education providers must be included on a State-administered 'Internationalisation Register'. Interim arrangements for current students affected by the change were also announced, including a six-month concession period applicable in cases for timed-out students to regularise their status.¹⁶³ Students who had exceeded their allowed duration of stay after 1 January 2011 were offered a number of options:

- Language and non-degree students who had completed three years were permitted to register only if they were commencing a non-language course at NFQ Level 5 or 6 or a degree-level course. The seven year maximum time remains;
- Students whose permission expired between 1 January and 30 September 2011 were entitled to a six-month extension during which they would be allowed to work for 40 hours a week. In addition, they were permitted to apply for an employment permit or Green Card from within Ireland;
- Degree-level students who had completed their seven years of residence were permitted to register only if starting their second year (or later) of a programme. They would also be allowed to complete the course;

¹⁶⁰ *Ibid.*

¹⁶¹ Department of Justice and Law Reform (2010). *New Immigration Regime for Full Time Non-EEA Students*. Available at <http://www.inis.gov.ie/en/JELR/BookletA4.pdf/Files/BookletA4.pdf>.

¹⁶² Except in cases where the course is at PhD level or a programme of study of long duration or where the Minister of Justice and Law Reform is satisfied that 'special circumstances exist'.

¹⁶³ Department of Justice and Law Reform (December 2010). 'Internationalisation Register New Arrangements to Apply from 01 January'. Available at www.inis.gov.ie.

- In the case of students whose educational body had not met the criteria for the Internationalisation Register, who had exceeded the three year time limit, and whose registration was due to expire prior to 1 July 2011, they were permitted to enrol for a course of this type for one year. Permission was granted in cases whereby the seven-year time limit would not be exceeded.¹⁶⁴

As discussed in Section 4.1.1.5, a subsequent extension of permission was announced for certain categories of non-EEA students whose permission to remain in Ireland expired after 1 October 2011. A three-month extension was offered for students legally resident in Ireland for seven years up to 1 January 2011 and who had:

- Either availed of the earlier six-month extension and kept their permission up to date, or
- Availed of the Third-Level Graduate Scheme.

INIS stated that the purpose of the time extension was to enable such students to either regularise their status in Ireland or make arrangements to leave Ireland.¹⁶⁵

Non-EEA national students who were registered to study in Ireland accounted for approximately a quarter (30,500) of all non-EEA nationals registered in the State in 2011. The majority of persons within this number are pursuing degree programmes (37 per cent), followed by language courses (22 per cent), further education non-degree courses (32 per cent) and other such as secondary school and accountancy training (9 per cent).¹⁶⁶

4.3.1.4 Visa Waiver Programme

In May 2011 the Government announced Ireland's first formal visa waiver programme. The short-stay Visa Waiver Programme (commencing on 1 July 2011) was announced as part of a Government Jobs Initiative with a view to promoting tourism from emerging markets and to make Ireland 'very attractive for these visitors to the UK to consider Ireland as an "add-on" element to their planned holiday'.¹⁶⁷

Launched as a pilot until the end of October 2012, the Programme was described as providing for visa-free travel to Ireland for persons in possession of a valid U.K. visa and who are either nationals of one of the countries covered by the scheme, have entered the UK on a UK 'C' General visa or been granted leave

¹⁶⁴ Irish Naturalisation and Immigration Service (2011). 'Special Extension of Residence for Timed-Out Students from 1 October 2011 - Notice of Special Extension of Residence for Timed-Out Students from 1 October 2011'. Available at www.inis.gov.ie.

¹⁶⁵ *Ibid.*

¹⁶⁶ Department of Justice and Equality (2012) *Annual Report 2011*. Available at www.justice.ie.

¹⁶⁷ Irish Naturalisation and Immigration Service (11 May 2011). 'Alan Shatter T.D., Minister for Justice, Equality and Defence announces Ireland's first formal Visa Waver Programme as an integral part of the Government's Job Initiative'. *Press Release*. Available at www.inis.gov.ie.

to remain in the UK for up to 180 days. In essence, eligible persons will not be required to have both an Irish and UK visa when entering Ireland after lawful entry to the UK. A valid entry stamp from the UK Border Agency will be required on the national's passport. Regarding the categories of persons covered, tourists, business persons (including 'C' long-term, multi-entry business visas), sportspersons and academics are included while holders of transit visas, long-term student visas and family reunification visas are not covered. Qualifying persons will be permitted to remain in Ireland for a maximum of 90 days or the duration remaining on their UK leave to remain if shorter. Nationals of primarily 'emerging' markets are catered for under the Programme including Eastern Europe (Belarus, Montenegro, Russian Federation, Serbia, Turkey and Ukraine), Middle East (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the U.A.E.) and Asia (India, Kazakhstan, China and Uzbekistan).¹⁶⁸

At the time of announcement it was noted that Ireland had approved 30,000 applications for nationals of these countries during 2010. The INIS Information Note also highlighted that the Programme 'does not amount to a common UK and Irish visa regime' and that possession of an Irish visa does not allow similar visa-free entry to the UK.¹⁶⁹

Long-term nationals who are long-term legal residents in the U.K. will require a visa but without a fee stipulation.¹⁷⁰

As noted in Section 4.3.1.1.4, *The Immigration Act 2004 (Visas) (No. 2) Order 2011 (S.I. No. 345 of 2011)* subsequently gave effect to the Programme from 1 July 2011.

4.3.1.5 Changes to Immigration Permission for Religious Ministers and Lay Volunteers

Updated arrangements concerning immigration arrangements for religious ministers and lay volunteers came into effect from 1 January 2011.¹⁷¹ The arrangements clarified the circumstances in which a person may come to Ireland as either a religious minister (or volunteer) or as a lay volunteer, the supporting documentation required for such an application and the conditions attached for their immigration permission. Persons granted permission to enter Ireland as a religious minister or lay person on or after 1 January 2011 will now be permitted to remain in Ireland for a maximum of three years and will be

¹⁶⁸ Irish Naturalisation and Immigration Service (2011). 'The Irish Short-Stay Visa Waiver Programme Information Note'. Available at www.inis.gov.ie.

¹⁶⁹ *Ibid.*

¹⁷⁰ See Irish Naturalisation and Immigration Service (11 May 2011). 'Alan Shatter T.D., Minister for Justice, Equality and Defence announces Ireland's first formal Visa Waiver Programme as an integral part of the Government's Job Initiative'. *Press Release*. Available at www.inis.gov.ie.

¹⁷¹ Irish Naturalisation and Immigration Service (2010). 'Ministers of Religion and Lay Volunteers'. Available at www.inis.gov.ie.

issued with a 'Stamp 3'¹⁷² immigration permission. Employment in the general labour market is not permitted; the person must be self-sufficient; have private health insurance (either on a personal or group scheme basis); and not be considered as a possible threat to public security. In the case of religious ministers, family reunification may be possible on a case-by-case basis (in cases of a spouse/partner and child under 18 years of age, and where a child may attend a State school) and a possible extension of immigration permission may be possible.¹⁷³

4.3.1.6 'Marriages of Convenience'

The issue of suspected marriages of convenience continued to attract debate during 2011. In June, the Minister for Justice, Equality and Defence cited 'serious concern' about 'highly irregular patterns of marriage in Ireland' involving EU nationals exercising their freedom of movement and Third Country Nationals. In a press release after a Justice and Home Affairs Council meeting in June, the Minister stated that

evidence is emerging in Ireland that this very fundamental right of all EU citizens is being abused by those seeking to circumvent proper immigration controls on entering the Union

and provided an example of almost 400 applications for residence in Ireland by non-EEA nationals on foot of their marriage to Latvian nationals during 2010. He noted that the predominant nationality of the Third Country Nationals concerned was Pakistani, followed by Ukrainian and Indian to a 'lesser degree'. The Minister acknowledged the role of the Gardaí in dealing with this area and the increase in inter-disciplinary cooperation and provisions related to such marriages contained in the *Immigration, Residence and Protection Bill 2010*.¹⁷⁴

As discussed earlier, at the UN Universal Periodic Review for Ireland, the Government noted that it was aware of the difficulties which had arisen with regard to 'sham marriages' and noted cooperation between An Garda Síochána and authorities in other jurisdictions as well as providing comment on its active examination of the draft *Immigration, Residence and Protection Bill 2010* in order to identify additional amendments which could be included to tackle the problem. It also stated that a co-ordinated approach by EU Member States is required in order to deal with the issue. Latvia recommended the passing of legislation on the issue and that the *Civil Registration Act 2004* be amended to empower

¹⁷² Stamp 3 category means that a person is permitted to remain in Ireland on conditions that the holder does not enter employment, does not engage in any business or profession and does not remain later than a specified date.

¹⁷³ Irish Naturalisation and Immigration Service (2011). *Ministers of Religion and Lay Volunteers*. Available at www.inis.gov.ie.

¹⁷⁴ Irish Naturalisation and Immigration Service (9 June 2011). 'Sham marriages leading to abuses of EU freedom of movement rights'. *Press Release*. Available at www.inis.gov.ie.

*the registers and the Gardaí (police) to intervene against sham marriages and to amend Criminal law to criminalize the organizers and facilitators of sham marriages.*¹⁷⁵

A 2011 case before the Irish courts, *Izmailovic & Anor v. The Commissioner of An Garda Síochána*,¹⁷⁶ found that ‘marriages of convenience’ are not unlawful in Irish law and the Gardaí are not empowered to prevent their solemnisation if they suspected it was for immigration purposes.¹⁷⁷ During 2011 a total of 2,376 EU Treaty Rights applications were received, with 1,600 applications based on marriage to an EU national. Permission was granted in 1,405 cases overall, of which 1,100 related to applications based on marriage to an EU spouse.¹⁷⁸

4.3.1.7 Fee Generation

Some €29m was generated from charges related to visas, re-entry fees, registration fees, naturalisation and long-term residency fees (as well as other fees) during 2011.¹⁷⁹

As referenced earlier in this Section, two Statutory Instruments, S.I.s 403 and 449 of 2011, were introduced during the year relating to fees for travel papers for non-Irish nationals with permission to be in the State and waiver of registration fees for certain non-Irish nationals, respectively.

4.3.1.8 Research

Quinn (2011) looked at the policy, legal and operational framework related to the granting of visas in the Ireland context in *Visa Policy as Migration Channel: Ireland*. Noting that the Irish system is ‘essentially discretionary’ whereby the Minister for Justice and Equality decides whether or not to grant applications for visas, codified visa policy is ‘limited’. The study notes that statistical records of visa applications, approvals and refusals are limited. The introduction of the Automated Visa Application Tracking System (AVATS) in 2009 provided the availability of data but it does not distinguish between ‘C’ (short-term) and ‘D’ visas. Recent policy changes include the earlier-referenced Short-Stay Visa Waiver Programme, and the introduction of six Irish Naturalisation and Immigration Service (INIS) branch offices in Irish embassies in Abuja, Abu Dhabi, Beijing, London, Moscow and New Delhi between 2002 and 2010. The role of commercial partners, Visa Facilitation Services (VFS), in managing Visa Application Centres (VAC) in India, Nepal, Ghana and Nigeria is cited as well as the 2010 introduction of biometric data collection in Nigeria. Of note, the study highlights cooperation with UK authorities regarding sharing of data during

¹⁷⁵ United Nations Human Rights Council (October 2011). ‘Draft report by the Working Group on the Universal Periodic Review Ireland’. Available at www.rightsnow.ie.

¹⁷⁶ *Izmailovic & Anor v. The Commissioner of An Garda Síochána* [2011] IEHC 32 (2011).

¹⁷⁷ Joyce, C. (2012). *Misuse of the Right to Family Reunification: Ireland*. Available at www.emn.ie and www.esri.ie.

¹⁷⁸ *Izmailovic & Anor v. The Commissioner of An Garda Síochána* [2011] IEHC 32 (2011).

¹⁷⁹ Irish Naturalisation and Immigration Service (INIS), Provisional figures (November 2011).
Department of Justice and Equality (2012) *Annual Report 2011*. Available at www.justice.ie.

2008 in which almost 20 per cent of cases referred by Ireland to the UK (a total of just over 6,300 in which a recent passport issue had taken place or travel activity seemed suspicious) resulted in a 'positive or probable match of identity' based on biographical data in the UKBA records.¹⁸⁰

4.3.1.9 Leave to Remain

During 2011 a total of 1,968 persons were granted leave to remain in Ireland overall, including cases granted following their consideration under Section 3 of the *Immigration Act 1999 (as amended)* and persons who relied primarily on the *Zambrano* judgment to advance their cases to remain in the State¹⁸¹ Of this overall number, the majority of grants referred to nationals of Nigeria (852 cases), China (104 cases), Democratic Republic of Congo (75 cases), Ghana (67 cases) and Pakistan (53 cases).¹⁸²

4.3.1.10 Case Law

4.3.1.10.1 Challenge to refusal of residency of elderly parents of Irish citizens

O'Leary and Ors v. Minister for Justice, Equality and Law Reform, Unreported, High Court, Hogan J, 30 June 2011

Ms. O'Leary's elderly parents, who lived in a state of insecurity in South Africa, applied to live with their daughter and her husband in Ireland. The application was refused, with the Minister's agents commenting that Ms. O'Leary's parents were manipulating the immigration laws of the State. The High Court granted leave for judicial review on the basis that the Minister's decision represented a disproportionate interference with Ms. O'Leary's family rights under the Irish Constitution and the ECHR. Leave was also given to challenge the decision on the ground that it discriminated against Ms. O'Leary as an Irish citizen because, had she been a national of another Member State, she would have been entitled to have her dependent parents reside with her pursuant to the provisions of *Directive 2004/38/EC*. The applicants had argued that it would be incongruous if dependent parents could be protected under EU law while no equivalent protections were available under Irish domestic law. The Court commented that there was no basis for the remarks relating to the family's manipulation of immigration law.

4.3.1.10.2 ECHR refusal of regularisation claim on basis that the complaint was premature

Adio and Ors v. Ireland, ECtHR, Fifth Section, 17 May 2011

Ms. Adio had applied for leave to remain in Ireland on the basis of her parentage of an Irish citizen, but her application was refused because she had

¹⁸⁰ Quinn, E. (2011). *Visa Policy as Migration Channel: Ireland*. Available at www.emn.ie and www.esri.ie.

¹⁸¹ Irish Naturalisation and Immigration Service (November 2012).

¹⁸² *Ibid.*

applied after the closing date of the relevant administrative scheme. After the completion of a High Court case challenging that refusal, she complained to the European Court of Human Rights under Article 8 of the ECHR, arguing that, in the absence of the process that would arise where a deportation order is issued under the *Immigration Act 1999*, there was no domestic procedure whereby she could apply for leave to remain in the Ireland with their Irish citizen family child, and therefore regularise her immigration status. The Court found that the applicant had not in fact demonstrated that she could not apply to the Minister for leave to remain, by raising Constitutional and Convention rights, or that the Minister would not have the power to determine and grant residency. The Court noted that an unfavourable response from the Minister could then be the subject of an application to the High Court for leave to apply for judicial review, and rejected the complaint as being premature.

4.3.2 Developments from the EU Perspective

4.3.2.1 Legislative Developments

4.3.2.1.1 Waiver of visa requirement for Third Country Nationals with EU residence cards: The Immigration Act 2004 (Visas) Order 2011 (S.I. No. 146 of 2011)

This instrument gave effect to certain aspects of *Directive 2004/38/EC*, particularly regarding waiving the visa requirement for Third Country Nationals with EU residence cards. The Order specifies the classes of non-nationals who are exempt from Irish visa requirements and those who are required to be in possession of a valid Irish transit visa when transiting within a port within the State. The principal change effected by this Order is that non-nationals who are family members of a European Union citizen and holders of a 'Residence card of a family member of a Union citizen' as referred to in Article 10 of *Directive 2004/38/EC* of the European Parliament and of the Council of 29 April 2004, are not subject to an Irish visa requirement. The provisions of this S.I. were in turn incorporated into the *Immigration Act 2004 (Visas) (No 2) Order 2011 (S.I. No. 345 of 2011)* which in turn repealed *S.I. No. 146 of 2011*.

4.3.2.1.2 The European Communities (Communication of Passenger Data) Regulations 2011 (S.I. No. 597 of 2011)

These regulations sought to give effect to *Directive 2004/82/EC*, requiring air carriers to provide advance passenger data to Irish Immigration authorities for the purposes of improving border control and combating illegal immigration. The Regulations apply to all inbound flights to Ireland from outside the EU and to all passengers on those flights. Implementation of the regulations requires airlines to provide data on passengers in advance of flights arriving in Ireland and to transmit the data to the Irish Immigration authorities after the completion of check-in.

4.3.2.2 Case Law

4.3.2.2.1 Where an EU-based residence application is otherwise accepted as valid, the onus passes to the Minister to state clearly which conditions of the application remain unsatisfied

Lamasz and Gurbuz v. Minister for Justice, Equality and Law Reform, Unreported, High Court, Cooke J, 16 February 2011

Ms. Lamasz was a Polish national working in Ireland in a Turkish restaurant, married to Mr. Gurbuz, a Turkish national. Mr. Gurbuz made an application for a Residence Card on the basis that he was a family member of a Union citizen, Ms. Lamasz, who was in employment in the State. In support of his application he submitted the documents identified in the checklist prescribed in the domestic regulations, including various documents showing that his wife was economically active in the State. The Minister refused the application on the basis that it had not been possible to verify that the Union citizen was exercising her treaty rights in the State. A document on Mr. Gunduz's file recorded that officials of the respondent's department had been unable to make contact with Ms. Lamasz's employers.

The High Court held that a host Member State is entitled to verify the authenticity of an application and its grounding documentation, but also held that the fact that the Minister was 'unable to verify' that Ms. Lamasz was in employment was an inadequate ground upon which to refuse an application which was otherwise accepted as valid. The Court stated that where it is not questioned that a couple is married; nor that one of them is an EU citizen and that they both have the necessary three-month period of established residence, the onus passes to the respondent to state clearly which conditions of the application remain unsatisfied. In the present case, where evidence of employment had been submitted, the Court held that it was not a valid ground for rejection that officials had merely been 'unable to make contact' with the employers in question. The Court quashed the Minister's decision, stating that the application ought not to have been refused and that the applicants ought not to be put to the delay of an administrative review.

4.3.2.2.2 Residence Application Reviews Relating To Directive 2004/38/EC Must Be Decided Within Six Months

Saleem and Spryszynska v. Minister for Justice, Equality and Law Reform, Unreported, High Court, Cooke J, 16 February 2011

Mr. Saleem made an application for a residence card on the basis that he was a family member of Ms. Spryszynska, a Polish and Union citizen in employment in the State. In support of his application he submitted the documents identified in the checklist prescribed in Schedule 2 to the Regulations, including a passport, marriage certificate and evidence of residence. The respondent refused Mr. Saleem's application, giving as the reason that he had failed to

comply with a request for certain specified documents, including payslips and a tax statement, proving that his wife was in employment. It transpired that Mr. Saleem had sent these documents but that they had been lost in the post, only to arrive after the decision on his residence card application had been made. In July 2009 Mr. Saleem sought a review, and by November 2009, no decision having been made, initiated judicial review proceedings. The applicants sought to quash the respondent's refusal decision and compel him to issue the residence card.

The High Court held that the Minister was entitled, without infringing Union law or applying the Regulations inconsistently with the provisions of *Directive 2004/38/EC*, to carry out reasonable checks in order to satisfy himself that the legal conditions met in the case of the Union citizen and family member and that documentation submitted by way of proofs is authentic, provided that these checks do not involve or amount to the imposition of additional administrative obstacles or preconditions to the exercise of the Union citizen's right to residence and to be joined or accompanied by a family member. In the present case, the Court held that the application to quash the Ministerial refusal could not succeed because the decision had been lawfully made.

The Court observed, however, that the Minister had taken the stance that once the initial refusal had been decided he was under no duty to deal with the review in any particular time. In the view of the Court, this stance was mistaken, and the consequence of the expiry of the 6-month period for the determination of the initial application is not to afford the Minister an indefinite time within which to decide the review where one is requested. Rather, the Court held, when the 6-month period expires without a decision being taken, an applicant is entitled to treat the ensuing delay as unreasonable and as justifying an application for a mandatory order.

4.3.2.2.3 Facilities at Dublin Airport not in line with Directive 2004/38/EC

Raducan and Raducan v. Minister for Justice, Equality and Law Reform, Unreported, High Court, Hogan J, 3 June 2011

Ms. Raducan, a Moldovan national married to a Romanian national, resident in Ireland since 2007, and in possession of an EU residence card, though not in possession of an Irish visa, was refused entry into the State by An Garda Síochána at Dublin Airport, arrested, and detained for the purpose of removal. The Raducans applied to the High Court for habeas corpus, and declarations that Ms. Raducan's detention had been unlawful and that the State had failed to comply with the provisions of *Directive 2004/38/EC*. The Court held that the State had failed to put facilities in place at the airport to comply with the Directive, and noted that no accelerated procedures were available at Dublin Airport for the purpose of obtaining a visa. The Court observed that no such reasonable opportunity had been afforded to Ms. Raducan to get any necessary documents. The Court stated that it was a matter of 'profound regret' that an innocent person who had every right to enter the State was refused entry,

arrested and sent to prison for nearly three days. The Court made the declarations sought by the applicants and awarded Ms. Raducan €7,500 in damages for breach of her right to liberty.

4.4 INTEGRATION

The *Intercultural Education Strategy (2010-2015)*, the *Cultural Diversity and the Arts Strategy* (published in 2010), *An Garda Síochána Diversity Strategy and Implementation Plan (2009-2012)* and the *Intercultural Health Strategy (2007-2016)* continued to be implemented throughout 2011.

4.4.1 Developments within the National Perspective

4.4.1.1 Programme for Government

The 2011 *Programme for Government Common Statement* included a commitment to ‘promote policies which integrate minority ethnic groups in Ireland, and which promote social inclusion, equality, diversity and the participation of immigrants in the economic, social, political and cultural life of their communities’.¹⁸³ Specific commitments included the promotion of policies which seek to integrate minority ethnic groups in Ireland including the participation of immigrants in the ‘economic, social, political and cultural life of their communities’.

4.4.1.2 Funding

Overall, during 2011 the Office for the Promotion of Migrant Integration (OPMI) paid grants of €181,994 to local authorities, €253,206 to sporting bodies and €806,675 to other national organisations. 23 projects continued during 2011 under the European Refugee Fund and the European Fund for the Integration of Third Country Nationals.¹⁸⁴ Supported activities via the latter fund included the provision of drop-in centres, social assistance, information and support, orientation, promoting intercultural awareness, integration and anti-racism amongst schools and service providers.¹⁸⁵

Activities funded through local authorities included initiatives to encourage interaction between migrant and receiving communities, initiatives to promote greater migrant participation in the sporting life of communities, local migrant fora, volunteer English language classes etc. In the context of the importance of local level initiatives, two local authorities (Dun Laoghaire Rathdown and Galway) were in receipt of funding towards the development of the second phase of local integration plans.¹⁸⁶ The OPMI continued to fund a number of local integration fora. These fora aim to provide a link between local migrants,

¹⁸³ Government of Ireland (2011). *Programme for Government 2011*. Available at http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf.

¹⁸⁴ Department of Justice and Equality (2012) *Annual Report 2011*. Available at www.justice.ie.

¹⁸⁵ Office for the Promotion of Migrant Integration (December 2011).

¹⁸⁶ *Ibid.*

service provider and local authorities; to promote migrants' perspective in local policy matters and provide a forum where topics of interest can be discussed. Two new fora, the South Dublin Integration Forum and Cork County Integration Forum were established during 2011.

The OPMI funded the New Communities Partnership (a migrant-led NGO) to employ an immigration law expert to train volunteers on citizenship matters who could then provide information and advice to citizenship applicants on eligibility criteria and completion of forms.¹⁸⁷

The OPMI also funded a 'Workplace Diversity Initiative' during 2011 under which a variety of actions within the trade union and business sectors took place including a helpdesk for employers on equality and diversity matters and various networking events. Under a new development in the initiative in 2011, two projects were funded under a 'sectoral projects' strand and comprised an information workshop on diversity and equality for employers and businesses in the Mid-West region of Ireland, and a networking event aimed at embedding equality and diversity in universities and third-level organisations.¹⁸⁸

In December 2011, two publications relating to employment and equal rights were made available online by the Equality Authority and National Employment Rights Authority.¹⁸⁹

During 2011, An Garda Síochána, with the financial assistance of the Office for the Promotion of Migrant Integration, published *crime prevention and community safety information sheets* for migrants in English, Irish and ten other languages.

In the area of employment, 338 migrants participated in the EPIC Programme in 2011 (Employment of People from Immigrant Communities) which aims to improve the employment prospects of persons from immigrant communities. The training programme includes workplace language and social skills training, CV preparation, one-on-one coaching, interview skills and referral to health services, as appropriate.¹⁹⁰

4.4.1.3 An Garda Síochána Diversity Day

In March 2011 the Garda (Police) Racial, Intercultural and Diversity Office (GRIDO) hosted the Annual Garda Diversity Consultation Day. With the objective of meeting directly and engaging with representative organisations and persons within a wide spectrum of communities within Ireland, attendees were provided with an opportunity to discuss issues affecting their communities and to help shape and influence Garda policy, strategy and procedures. The

¹⁸⁷ Office for the Promotion of Migrant Integration (December 2011).

¹⁸⁸ *Ibid.*

¹⁸⁹ www.equality.ie/index.asp?docID=653.

¹⁹⁰ <http://www.bitc.ie/epic>. Data as received from the Office for the Promotion of Migrant Integration.

initiative won an award at the European Diversity in Policing (EDPOL) leadership conference in September 2011.¹⁹¹

4.4.1.4 Research

The *Annual Monitoring Report on Integration 2011* looked at the progress of integration of immigrants in Ireland. The Report highlighted a number of key findings including that immigrant children are generally highly motivated students, although pupils from non-English speaking backgrounds tend to perform worse in school. A lack of functional literacy among non-English speaking mothers was found to result in less help for children with homework. Regarding employment and educational attainment, it found that total employment among non-Irish nationals fell by 40 per cent (in comparison to a fall of ten per cent for Irish nationals during the same period) since 2008. Some 45 per cent (versus 32 per cent of Irish nationals) of non-Irish nationals hold third-level qualifications. The rate of consistent poverty is higher among non-EU nationals than Irish nationals, with factors such as a low labour market participation rate and high student numbers cited as contributing factors, although authors noted that the exact cause remains unknown. A lower participation rate of non-EU nationals in sporting activities was also found. It was noted that some 25,000 persons had achieved citizenship between 2005 and 2010, with an estimated 7 per cent of non-EEA adult migrants receiving long-term residency in Ireland during the same timeframe. The low rate of non-Irish nationals as elected representatives (less than 0.2 per cent) was also highlighted.

The Report highlighted a number of policy issues including the lack of a ‘clearly defined’ strategy for the provision of English language teaching for adults and continuing budget cuts for teaching of English as an additional language. The increase of poverty among non-EU nationals is noted as a ‘cause for concern’ with a recommendation for investigation into why social protection methods are not providing ‘adequate help’ for this group. Issues surrounding the granting of naturalisation such as ‘inconsistent procedural requirements and discretionary decision making’ remain. The absence of statutory long-term residence permission, as contained in the *Immigration, Residence and Protection Bill 2010*, is noted with difficulties in the ‘limited access’ to the current administrative scheme apparent.¹⁹²

4.4.2 Developments from the EU Perspective

4.4.2.1 Immigrant Council of Ireland Activity on EU-funded Study

In September 2011, the Immigrant Council of Ireland began implementation as lead partner of the European Union’s Integration Fund Community Actions

¹⁹¹ An Garda Síochána (2012). *Annual Report 2011*. Available at www.garda.ie.

¹⁹² McGinnity et al. (2012). *Annual Monitoring Report on Integration 2011*. Available at www.esri.ie.

Programme (IFCAP) funded study on *Family Reunification - a barrier or facilitator of integration?* The project aims to promote the integration of Third Country Nationals within the EU via research into how differing admission laws and migration patterns effect integration. It also aims to promote admission policies that favour the effective integration of Third Country Nationals. Involving partners from the UK, Germany, Austria, the Netherlands, Portugal and Bulgaria, the project will run until March 2013.¹⁹³

4.5 CITIZENSHIP AND NATURALISATION

4.5.1 Developments within the National Perspective

A total of 27,000 applications for citizenship were received during 2011, with 16,150 applications decided during the year.¹⁹⁴

4.5.1.1 Legislative Developments

4.5.1.1.1 Civil Law (Miscellaneous Provisions) Act 2011

As discussed in Section 3.2.3, the *Civil Law (Miscellaneous Provisions) Act 2011* was signed into law in August 2011 and provides for a number of amendments to citizenship and immigration law. Section 33 of the *Civil Law (Miscellaneous Provisions) Act 2011* amends the *Irish Nationality and Citizenship Act 1956* to provide for citizenship ceremonies, to take account of recognition in Irish law of civil partnerships in Irish law by the *Civil Partnership Act 2010* and to allow fees to be charged for naturalisation applications.¹⁹⁵

4.5.1.1.2 The Irish Nationality and Citizenship (Amendment) Regulations 2011 (S.I. No. 284 of 2011)

In June 2011, the Minister for Justice, Equality and Defence signed *S.I. No. 284 of 2011* which relates to changes in naturalisation forms, in particular to facilitate minor applicants. The commencement date for these changes was 24 June 2011.

¹⁹³ <http://familyreunification.eu>.

¹⁹⁴ Department of Justice and Equality (2012). *Annual Report 2011*. Available at www.justice.ie.

¹⁹⁵ In summary, the principal amendments are as follows:

Section 15 of the Principal Act is amended to provide expressly for formal citizenship ceremonies;

Section 15A is amended to allow the Minister for Justice to waive the conditions for naturalisation in Section 15 for non-national civil partners as well as non-national spouses;

Section 16 is similarly amended to include civil partners of Irish citizens within those deemed to be 'of Irish associations';

Section 17 is amended to include express permission to charge fees for applications for naturalisation;

Section 19 is amended to exclude those who obtain another citizenship by way of civil partnership from the category of persons from whom Irish citizenship may be revoked;

Section 20 is amended to provide that civil partnership, like marriage, does not bring with it an entitlement to citizenship;

Section 22 is amended to provide that the death of an Irish citizen or revocation of citizenship does not affect the subjects spouse, civil partner or children; and

Section 23 is amended to provide that the marriage or civil partnership of an Irish citizen will not affect their entitlement to citizenship.

4.5.1.1.3 The Irish Nationality and Citizenship Regulations 2011 (S.I. No. 569 of 2011)

In November 2011, the Minister for Justice, Equality and Defence signed *S.I. No.569 of 2011* which relates to the introduction of a non-refundable fee of €175 for all applications for a certificate of naturalisation, as well as changes to forms, in particular to facilitate applicants who are the civil partners of Irish citizens. The commencement date for these changes was 10 November 2011.¹⁹⁶

4.5.1.2 Changes to the Citizenship Application Process

In June 2011 it was announced that a series of changes to the citizenship application process in Ireland was to take place to enable *'more efficient and streamlined processing times'*. All applications are to receive a decision within six months (except in exceptional circumstances), and, noting the high level of applications which routinely had to be returned due to errors (see Joyce (2011) for further discussion), a simplified application form was introduced. The introduction of citizenship ceremonies was also provided for, and the first took place in Dublin on 24 June 2011. Under the previous arrangements, a local district court clerk arranged for a person granted citizenship to take an oath before a District Court Judge, and the new citizen then received his or her Certificate of Naturalisation by post. A further 28 citizenship ceremonies took place during 2011 on a national basis with persons from 112 countries participating.¹⁹⁷

Statutory Instruments Numbers 284 and 569 of 2011 were both signed and commenced during the year, relating to changes in naturalisation forms and introduction of a non-refundable fee of €175 for all applications, respectively.

Other changes announced during 2011 included accelerated checking procedures for certain categories of applicants (such as spouses of Irish citizens and recent grantees of long-term residency) in which similar checks may have already taken place, and the recruitment of a number of interns under the Governmental 'Jobs Initiative'.¹⁹⁸

4.5.1.3 Citizenship Application Processing Times

The issue of processing times for applications for citizenship has attracted considerable debate in recent years, and received additional commentary during 2011. Upon announcing changes to the citizenship application process in June 2011, the Minister for Justice and Equality stated that upon taking office in March of that year, approximately 22,000 citizenship applications were awaiting

¹⁹⁶ Irish Naturalisation and Immigration Service (November 2011). 'Minister Shatter signs new nationality and citizenship Regulations'. *Press Release*. Available at www.inis.gov.ie.

¹⁹⁷ Irish Naturalisation and Immigration Service (January 2012). 'Immigration in Ireland 2011 - a year-end snapshot - major changes and more to follow. Minister Shatter outlines plans for 2012'. *Press Release*. Available at www.inis.gov.ie.

¹⁹⁸ Irish Naturalisation and Immigration Service (June 2011). 'Minister Shatter introduces major changes to citizenship application processing regime'. *Press Release*. Available at www.inis.gov.ie.

decisions. Of this number, approximately 17,000 had been waiting over six months, with an average waiting time of 26 months. During 2011 a total of 16,150 applications had been decided upon, in contrast to the previous year when 7,800 cases were decided.¹⁹⁹ The Department of Justice and Equality noted in its *Annual Report 2011* that as from mid-2012 all non-complex cases (noted as 70 per cent of all applications) will be completed within six months.²⁰⁰

4.5.1.4 Proposed Development of a Language/Civics Test for Naturalisation Applicants

In a year-end review of 2011 activities, the Minister for Justice, Equality and Defence highlighted the completion of preparations for an English language and civics test for naturalisation applicants during 2012 as a key priority.²⁰¹ It was stated that this knowledge of language and understanding of how '*business is conducted in Ireland... must form an integral part of eligibility for naturalisation*'.²⁰²

4.5.1.5 Case Law

4.5.1.5.1 Naturalisation decisions are subject to fair procedures

Hussain v. Minister for Justice, Equality and Law Reform, Unreported, High Court, Hogan J, 13 April 2011

The applicant was a national of Pakistan who had lived in Ireland lawfully since 2000. He applied for certificate of naturalisation in December 2005. In March 2010 his application was refused by the Minister on the grounds that he had not disclosed on his application form that he had been investigated by Gardaí for passing counterfeit currency and possession of counterfeit clothing and that, having come to the attention of Gardaí he was not of 'good character' as required by the legislation.²⁰³ The applicant sought to quash this decision on the grounds (a) that there was no basis for the Minister's suggestion that he had failed to make the appropriate disclosure required by the application form for naturalization in that he had never been the subject, in the words of the application form, of any 'judicial proceedings (civil or criminal)', and (b) that the Minister failed to observe fair procedures in failing to put his concerns about the Garda investigations to the applicant for comment before reaching an adverse decision.

The High Court found that the Garda investigations into the applicant's conduct did not constitute 'judicial proceedings (civil or criminal)' and that the applicant

¹⁹⁹ Department of Justice and Equality (2012). *Annual Report 2011*. Available at www.justice.ie.

²⁰⁰ *Ibid.*

²⁰¹ Irish Naturalisation and Immigration Service (January 2012). 'Immigration in Ireland 2011 - a year-end snapshot - major changes and more to follow. Minister Shatter outlines plans for 2012'. *Press Release*. Available at www.inis.gov.ie

²⁰² *Ibid.*

²⁰³ Section 15 of the *Irish Nationality and Citizenship Act, 1956*, as amended.

could not be faulted for failing to make disclosure of these matters in his application form for naturalization. The Court noted that there was no settled or fixed interpretation of the words ‘good character’ in the legislative provision but that, interpreted in the statutory context, they meant that the applicant’s character and conduct must measure up to reasonable standards of civic responsibility as gauged by reference to contemporary values.

The Court observed that by describing the Minister’s discretion as ‘absolute’, the Oireachtas (legislature) intended to emphasise that the grant by the Minister of a certificate of naturalisation ‘is the purely gratuitous, conferring of a privilege in exercise of the sovereign authority of the State’. This did not mean that the Minister was freed from the obligations of adherence to the rule of law, as this would open the way for the imposition of private morality and arbitrary choice in the sphere of public law.

The Court noted that the Minister’s assessment of the good character issue was amenable to judicial review and that his conclusion had to be one which was bona fide held and factually sustainable and not unreasonable. The Court held that if the Minister wished to reach a conclusion adverse to the applicant on the basis of the Garda reports, he was obliged as a matter of fair procedures to put matters not involving a criminal record or pending civil or criminal proceedings to the applicant for his comments. For these reasons, the Court quashed the Ministerial decision and remitted the matter for reconsideration.

4.5.1.5.2 Costs awarded to applicant after Minister delays deciding on a naturalisation application

Salman v. The Minister for Justice and Equality, Unreported, Kearns P., 16 December 2011

The applicant, an Iranian national and a refugee in the State, applied for naturalization in February 2008. The applicant had been waiting for a decision for three years and nine months when, on the eve of this hearing, the respondent issued a decision granting the applicant naturalisation. This rendered the proceedings moot, and the sole matter that remained to be determined was that of the costs of the proceedings. The Court found that, contrary to claims by the Minister, there was no evidence of any purported system in place for dealing with applications for certificates of naturalization such that the respondent had a fair system in place whereby applications were dealt with in chronological order. The Court held that the respondent was in possession of all documentation necessary to make a decision since 2008, never indicated to the applicant that there was anything outstanding, did not indicate what was causing the delay in processing the application and refused to explain why the delay extended far past the average. The Court said that had the application for judicial review proceeded, the applicant would have been entitled to relief on the basis of the respondent’s unexplained delay, and that it followed that the applicant was entitled to his costs.

4.5.1.6 Research

The Immigrant Council of Ireland conducted research into the process of applying for naturalisation in a 2011 report, *Living in Limbo: Migrants' Experiences of Applying for Naturalisation in Ireland*. The report highlighted the frequent delays in processing of applications for citizenship, with decision-making for participants interviewed taking from five to 54 months and with an average processing time of 28 months. It noted that there are consequences arising from barriers to naturalisation or permanent residence status including 'employment, housing and education', most notably difficulties by children of migrant workers in accessing third-level education (except as an 'international student'). The report highlights that this leads to 'concerns that there is a rising generation of children who are experiencing social exclusion'. Other stressors linked to a lack of clear long-term residency or citizenship status include anxiety and the inability to purchase a house in Ireland. A lack of transparency in the processing of applications and in decision making was also highlighted, with particular emphasis on no public knowledge regarding the criteria on which citizenship would be granted.²⁰⁴

4.5.2 Developments from the EU Perspective

As discussed in Sections 4.22 and 5.2.2.1, in 2011 the Department of Justice and Equality announced that they would be examining all cases with a link to the *Zambrano* judgment to see whether criteria were met and said that, if so, permission to remain in Ireland would be granted to parents with an Irish citizen child to work in the State without an employment permit and/or to set up a business. In a review of the first 16 months of Government published in 2012, Minister Shatter noted that a total of '764 parents have to date been granted Irish residency rights'.²⁰⁵

²⁰⁴ Cosgrave, C. (2011). *Living in Limbo: Migrants' Experiences of Applying for Naturalisation in Ireland*. Available at www.immigrantcouncil.ie.

²⁰⁵ Department of Justice and Equality (July 2012). *Alan Shatter, T.D., Minister for Justice, Equality and Defence reports on work done during first 12 months of Government*. Available at www.justice.ie.

Chapter 5

Irregular Immigration and Return

5.1 IRREGULAR IMMIGRATION

5.1.1 Developments within the National Perspective

5.1.1.1 *Immigration, Residence and Protection Bill 2010 (restored 2011)*

As discussed in the Annual Policy Report 2010, the *Immigration, Residence and Protection Bill 2010* was published in June 2010.²⁰⁶

The 2010 Bill lapsed with the dissolution of the 30th Dáil (parliament) on 1 February 2011. It was subsequently restored to the Order Paper by the Minister for Justice, Equality and Defence and by year-end was awaiting Committee Stage, however in 2012 the Minister for Justice and Equality announced his intention to republish the Bill in 2013.

5.1.1.2 Operation Gull

During 2011, Operation Gull, a joint UK and Irish initiative with respect to irregular migration continued to take place. The Operation has a focus on decreasing illegal migration between both countries via Northern Ireland, with UK Border Agency immigration officers in Northern Ireland checking the status of passengers arriving from, or departing for, the UK for routes believed to be most at risk.

²⁰⁶

The Bill set out a legislative framework for the management of inward migration to Ireland, including a number of provisions in the area of irregular migration. It laid down a number of important principles governing the presence in the State of foreign nationals, including the obligation on a foreign national who is unlawfully in the State to leave. It set out statutory processes for applying for a visa, for entry to the State, for residence in the State and for deportation. It proposed to integrate the processes for dealing with applications for protection in the State and all other aspects of the desire of a protection applicant to remain in the State into a unified process. The Bill also contained provisions in relation to the powers of immigration officers, exchange of information, provision by carriers of advance passenger information, marriages of convenience, special provisions on judicial review and requirements in relation to the departure of foreign nationals from the State. The Bill also laid down new rules relating to the suppression of migrant smuggling and trafficking in persons.

5.1.2 Developments from the EU Perspective

5.1.2.1 Legislative Measures

5.1.2.1.1 Regulation 493/2011 of the European Parliament and of the Council amending Council Regulation 377/2004 on the creation of an immigration liaison officers network

Ireland is taking part in *Regulation 493/2011 of the European Parliament and of the Council amending Council Regulation 377/2004 on the creation of an immigration liaison officers network*. Ireland is taking part in this Regulation, in accordance with Article 5(1) of the *Protocol on the Schengen acquis integrated into the framework of the European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union*, and Article 6(2) of *Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis*.

5.1.2.2 The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex)

The legal basis of the Frontex Regulation falls within those provisions of the Schengen *acquis* in which Ireland does not participate and, as such, Ireland is excluded from participating as a full member. Limited cooperation between Frontex and Ireland is provided for via an annual application approved by the Frontex Management Board. During 2011, Ireland participated in a total of seven joint European return operations organised by Frontex, and was the lead partner in two of these. Ireland also continued to participate in meetings of the Frontex Risk Analysis Network and to provide relevant statistical data on a regular basis. Ireland also made a financial contribution of €250,000 to Frontex during 2011.

5.2 RETURN

5.2.1 Developments within the National Perspective

5.2.1.1 Deportation Orders, Transfers and Removal from the State

In 2011 some 280 persons were removed from the State by way of deportation orders made under Section 3 of the *Immigration Act 1999*.²⁰⁷ The main country of nationality of deportation orders effected in 2011 related to Nigeria (124 persons), Moldova (21 persons), South Africa (21 persons), Georgia (18 persons) and Pakistan (18 persons).²⁰⁸

²⁰⁷

Department of Justice and Equality (2012). *Annual Report 2011*. Available at www.justice.ie.

²⁰⁸

Irish Naturalisation and Immigration Service (INIS). Section 3(1) of the *Immigration Act 1999* provides that, subject to, inter alia, the prohibition of *non-refoulement*, the Minister for Justice and Equality may require a non-

Some 2,543 persons were refused entry to Ireland at ports of entry and returned to the place from which they had come.²⁰⁹

A total of 41 EU nationals were transferred from Ireland on foot of an EU Removal Order.²¹⁰

Some 144 transfer orders were effected during 2011 under the Dublin Regulation.²¹¹

5.2.1.2 Voluntary Returns

A total of 475 persons were assisted to return home voluntarily during 2011,²¹² with 402 persons in receipt of assistance from the International Organization for Migration (IOM) office in Dublin and 73 availing of administrative assistance from the Irish Naturalisation and Immigration Service (INIS). The main country of nationality of persons assisted by both INIS and IOM was Brazil (15 persons and 93 persons respectively), Moldova (eight persons and 53 persons respectively), Nigeria (seven persons and 28 persons respectively), Georgia (one person and 32 persons respectively) and South Africa (no persons and 28 persons respectively).²¹³

5.2.1.2.1 International Organization for Migration

Of the 402 persons in receipt of assistance from the International Organization for Migration (IOM) office in Dublin during 2011, some 165 asylum seekers were assisted to return home and avail of reintegration assistance under the VARRP programme,²¹⁴ with 237 vulnerable irregular migrants meeting specific vulnerability criteria availing of assistance under the IVARRP programme²¹⁵ to return home and avail of reintegration assistance.

The IOM Dublin office continued to provide family reunification assistance to family members of persons with refugee status during 2011, facilitating travel. In addition, IOM assisted the Irish Government with travel and documentation issuance in the case of 56 resettlement cases during 2011.²¹⁶

IOM Dublin continued to provide counter-trafficking training to members of An Garda Síochána during 2011 and developed a 'Facilitator's Guide' to accompany

Irish national to leave the State and 'to remain thereafter' out of the State. There is no provision allowing the Minister to make a deportation order of a finite duration.

²⁰⁹ Department of Justice and Equality (2012). *Annual Report 2011*. Available at www.justice.ie.

²¹⁰ *Ibid.*

²¹¹ *Ibid.*

²¹² Department of Justice and Equality (2012). *Annual Report 2011*. Available at www.justice.ie.

²¹³ Irish Naturalisation and Immigration Service (INIS).

²¹⁴ The Voluntary Assisted Return and Reintegration Programme (VARRP) is eligible for non-EEA nationals pending or failed asylum seekers, who are at any stage of the process prior to a deportation.

²¹⁵ The IVARRP is open to vulnerable irregular migrants presenting with a range of specific vulnerabilities.

²¹⁶ International Organization for Migration, Dublin (2012).

the counter-trafficking training modules manual to assist in the delivery of counter-trafficking trainings on a range of themes.²¹⁷

5.2.1.3 Research

A 2011 report commissioned by the IOM Dublin office, *Where do I go from here? The leading factors in voluntary return or remaining in Ireland*, looked at the key determining factors for migrants in taking the decision to stay in Ireland or to return to their country of origin. These included the immigration system; security; political instability; economic opportunity and family life. Meetings with key stakeholders and some baseline data were gathered using an initial social survey and a series of five focus group discussions (FGDs) with asylum-seekers and irregular migrants took place. A series of 61 detailed case-studies were conducted on top of this initial data set. The report found a general lack of awareness regarding return programmes, together with much misinformation in evidence about the return experience in general. Return programmes are stated as operating best when they ‘facilitate a decision that is already made and do not engage in self-promotion’. It is also suggested that the ‘simple presence’ of a return programme did not promote the idea of return among the persons interviewed. The report found that both the cause of a person’s original migration, and a perceived lack of opportunity in the country of origin, prove to be both a ‘powerful motivation to move and, conversely, a disincentive to return’. An earlier engagement with migrants regarding return is encouraged, and the role of advocacy organisations is highlighted. The clear separation of the idea of voluntary return from forced return is also suggested, as is the development of a comprehensive monitoring programme post-return. Pre-return training, as well as a remodelling of the IOM reintegration grant to provide for ‘more forms of such non-financial assistances’ is recommended.²¹⁸

5.2.1.4 Case Law

5.2.1.4.1 When making a deportation order, the decision that non-refoulement does not apply is required to have reasons

T.K. v. Minister for Justice, Equality and Law Reform, Unreported, High Court, 9 February 2011

The applicant was a Togolese national who claimed refugee status in Ireland on the grounds that his family had long-standing opposition to the authoritarian regime in Togo. His claim was rejected and he applied for leave to remain in Ireland on humanitarian grounds. In considering such applications, the Minister is required²¹⁹ to consider the matter of *non-refoulement*. In deciding to make a deportation order against the applicant, the Minister concluded that ‘having

²¹⁷ *Ibid.*

²¹⁸ Coakley, L. (2011). *Where do I go from here? The leading factors in voluntary return or remaining in Ireland*. Available at www.iomdublin.org.

²¹⁹ Section 5 of the *Refugee Act 1996*.

considered all of the facts of this case' he was of the opinion that repatriating the applicant was not contrary to the *non-refoulement* provision. The applicant claimed that this was unreasonable in that the Minister failed to give satisfactory reasons for his decision. The High Court concluded that the Minister had failed to give satisfactory reasons for his decision that repatriating the applicant to Togo was not contrary to the *non-refoulement* provision, and quashed the deportation order.

5.2.1.4.2 Disproportionate weight given to the need to maintain the integrity of the asylum process over family rights in refusing to revoke a deportation order

P.S. and B.E. v. Minister for Justice, Equality and Law Reform, Unreported, High Court, Hogan J, 23 March 2011

P.S. was an Irishman who suffered from an intellectual disability, bipolar disorder and a number of other chronic medical conditions requiring ongoing medical supervision. He lived in the midlands and received the daily support of a religious order. In May 2009 P.S. met B.E., a Nigerian asylum seeker, and in November 2009 they were married. In December 2009, B.E.'s claim for asylum was rejected and a deportation order was made against her. An application was made for revocation of the deportation order, but this was refused and B.E. was arrested in anticipation of deportation. B.E.'s deportation was delayed by a number of ultimately unsuccessful High Court challenges to the legality of her deportation. Another application for revocation of the deportation order was made in March 2010 and this was refused in April 2010. The Minister noted that if P.S. wished to visit B.E. in Nigeria, the option would be open to him to apply for a visa to visit Nigeria in order to see her. The Minister noted that P.S.'s solicitors had indicated that he 'lives alone' and 'travels freely.' The applicants challenged the Minister's refusal to revoke the deportation order on the grounds that the Minister failed to have adequate regard to the couple's right to family life under the Constitution and the ECHR and that the Minister's conclusion that P.S. could visit his wife in Africa was unreasonable.

The High Court found that the Minister's assessment of the possibility of P.S. visiting his wife in Nigeria was 'entirely unrealistic and totally unbalanced' having regard to his capacity, medical condition and general vulnerability. The Court observed that the practical effect of the Minister's decision was to condemn the couple to live apart permanently and that this failed to conform with the State's obligation to guard with special care the institution of marriage absent some compelling justification. The Court concluded that disproportionate weight had been given to the need to maintain the integrity of the asylum process and that the entire assessment of the position of the parties in general was unbalanced. In quashing the refusal to revoke the deportation order, the Court held that the Minister's decision was both disproportionate

and unreasonable in law and that it struck at the very essence and substance of the applicants' family rights under the Irish Constitution.²²⁰

5.2.1.4.3 ECHR finds challenge to deportation on Article 3 FGM-related grounds manifestly unfounded

Izevbekhai and Ors v. Ireland, ECtHR, Fifth Section, 17 May 2011

Ms. Izevbekhai applied for declarations of refugee status on her own behalf and on behalf of her daughters. The basis of her claim for refugee status was that she was in fear for her own life and the lives of her daughters if they were returned to Nigeria, as a result of threats from the family of her husband to carry out female genital mutilation on her daughters. She claimed that an elder daughter had died in Nigeria as a result of complications arising from female genital mutilation. The applicants' applications for refugee status in Ireland were refused, and the Minister refused to exercise this discretion in favour of allowing the applicants apply for subsidiary protection. The applicants sought to challenge that decision (as well as their deportation orders) by way of judicial review. In the meantime, the Minister's officials reopened their investigations into Ms. Izevbekhai's claims about the death of her eldest daughter in Nigeria. The Minister concluded that the documents relied upon by Ms. Izevbekhai in support of her claim were forgeries and that no such child had ever existed. Affidavits to this effect were filed in the Supreme Court. The case before the Supreme Court did not proceed to substantive hearing for legal reasons.

The applicants complained to the ECtHR that, under Article 3 ECHR, that there was a real risk that the minor applicants would be exposed to FGM if they were expelled to Nigeria. They also invoked Articles 6, 13 and 14 of the Convention about the domestic remedies available to them in Ireland. The ECHR found that the information presented by the Government with respect to the documents relied upon by Ms. Izevbekhai gave strong reasons to question the veracity of the applicants' core claim concerning the death of a child in Nigeria as a result of FGM, and considered the applicants' response to the core issue of credibility to be unsatisfactory. Furthermore, having considered country of origin information with respect to the incidence of FGM in Nigeria and the particular circumstances of the applicants, the Court held that Ms. Izevbekhai and her husband could protect their daughters from FGM if returned to Nigeria. The Court found that the applicants had failed to substantiate that Ms. Izevbekhai's daughters would face a real and concrete risk of treatment contrary to Article 3 of the Convention upon return to Nigeria. The Court concluded, *inter alia*, that the complaint was manifestly ill-founded and therefore inadmissible.

5.2.1.4.4 The common law rules for judicial review held not to be unconstitutional or incompatible with the ECHR in respect of challenges to deportation

Efe and Ors v. Minister for Justice, Equality and Law Reform (No.2), Unreported, High Court, Hogan J, 7 June 2011

The applicants were a family of Nigerian origin. Ms. Efe had been given permission to remain in the State on the basis of her being the mother of an Irish citizen child, but such permission had been denied to Mr. Efe, the children's stepfather, who had been issued with a deportation order. The applicants challenged the deportation order on the grounds that the substantive common law rules governing judicial review, namely the doctrines of reasonableness, rationality and other related rules, did not provide an 'effective remedy' against breaches of their rights under the Irish Constitution and the ECHR as required by Articles 40.3.1 and 40.3.2 of the Constitution and Article 13 of the ECHR.

The High Court noted first that Articles 40.3.1 and 40.3.2 of the Constitution require the State to vindicate constitutional rights. This of necessity requires the State to provide a mechanism where such rights are adequately vindicated by means of an adequate remedy and, where appropriate, the courts will take on the task of fashioning such a remedy. The Court further observed that any rule of law which purported to constrain this Court from protecting constitutional rights in circumstances where it could only interfere where there was 'no evidence' to justify a factual conclusion reached by a decision-maker would simply be at odds with these constitutional obligations. A test of this nature in the sphere of constitutional rights would thus fall to be condemned as unconstitutional in light of the obligations imposed on the State by Articles 40.3.1 and 40.3.2 to vindicate these constitutional rights. The Court noted that, in the wake of the Supreme Court's decision in *Meadows* (see Joyce 2010), it could no longer be said that the courts were constrained to apply some artificially restricted test for review of administrative decisions affecting fundamental rights on reasonableness and rationality grounds. The Court held that this test was broad enough to ensure that the substance and essence of constitutional rights would always be protected against unfair attack, if necessary through the application of a *Meadows*-style proportionality analysis. Accordingly, the Court held that constitutional rights, including the family rights protected by Article 41 at issue here, were adequately vindicated by the common law rules of judicial review.

Having considered the constitutional issues, the Court then considered whether there were grounds for granting a declaration of incompatibility with the ECHR.²²¹ The Court noted that in judicial review proceedings it is not permissible for the Court to receive and act on new evidence, since to do so would be to cross a border between appeal and review. If there were no mechanism whereby material new facts which impacted significantly on constitutional rights emerged after the relevant administrative decision could

be reviewed, then such a lacuna would amount to a failure to vindicate constitutional rights for the purposes of Article 40.3 and the Court might have to give a declaration to this effect. However, the Court was satisfied that there existed such a mechanism, in that legislation²²² allowed the Minister to revoke a deportation order. In these circumstances, the Court held there was no basis for granting a declaration of incompatibility in respect of any legal lacuna or for declaring the common law rules of judicial review to be unconstitutional. The Court stated that it was clear from the decision of the ECHR in *Kay v. United Kingdom* that Meadows-style judicial review satisfies the requirements of Article 13 of the ECHR and that, so far as the receipt of new evidence was concerned, it was likewise clear from *Maslov v. Austria* that all that is necessary is that there is a mechanism whereby new material evidence can be evaluated by administrative decision-makers. The Court noted that such a procedure is provided by the national legislation. For these reasons, the Court held that there was no basis for granting a declaration of incompatibility with the ECHR.

5.2.1.4.5 Detention of a deportee unlawful if no real prospect of removal within the detention period

Om v. Governor of Cloverhill Prison, Unreported, High Court, Hogan J, 1 August 2011

The applicant, who had unsuccessfully sought asylum, claimed to be Liberian, but his precise origins were a matter of doubt throughout the asylum process. The Refugee Applications Commissioner had found that he showed a distinct lack of knowledge of Liberian history and geography, and, on appeal, the Refugee Appeals Tribunal took a similar view. The applicant subsequently applied for subsidiary protection. This was rejected, and the Minister for Justice ultimately made a deportation order against him. All of these proceeded on the assumption that he was Liberian. An official from the Liberian Embassy in London travelled to the Garda National Immigration Bureau (GNIB) in Dublin, interviewed the applicant, and concluded, based on what was said to be basic errors in relation to history, geography and language, that the applicant was not Liberian. A Detective Garda then put it to the applicant that he was not Liberian. The applicant insisted that he was. The Garda informed the applicant that the GNIB believed he was frustrating their attempts to progress deportation. As no new information was forthcoming from the applicant, the Garda arrested him²²³ with a view to deporting him. The provision in question allows for a person to be detained for up to eight weeks pending deportation.

The Court held that the arrest was lawful as the Gardaí were entitled to act on the basis of the information supplied by the Liberian diplomat once the applicant was given an opportunity to respond to this development. The Court said that the real question was whether there was any likelihood that the

²²² Section 3(11) of the Immigration Act 1999.

²²³ Under Section 5(1)(d) of the *Immigration Act 1999*.

deportation could actually be effected within the remaining six weeks or so of the permitted detention period. The Court found that this was unlikely because: (a) investigation of the applicant's true nationality would take time; (b) if it were established that the applicant was a national of another country, it would be necessary for the Minister to consider the issue of *refoulement* afresh; and (c) there would be issues arising regarding the organisation of a deportation flight. The Court held that since it did not seem likely that there was any real prospect that the applicant could be deported within the maximum detention period, his continued detention was unlawful.

5.2.1.4.6 The Minister does not have to sign deportation orders personally

L.A.T. & Ors v. Minister for Justice and Equality, Unreported, High Court, Hogan J, 2 November 2011

The application for judicial review presented a single issue of law, i.e. whether a deportation order under Irish law²²⁴ must be made personally by the Minister personally, as a plain reading of the provision suggested. Here, the deportation order had been made in the name of the Minister by a high-ranking official in the Minister's department. The Court said the issue was whether the applicants' case presented a matter of significant importance where the Minister is expected to make the decision personally. The Court accepted that the decision to deport is often a complex one with significant implications for the individual, but was not satisfied that it was not of such intrinsic importance to the community at large that the decision can only be made by the Minister personally, and that it could not be said that the Oireachtas must have intended that the Minister alone should personally take the decision to deport in every single case. The Court held that it follows that the deportation decision was lawfully made in the name of the Minister by Mr. Waters, given the application of the *Carltona* doctrine,²²⁵ and dismissed the application for judicial review. The matter is under appeal to the Supreme Court.

5.2.1.4.7 Suspicion that a person will evade deportation must refer to some overt act or deed or some external piece of intelligence which suggests that there is a risk that such a person will seek to so evade deportation

Troci v. Governor of Cloverhill Prison, Unreported, High Court, Hogan J, 2 November 2011

Mr. Troci, an Albanian national, and unsuccessful asylum seeker, had formed a relationship and then married an Irish woman while he lived in the State. Mr. Troci attended at the offices of the Garda National Immigration Bureau (GNIB), the unit responsible for the operation of deportation orders, on various occasions, as requested to facilitate his deportation. He had also applied for his deportation order to be revoked due to his marriage to an Irish citizen. On 25

²²⁴ Made under Section 3(1) of the *Immigration Act 1999*.

²²⁵ See *Carltona Ltd. v. Commissioner of Works* [1943] 2 All ER 560.

October 2011, Mr. Troci attended the GNIB, as directed, where he was first asked if he was willing to travel home. He replied 'I am married here. I don't have to go home'. He was then asked whether he was willing to go home. He replied in the negative. The Gardaí checked with the Department of Justice whether any High Court proceedings in respect of the applicant were outstanding, and, after confirming there were no such proceedings, the applicant was arrested on the basis that the Garda with reasonable cause suspected that he intended to avoid removal from the State.²²⁶

The Court stated that the applicant's first response to the Gardaí amounted to little more than his saying that he preferred to stay in Ireland, while his second response amounted to his saying that he would not voluntarily travel home. The Court found that this cannot in itself mean that the applicant would take active steps to avoid deportation, opining that there is often a wide gulf between the voluntary act and the legal obligation, noting that few but the noble would volunteer to pay tax if it was voluntary. The Court stated that the suspicion must refer to some overt act or deed, including statements, on the part of the arrested person, or some external piece of intelligence which suggests that there is a risk that such a person will seek to evade deportation. The Court commented that, on reflection, the reasonable person would have cross examined the applicant further regarding his intentions to evade deportation, and ordered that the detention was unlawful and that Mr. Troci be freed.

5.2.1.4.8 Failure by the Minister to properly weigh family rights in refusing to revoke a deportation order

A. & Ors v. Minister for Justice, Equality and Law Reform, Unreported, High Court, Hogan J, 25 November 2011

Mr. A., Nigerian national and an unsuccessful asylum seeker who had evaded deportation, was arrested and deported, at a time when his wife was pregnant with their child. An application to revoke the deportation order was refused, and the applicants maintained that the Minister erred in failing to give appropriate weight to the applicant's family rights under Article 41 of the Constitution of Ireland. The Court considered, inter alia, that a deportation order under Irish law is in principle permanent in its effect, and that a decision that in practice compels a couple to live more or less permanently apart is a very significant interference by the State with a core principle requiring compelling justification. The Court found that, inter alia, that there was nothing in the examination of file that would suggest that the issue of whether Mrs. A. would be required to secure a Nigerian visa had been considered; it was 'pure fiction' to say that Mrs. A. had a choice worth speaking of; and that the State respects the essence of the marital relationship, and is not indifferent to the plight of those who have been forcibly separated by State action. The Court

held that the Minister had not weighed the rights of the applicants fairly, and quashed the decision refusing to revoke the deportation order.

5.2.2 Developments from the EU Perspective

5.2.2.1 The *Zambrano* Ruling

The *Zambrano* ruling impacted the State's policy in respect of the deportation of parents of Irish citizen children. Arising from this judgment, the Department's Repatriation Division said it examined all cases where a link to the Judgment had been identified to see if such cases meet the *Zambrano* criteria, and that where the criteria were met, 'all other things being equal', permission to remain in the State would be granted, for a specified period, of a nature as will enable such parents to work in the State without an employment permit or to set up in any legitimate business or profession without seeking the permission of the Minister.

In a statement released during 2011 and as discussed earlier, INIS stated that the *Zambrano* judgment may be particularly relevant to three categories of Third Country Nationals: parents of an Irish-born citizen child or children who are awaiting a decision in their case under Section 3 of the *Immigration Act 1999 (as amended)*; parents of an Irish-born citizen child or children who have current permission to remain in the State on the basis of Stamp 1, Stamp 2 or Stamp 3 conditions; and parents of an Irish-born citizen child who have been deported or who have left the State on foot of a deportation order. It was stated that persons who had already left the State or been deported on foot of such an order would need to apply for a visa to return to Ireland at their local embassy/consulate and would then be required to produce documentation which showed a clear link to the *Zambrano* judgment. It was further stated that DNA evidence of a biological link to the Irish citizen child or children may also be required. Exceptions to the judgment were said to apply, particularly in cases of convictions related to serious and/or persistent criminal offences.²²⁷

5.2.2.2 Case Law

5.2.2.2.1 *There is no entitlement to restrain deportation where an applicant seeks review of deportation or subsidiary protection*

K v. Refugee Appeals Tribunal & Ors, Unreported, High Court, Cooke J, 25 November 2011

With regard to this case, the High Court held that it cannot be assumed that just because a challenge has commenced to the legality of a deportation order or to the refusal of subsidiary protection, there will necessarily follow an entitlement to restrain implementation of the deportation order by way of interlocutory

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Irish Naturalisation and Immigration Service (2011). 'European Court of Justice Judgment in the *Zambrano* case'. Available at <http://www.inis.gov.ie>.

relief. The Court held that any presumption is in fact to contrary effect, as once the claim for asylum has been definitively concluded so that the asylum seeker is without permission to be present in the State.

The Court held that whether or not it is appropriate or necessary for the Court to intervene to interrupt the performance by the Minister of his statutory function depends upon the particular circumstance of each individual case; on the nature and significance of the illegalities alleged; and particularly, on the evidence adduced by the applicant as to why an injunction is necessary to prevent an irreversible or irreparable change in the applicant's situation occurring before the issues are determined. The Court held that the issue raised must be one which, if resolved in the applicant's favour, will lead to the quashing of the deportation order with the result that a deportation on foot of such an order will necessarily be unlawful. The Court acknowledged that the deportation would change the applicant's circumstances by removing him from the State and returning him to his country of origin, but stated that change of itself was not irreversible, and that no case had been made that the instant applicant's presence in the State was necessary for the purpose of prosecuting the present case.

The Court held that if an interlocutory injunction is to be granted to restrain deportation, it can only be on the basis of credible evidence that there is a real and current risk that the applicant will be exposed to some irreparable harm if deported before the application for leave is heard; or that for some other reason it is necessary that the applicant remains present in this jurisdiction until that date in order to avoid depriving the applicant of the effective exercise of his right of access to the Court. On the facts of the case, the Court refused the injunction.

5.2.2.2 Court says the Minister is impliedly precluded from giving effect to a deportation order pending the determination of the leave application in those cases where the proceedings have been commenced within the statutory time period, save where the application is clearly unsustainable.

H.M. v. Minister for Justice, Equality and Law Reform, Unreported, High Court, Hogan J, 21 January 2012

This case concerned an application for interlocutory relief restraining deportation where the applicant claimed to be a refugee *sur place* at risk of return to Iran. The Court found that the Minister's decisions in respect of subsidiary protection and regarding deportation relied heavily on the Tribunal's reasoning on the credibility and refugee *sur place* issues. The Court held that while this in itself is in principle perfectly acceptable, where such reasoning is itself open to objection, as was the case here, then it will also infect the Minister's decision, even where the decision of the Tribunal has not been challenged in judicial review proceedings.

The Court concluded that the balance of convenience clearly favoured the preservation of the status quo and that damages could not be said to constitute an adequate remedy, and considered it appropriate to grant the interlocutory injunction pending the determination of the application for leave. The Court was also of the view that the Minister is impliedly precluded from giving effect to a deportation order pending the determination of the leave application in those cases where, as here, the proceedings have been commenced within the statutory time period, save in those cases where the application is clearly unsustainable.

5.3 ACTIONS AGAINST HUMAN TRAFFICKING

5.3.1 Developments within the National Perspective

5.3.1.1 Administrative Immigration Arrangements

Amendments during 2011 to Administrative Arrangements for victims of trafficking²²⁸ included clarification on the scope of application of the Arrangements; application to persons under 18 years; clarification in relation to family reunification; clarification as to the process followed when a person is refused a declaration of refugee status; and new provisions allowing for an application or a change of status to be made.²²⁹

The Administrative Arrangements are not applicable to EU or EEA nationals. The Immigrant Council of Ireland has stated that this is contrary to the requirements of various pieces of international legislation (*EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA*; the *Council of Europe Convention on Action against Trafficking in Human Beings*; and the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*) in that a victim of trafficking cannot generally benefit from 'Free Movement' rules.²³⁰

5.3.1.2 Review of National Action Plan to Prevent and Combat Trafficking in Human Beings 2009-2012

On a national level, work began during 2011 on a review of the *National Action Plan to Prevent and Combat Trafficking in Human Beings 2009-2012* (NAP). A commitment to a structured mid-term review is contained in the NAP, and during 2011 existing structures such as a Roundtable Forum and various

²²⁸ Administrative Arrangements for victims of trafficking set out the protections from removal, such as a 60-day period of recovery and reflection and renewable six-month temporary residence permission in addition to other protections, available to suspected victims of human trafficking who have no legal permission to be present in the State. They were established in June 2008 to coincide with the commencement of the *Criminal Law (Human Trafficking) Act 2008* and were updated and republished in July 2010 and March 2011.

²²⁹ The Administrative Arrangements were to be given legislative effect in the *Immigration, Residence and Protection Bill 2010*.

²³⁰ Immigrant Council of Ireland (May 2012).

Working Groups were used for this consultative review. The review will proceed during 2012.

5.3.1.3 Launch of ‘Blue Blindfold Campaign’

In January 2011, the *Blue Blindfold*²³¹ campaign which seeks to raise awareness of human trafficking across Ireland was launched in Northern Ireland. A public information campaign was also launched in Dublin. A dedicated website and phone line for suspected cases of trafficking are in operation, and a *Guide to Procedures for Victims of Human Trafficking* was produced and made available online.²³²

5.3.1.4 Statistics Regarding Human Trafficking

In their *Annual Report 2011*, An Garda Síochána noted that during 2011 the Garda National Immigration Bureau (GNIB) ‘prioritised the prevention, detection and investigation of human trafficking, with a particular emphasis on victim related issues’.²³³

5.3.1.4.1 Referrals

Detailed information on referrals, investigations and prosecutions was made available in the *Annual Report of Trafficking in Human Beings in Ireland for 2011*. During 2011, some 53 cases of alleged human trafficking involving 57 persons were reported to An Garda Síochána. Of this number, 37 persons were alleged victims of sexual exploitation (34 were female, three were male); 13 were alleged victims of labour exploitation (nine were female, four were male); two persons were alleged victims of both sexual and labour exploitation (one was female, one was male); and five were victims of uncategorised exploitation (four were female, one was male). Of the overall number of cases referred, 48 concerned females and nine referred to males.

Regarding the age profile of referred cases to An Garda Síochána, 44 persons were adults and 13 were minors. Minors represented seven of the 37 cases of alleged sexual exploitation; four of the 13 cases of alleged labour exploitation; one of the two cases of both alleged labour and sexual exploitation; and one of the five cases of uncategorised exploitation.

The majority of referred alleged cases of human trafficking related to persons from Africa, (with 23 cases from Western Africa, three from Southern Africa, two from North Africa and one from East Africa) and Europe (with nine cases from EU countries excluding Ireland, six from Ireland and two from non-EU European countries). Some eight cases related to persons from Asia and three from Latin America. Looking at the immigration status of the referred cases, 32 of the 57 persons were in the asylum process, nine persons were EU citizens, six

²³¹ See previous reports in this series for further information.

²³² Department of Justice and Equality (2012). *Annual Report 2011*. Available at www.justice.ie.

²³³ An Garda Síochána (2012). *Annual Report 2011*. Available at www.garda.ie.

persons were Irish citizens and one person was granted protection from removal under the Administrative Arrangements.

A total of 27 cases of alleged human trafficking were reported to the Anti-Human Trafficking Unit of the Department of Justice and Equality by NGOs during 2011, mainly related to sexual exploitation (22 persons). Some 19 of these 27 cases were reported as having been referred to An Garda Síochána. Some 11 persons referred onwards to An Garda Síochána by NGOs had not previously been referred to them.²³⁴

5.3.1.4.2 Investigations and Prosecutions

During 2011, some 53 investigations relating to 57 persons involving allegations of trafficking in human beings were launched by An Garda Síochána. Of this number, 32 cases referred to ongoing investigations. Some six cases saw no or insufficient evidence of an offence having occurred in Ireland. A further six cases saw investigations ongoing in regard to other offences. Some four cases went before the Courts in Ireland, with three cases sent to the Director of Public Prosecutions (DPP). One case resulted in a conviction related to trafficking in human beings obtained under the *Criminal Law (Sexual Offences) Act, 1993* and in one case the claim of trafficking was withdrawn.

Regarding cases prosecuted during 2011, as detailed in the *Annual Report of Trafficking in Human Beings for Ireland for 2011*, some seven cases were taken forward during the year:

- Charges were preferred under the *Illegal Immigrants (Trafficking) Act, 2000* and the *Criminal Law (Sexual Offences) Act, 1993*. The accused was an adult female who was charged with one count of trafficking into the State and six counts of controlling prostitution/brothel keeping. This case is listed for trial.
- Charges were preferred under Section 2 of the *Criminal Law (Rape) (Amendment) Act, 1990*, Section 3 of the *Child Trafficking and Pornography Act, 1998*.²³⁵ The two accused were an adult male and female. Charges related to sexual assault and the sexual exploitation of a minor in addition to the possession of child pornography. The two accused pleaded guilty and were remanded for sentence.
- Charges were preferred under Section 3 of the *Child Trafficking and Pornography Act, 1998*.²³⁶ The case has been listed for trial.
- Charges were preferred under Section 3 of the *Child Trafficking and Pornography Act, 1998*.²³⁷ The accused was an adult male. The accused was returned for trial.

²³⁴ Anti-Human Trafficking Unit, Department of Justice and Equality (2012). *Annual Report of Trafficking in Human Beings in Ireland for 2011*. Available at www.justice.ie.

²³⁵ As amended by the *Criminal Law (Human Trafficking) Act 2008*.

²³⁶ As amended by Section 6 of the *Criminal Law (Sexual Offences) (Amendment) Act 2007* and as substituted by Section 3(2) of the *Criminal Law (Human Trafficking) Act 2008*.

- Charges were preferred under Section 3 of the *Criminal Law (Human Trafficking) Act 2008* in addition to other charges. The accused was an adult male. Charges related to attempted kidnapping for the purposes of sexual exploitation of a minor. The accused pleaded guilty and was remanded in custody for sentence.
- Charges were preferred under Section 3 of the *Criminal Law (Human Trafficking) Act 2008* in addition to other offences. The accused was an adult male. Charges related to recruitment by deception and the sexual exploitation of a minor. The accused was returned for trial.
- Charges were preferred under Section 3 of the *Criminal Law (Human Trafficking) Act 2008*. The accused was an adult male.²³⁸

5.3.1.4.3 Convictions

Some four convictions took place during 2011 with regard to offences relating to the trafficking of human beings in Ireland:

- Two were secured under the *Child Trafficking and Pornography Act 1998*:²³⁹ the first case refers to the controlling and sexual exploitation of a minor for the purposes of prostitution by an adult female. The sentence was four years imprisonment with the final two years suspended. The second case refers to the controlling and sexual exploitation of a minor for the purposes of creating child pornography by an adult male. He was convicted and fined €100.
- One conviction was secured under the *Criminal Law (Human Trafficking) Act 2008*. It relates to the sexual exploitation of a minor by an adult male. The sentence was three years imprisonment.
- One conviction was secured under the *Criminal Law (Sexual Offences) Act 1993*. It relates to the controlling and organising of prostitution by an adult male. The sentence was 2.5 years imprisonment with the final fifteen months suspended on condition that he leaves the State on his release and does not return for ten years.²⁴⁰

5.3.1.5 International Cooperation

Ireland was involved in a number of international human trafficking investigations in 2011 including Operation Abbey which was established in 2008 to investigate the criminal activities of an Irish national and his associates in Ireland and the United Kingdom. Several other acts of international cooperation

²³⁷ As amended by Section 6 of the *Criminal Law (Sexual Offences) (Amendment) Act 2007* and as substituted by Section 3(2) of the *Criminal Law (Human Trafficking) Act 2008*.

²³⁸ Anti-Human Trafficking Unit, Department of Justice and Equality (2012). *Annual Report of Trafficking in Human Beings in Ireland for 2011*. Available at www.justice.ie.

²³⁹ The first case as amended by Section 6 of the *Criminal Law (Sexual Offences) (Amendment) Act 2007* and as substituted by Section 3(2) of the *Criminal Law (Human Trafficking) Act 2008*.

²⁴⁰ Anti-Human Trafficking Unit, Department of Justice and Equality (2012). *Annual Report of Trafficking in Human Beings in Ireland for 2011*. Available at www.justice.ie.

resulted in arrests and convictions during 2011 including with the Police Service of Northern Ireland (PSNI) Organized Crime Unit which saw a Hungarian male charged with human trafficking and organizing prostitution, and the arrest of two Romanian nationals following the launch of an investigation into the suspected trafficking of a Romanian national into Ireland for the purposes of labour exploitation at the request of Romanian authorities.

In September 2011, a Ghanaian national was convicted of child trafficking in the Netherlands and sentenced to six years imprisonment in his absence. The perpetrator was originally identified and arrested in Ireland.²⁴¹

5.3.1.6 Proposed Bilateral Agreement between Ireland and Nigeria on Cooperation in the Fight against Human Trafficking

During 2011 consultations took place between representatives of the Nigerian National Agency for the Prohibition of Traffic in Persons and Other Related Matters (NAPTIP), the Human Trafficking Investigation and Co-ordination Unit of An Garda Síochána (HTICU) and the Anti-Human Trafficking Unit, of the Department of Justice and Equality. Following these consultations a draft Memorandum of Understanding was prepared on broad scale cooperation with Nigeria to combat human trafficking. This document is now awaiting final approval.²⁴²

5.3.1.7 Proposed Memorandum of Understanding between An Garda Síochána and the Serious Organised Crime Agency (UK)

Following consultations between representatives of the UK Serious Organised Crime Agency (SOCA), the Human Trafficking Investigation and Co-ordination Unit of An Garda Síochána (HTICU) and the Anti-Human Trafficking Unit of the Department of Justice and Equality, a draft Memorandum of Understanding was prepared to address the need to enhance collaboration on information sharing in the prevention of trafficking in human beings. The Draft Memorandum of Understanding deals only with routine technical matters between the law enforcement agencies of the two States.²⁴³

North-South cooperation also continued during 2011 between representatives from the Anti-Human Trafficking Unit (AHTU) within the Department of Justice and Equality and An Garda Síochána who continue to meet with representatives from the Northern Ireland Office (NIO) and the Police Service of Northern Ireland (PSNI) once or twice a year to discuss issues of mutual concern in relation to human trafficking and to share experiences. During the year, meetings with representatives of the Scottish Government, the UK Human

²⁴¹ Anti-Human Trafficking Unit, Department of Justice and Equality (2012). *Annual Report of Trafficking in Human Beings in Ireland for 2011*. Available at www.justice.ie.

²⁴² Anti-Human Trafficking Unit, Department of Justice and Equality (May 2012).

²⁴³ Anti-Human Trafficking Unit, Department of Justice and Equality (May 2012).

Trafficking Centre and the Scottish Crime and Drug Enforcement Agency also took place.²⁴⁴

5.3.1.8 US Trafficking in Persons Report 2011

The 2011 US State Department *Trafficking in Persons Report 2011* saw Ireland remain a Tier 1 country,²⁴⁵ fully complying with the minimum standards for the elimination of trafficking. The 2011 report noted that it was a ‘destination, source and transit country’ for women, men and children in both cases of sexual exploitation and forced labour. Victims of sex trafficking were noted as originating from ‘Eastern Europe, Africa, including Nigeria, as well as South America and Asia’. Victims of labour trafficking are men and women from ‘Bangladesh, Pakistan, Egypt, and the Philippines’ though the possibility of additional victims from South America, Eastern Europe and wider Asia and Africa was also noted.

The report made a number of recommendations including the increased implementation of the *Criminal Law (Human Trafficking) Act 2008*, the institutionalisation and improvement of identification of victims of trafficking, including potential forced labour victims; the pursuance of a victim-centred approach by expanding partnerships with NGOs providing specialised services; and the implementation of measures to educate consumers on forced labour trafficking.²⁴⁶

5.3.2 Developments from the EU Perspective

5.3.2.1 Legislative Developments

5.3.2.1.1 Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

Ireland notified its intention to take part in *Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims*, and replacing Council Framework Decision 2002/629/JHA which was adopted on 5 April 2011 and for implementation by 6 April 2013. Work is ongoing regarding determination of measures necessary to implement the Directive on a domestic level.

²⁴⁴ *Ibid.*

²⁴⁵ Tier 1 classification indicates countries which fully comply with *Trafficking Victims Protection Act's* (TVPA) minimum standards.

²⁴⁶ US State Department (2012). *Trafficking in Persons Report 2011*. Available at www.state.gov.

Chapter 6

Border Control

6.1 CONTROL AND SURVEILLANCE AT EXTERNAL BORDERS

6.1.1 Developments within the National Perspective

6.1.1.1 Legislative Developments

6.1.1.1.1 Civil Law (Miscellaneous Provisions) Act 2011

The *Civil Law (Miscellaneous Provisions) Act 2011* was signed into law in August 2011 and provides for a number of amendments to immigration and citizenship law (see Section 3.2.3 for further information). Section 34 of the Act of 2011 amends the *Immigration Act 2004* to take account of the decision of the High Court in *E.D. v. D.P.P. [2011] IEHC 110* which found that Section 12 of the *Immigration Act 2004* is inconsistent with Articles 38.1 and 40.4.1 of the Constitution (see Section 6.1.1.6.1).

Section 11 of the 2004 Act is amended to require that non-nationals presenting at the border be in possession of a valid passport or other equivalent document. When requested to do so by an immigration officer, non-nationals are required to furnish their passport or identity document and such further information as the officer may require. Failure to comply with these obligations is an offence. The new Section also creates a defence of reasonable cause for non-compliance.

6.1.1.2 Visas

During 2011, some 136,944 visa applications were received by Ireland.²⁴⁷ A total of 83,437 applications were for entry visas and some 53,507 applications for re-entry visas which are issued to nationals of visa-required countries who are legally present in Ireland and wish to leave temporarily (holidays, business, visit relatives etc.) and to re-enter the State.²⁴⁸ The *Annual Report 2011* of the Department of Justice and Equality noted that some 91 per cent of all applications for entry visas were approved. The main country of nationality of persons applying for visas during 2011 was India (16 per cent), Russia (13 per cent), China (11 per cent), Nigeria (7 per cent) and Turkey (5 per cent).²⁴⁹

²⁴⁷ Department of Justice and Equality (2012). *Annual Report 2011*. Available at www.justice.ie.

²⁴⁸ Irish Naturalisation and Immigration Service (May 2012).

²⁴⁹ Department of Justice and Equality (2012). *Annual Report 2011*. Available at www.justice.ie.

6.1.1.3 Refusal of Leave to Land

Some 2,543 persons were refused leave to land at Irish ports during 2011.²⁵⁰

6.1.1.4 Civilian Immigration Officers at Ports

In an end of year review of developments in the area, the Minister for Justice, Equality and Defence outlined plans for a new pilot project at Dublin Airport to be launched in January 2012 which would see civilian staff from the Irish Naturalisation and Immigration Service (INIS) working in the arrival booths there. Currently, all immigration control duties at the airport are conducted by members of the Garda National Immigration Bureau (GNIB).²⁵¹

6.1.1.5 Irish Border Information System (IBIS)

During 2011 further discussions with the project team regarding progression of the Irish Border Information System (IBIS) for Ireland continued to take place. The Irish Border Information System (IBIS) is intended to reduce and possibly eradicate the issue of 'overstayers' in Ireland and will entail all passenger information collected by carriers prior to travel being sent to an Irish Border Operations Centre (I-BOC) where it will be screened against certain watch lists. If a match occurs, the relevant agency will be notified and provided with time to take appropriate measures such as monitoring, intercepting or arresting the passenger.

As discussed in Section 4.3.2.1.2, the *European Communities (Communication of Passenger Data) Regulations 2011 (S.I. No. 597 of 2011)* was signed during 2011 and sought to give effect to *Directive 2004/82/EC* which requires air carriers to provide advance passenger data to Irish Immigration authorities for the purposes of improving border control and combating illegal immigration. The Department of Justice and Equality noted in their Annual Report that INIS were testing a 'prototype system (IBIS)' to 'inform any decision to build a standing system to receive and process passenger data from airlines'.²⁵²

6.1.1.6 Case Law

6.1.1.6.1 Provision allowing for detention of migrants struck down for vagueness

E.D. v. Director of Public Prosecutions at the suit of Garda Thomas Morley, Unreported, High Court, Kearns P, 25 March 2011

The applicant, a Liberian national, was arrested in Dublin Airport and charged with an offence that she, being a non-national, failed to produce on demand to

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Ibid.

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Irish Naturalisation and Immigration Service (January 2012). *'Immigration in Ireland 2011 - a year-end snapshot - major changes and more to follow'*. Available at www.inis.gov.ie. See also Department of Justice and Equality (2012). *Annual Report 2011*. Available at www.justice.ie.

²⁵²

Department of Justice and Equality (2012). *Annual Report 2011*. Available at www.justice.ie.

an Immigration Officer or member of An Garda Síochána, a valid passport or other equivalent document which established her identity and nationality and failed to give a satisfactory explanation of the circumstances which prevented her from doing so contrary to Sections 12(1)(a) and (2) and Section 13 of the Immigration Act 2004.

The applicant appeared before the District Court on this charge and was remanded in custody. While on remand she applied for asylum and was issued with a Temporary Residence Certificate pursuant to Section 9 of the Refugee Act 1996. When the applicant appeared again in the District Court, the judge decided that the initial charge was null and void. He made no order and the applicant was released, only to be rearrested again nearly two months later for the same offence. She was granted bail by the District Court. She then applied for and was granted leave to seek a permanent injunction restraining her prosecution under Section 12 of the Immigration Act 2004 and a declaration that the Section is unconstitutional and incompatible with the State's obligations under Articles 5, 6, 7 and 14 of the ECHR.

The applicant argued that Section 12 of the Act of 2004 was unconstitutional on three grounds: firstly, the words purporting to create the offence were impermissibly vague and imprecise; secondly, the Section was a disproportionate interference with the equality provisions of the Constitution; and thirdly, the procedure provided for under the Section constituted or permitted a breach of process in that she ought to have been prosecuted under Section 11 of the Act of 2004 (which creates the offence of entering the State without a valid passport) or she ought to have been detained under Section 9 of the Refugee Act 1996, which allows for civil detention of asylum seekers in certain limited circumstances.

The High Court held that Section 12 was not sufficiently precise to reasonably enable an individual to foresee the consequences of his or her acts or omissions or to anticipate what form of explanation might suffice to avoid prosecution. Furthermore, the Court noted that there was no requirement in Section 12 to warn of the possible consequences of any failure to provide a 'satisfactory' explanation. Consequently, the Court held that the offence was ambiguous and imprecise and that it lacked the necessary clarity to create a criminal offence. The Court acknowledged the potential of Section 12 to breach the applicant's rights, noting that it violates the privilege against self-incrimination as recognised by the Irish Constitution and Article 6 of the ECHR. The Court further stated that the applicant could legitimately complain that Section 11 and not Section 12 should have been used in her case, and that unfairness could arise because the applicant could be subjected to repeated prosecutions and be guilty of a criminal offence on each and every occasion.

The Court expressed the view that while Section 12 was designed as an immigration control mechanism, its vagueness was such as to fail basic requirements for the creation of a criminal offence, and that, as drafted it gave

rise to arbitrariness and legal uncertainty. For these reasons, the Court granted an injunction restraining the respondent from taking any further steps in the prosecution arising from the applicant's second arrest and made a declaration that Section 12 was inconsistent with Articles 38.1 and 40.4.1 of the Constitution of Ireland.

6.1.1.6.2 Detention order of illegal immigrant refused leave to land must show jurisdiction on its face

Ejerenwa v. Governor of Cloverhill Prison, Unreported, Supreme Court, 28 October 2011

The Appellant, on being questioned on a bus at the border crossing from Northern Ireland into the State, could not provide the Garda with any form of identification and he was accompanied to a Garda (police) station. The Appellant filled out a landing card stating he was from Sierra Leone. The Gardaí did not accept that the Appellant was from Sierra Leone, and asked him to fill out another landing card, which the Appellant did, this time stating his nationality to be Nigerian. The Appellant's solicitor averred that the Appellant instructed him that he was already an asylum seeker in the State, and that he felt pressurised into completing a second landing card containing a reference to Nigeria and stating his nationality to be Nigerian. The Appellant was refused permission to enter the State, and detained pending his removal.²⁵³ The Gardaí gave the Appellant three documents. One referred to the fact that he did not have a valid passport or equivalent document. One stated he did not have a valid Irish visa. And one that stated that the Appellant intended to travel to Great Britain or Northern Ireland, where he would not qualify for admission.

The High Court refused his application for habeas corpus, and the Appellant appealed, inter alia, on two grounds: (1) that the detention order was defective on its face, and (2) that it was necessary for the order to show on its face the time permitted for detention (i.e. eight weeks, under the legislation).

Regarding (1), whether the order was defective on its face, the Court stated that the principle of law, i.e. that the immigration officer or Garda acting under the immigration legislation must show on the face of a document which he or she creates, the facts upon which jurisdiction rests for warrants such as that in issue, was well established. The Court held that a document, such as that in issue here, should contain clear information on its face as to the basis of its jurisdiction. The Court found that in this case the detention order referred only to the Section of the Act²⁵⁴ and that this was insufficient to show jurisdiction because it did not state on its face the reason for the arrest and detention. The Court stated that the Section in question confers a power of arrest and detention of 'a person to whom this section applies', and that it was therefore necessary to see what provisions applied. The Court noted that the Detective

²⁵³ Under Section 5 of the *Immigration Act 2003*, as amended.

²⁵⁴ Section 5(2)(a) of the *Immigration Act 2003*.

Garda appeared to rely on three of them, as per the three documents furnished to the Appellant, but found that the defect in the detention order was the failure to state that the Appellant had been refused permission to land and, as required²⁵⁵ that the Garda had ‘with reasonable cause’ suspected that the Appellant had been ‘unlawfully in the State for a continuous period of less than three months.’ Accordingly, as these facts were not on the document, the Court released the Appellant. Regarding (2), whether it was necessary for a detention order to show on its face the time permitted for detention, the Court held that the permitted period of detention is a matter of general law, provided by statute, and a warrant of detention is not required to make statements of law.

6.1.2 Developments from the EU Perspective

6.1.2.1 Legislative Developments

6.1.2.1.1 *The European Communities (Communication of Passenger Data) Regulations 2011 (S.I. No. 597 of 2011)*

In October 2011, the Minister for Justice, Equality and Defence signed into law the *European Communities (Communication of Passenger Data) Regulations 2011* which transposed *Council Directive 2004/82/EC* of 29 April, 2004 on the obligation of carriers to communicate passenger data. The Regulation requires all air carriers on inbound flights from outside the E.U. to provide passenger data to Irish immigration authorities in order to improve border control and combat irregular immigration.²⁵⁶ Airlines will be required to provide data on passengers as available via machine-readable passports and to transmit this to Irish authorities after check-in is completed in order for checks against ‘watch lists’ for persons of concern to take place. Data may only be stored for 24 hours or for up to three years in cases of persons of concern or until they cease to be in such a category. A trial system will initially be tested.

6.1.2.2 European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex)

As discussed earlier, during 2011 Ireland participated in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) Risk Analysis Network. It also participated in border guard training in the area of biometrics, common curriculum, false documents and return.

²⁵⁵ By Section 5(1) of the *Immigration Act 2003*.

²⁵⁶ Irish Naturalisation and Immigration Service (October 2011). ‘Minister Shatter signs new law requiring airlines to provide Advance Passenger Information’. *Press Release*. Available at <http://www.inis.gov.ie>.

6.1.2.3 Schengen Information System (SIS II)

During 2011, Ireland participated in aspects of the second generation Schengen Information System (SIS II), namely policy and judicial cooperation. Ireland is participating in *Council Regulation (EU) No 542/2010*²⁵⁷ by virtue of Council Decision 2002/192/EC concerning certain aspects of the Schengen *acquis*. Integration of the national system will begin after the SIS II becomes operational which is expected to take place following the migration process scheduled for March 2013.²⁵⁸

6.2 COOPERATION WITH RESPECT TO BORDER CONTROL

6.2.1 Developments within the National Perspective

6.2.1.1 Biometric Data Collection

In 2011 Ireland continued to operate biometric data collection ('e-Visa') as part of the visa application process in Nigeria and indicated its intention to expand this collection system to certain other countries, notably Pakistan. Within the e-Visa system, all visa applicants aged six years and over and who are residing in Nigeria (irrespective of nationality) must present in person to one of the Ireland Visa Application Centres (VAC) in Abuja or Lagos. Nigerian nationals seeking permission to enter at the border in Ireland may have their fingerprints checked against records at Dublin Airport. In January 2011 the then Minister for Justice, Equality and Defence stated that the introduction of biometric checks as part of the visa application procedure in Pakistan would be investigated on an urgent basis. This move would increase the traceability of the movement of Pakistani migrants and was prompted by the high instance of marriages between Pakistani nationals and EU partners from the Baltic States.²⁵⁹

In the context of the signing of an agreement between Ireland and the UK regarding a reinforced commitment to the Common Travel Area (CTA), in December 2011 a memorandum was also signed regarding the exchange of information such as fingerprint biometrics and biographical details, particularly from 'high risk' countries, as part of the visa issuing process.²⁶⁰ This memorandum will have the effect that the visa application data, from nine specified countries, will be automatically shared between the Irish Naturalisation and Immigration Service (INIS) and the UK Border Agency (UKBA). The countries concerned are: Bangladesh; China; Ghana; India; Iran; United Kingdom; Nigeria; Pakistan and Sri Lanka.²⁶¹ This increased data sharing will take place under the domestic law and policy of each country, and both

²⁵⁷ *Council Regulation (EU) No 542/2010* of 3 June 2010 amending Decision 2009/724/JHA on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II).

²⁵⁸ Irish Naturalisation and Immigration Service (September 2012).

²⁵⁹ *The Irish Times* (8 January 2011). 'Biometric checks on Pakistani visas likely'. Available at www.irishtimes.com.

²⁶⁰ Department of Justice and Equality (20 December 2011). 'Ireland-UK Accord to Further Secure the Common Travel Area'. *Press Release*. Available at www.justice.ie.

²⁶¹ Quinn, E. (2011). *Visa Policy as Migration Channel: Ireland*. Available at www.emn.ie.

countries will roll out the exchange of biographic and biometric visa data across overseas locations. Continued cooperation will also take place on establishing the immigration histories and identification of failed asylum seekers for the purpose of reaching final decisions in respect of such cases and, where appropriate, facilitating returns to countries of origin.

Outlined also in the joint agreement was the capability to ‘challenge the credibility of applications’ with a view to creating a framework in which enhanced cooperation in the area of mutual visa recognition (possibly up to a common short-stay visa) could be built upon. From July 2011, and on an 18-month trial basis, Ireland has recognised UK ‘short-term visit visas’ under its Visa Waiver Programme for visa-required nationals of 16 countries who wish to travel from the UK to Ireland. Both countries also committed to cooperating ‘to the fullest extent possible’ to align their list of visa-required countries for travel to both jurisdictions and to review the standards for determination of visa applications for both countries. Exploration of the ‘viability’ of a Common Travel Area visit visa is also referenced.²⁶²

During 2011, the UK and Ireland developed a number of initiatives with regard to training, sharing of immigration liaison officer resources, immigration information and biometric exchanges. A commitment has been publically made to continue to build on such initiatives.²⁶³

6.2.2 Developments from the EU Perspective

None to report.

²⁶² Irish Naturalisation and Immigration Service (December 2011). ‘Joint Statement by Mr. Damian Green, Minister of State for Immigration, The United Kingdom’s Home Department and Mr. Alan Shatter, Minister for Justice and Equality, Ireland’s Department of Justice and Equality Regarding Cooperation on Measures to Secure the External Common Travel Area Border’. Available at www.inis.gov.ie.

²⁶³ *Ibid.*

Chapter 7

International Protection, Including Asylum

Unlike other Member States, Ireland has a two-stage international protection process.

- An applicant for international protection is permitted to remain in the State under the *Refugee Act 1996*, and has their asylum claim investigated by the Refugee Applications Commissioner and, on appeal, the Refugee Appeals Tribunal, who make recommendations in respect of asylum to the Minister for Justice, Equality and Defence.
- Where an applicant is unsuccessful in respect of asylum, his permission to be in the State comes to an end, and he is made the subject of a proposal to deport under the *Immigration Act 1999*.
- In this context, the applicant can make representations regarding why he should not be deported, and may also apply for subsidiary protection under *The European Communities (Eligibility for Protection) Regulations 2006* (S.I. 518 of 2006).

7.1 DEVELOPMENTS WITHIN THE NATIONAL PERSPECTIVE

7.1.1 Legislative Developments

7.1.1.1 *The Refugee Act 1996 (Travel Document and Fee) Regulations 2011 (S.I. No. 404 of 2011)*

In July 2011, the Minister for Justice and Equality signed *S.I. No. 404 of 2011*, which introduced a fee for travel documents for refugees.

7.1.2 International Protection Statistics

During 2011 some 1,290 applications for asylum were received by the Office of the Refugee Applications Commissioner (ORAC). Regarding main country of stated origin of applicants for asylum at first instance during 2011, all main countries were present during 2010 also. The largest groupings concerned nationals of Nigeria (182 applications, representing 14.1 per cent of all applications), Pakistan (175 applications, representing 13.6 per cent of all applications), China (142 applications, representing 11 per cent of all applications), DR Congo (70 applications, representing 5.4 per cent of all applications) and Afghanistan (67 applications, representing 5.2 per cent of all

applications).²⁶⁴ Some 26 applications for asylum were received from unaccompanied minors during 2011, with ORAC noting in their *Annual Report 2011* that the timeframe for scheduling interviews with minors had been increased from 20 to 25 days at the request of the Refugee Legal Service.²⁶⁵ During 2011, a total of 5.8 per cent of all applications (75 applications) represented persons in detention.²⁶⁶ A total of 243 determinations were made under the Dublin Regulation. A total of 1,834 cases were finalised during 2011 and some 61 positive recommendations took place during 2011 at first instance.²⁶⁷ A total of 238 first instance applications remained outstanding at year end.²⁶⁸

A total of 1,010 sets of fingerprints were sent to EURODAC during 2011, with 13 per cent (135 cases) showing that applicants had submitted an application for asylum in another Member State.²⁶⁹ Some 144 transfer orders were effected during 2011 under the Dublin Regulation.²⁷⁰

Some 1,106 appeals were received by the Refugee Appeals Tribunal during 2011 under new and older procedures. A total of 1,378 appeals were completed during the year, including cases relating to the Dublin Regulation. Some 921 cases were finalised under substantive 15 day appeals, 369 under accelerated appeals and 88 related to appeals under the Dublin Regulation under new and older procedures during 2011.²⁷¹ Some 99 per cent of recommendations made by the Refugee Applications Commissioner under manifestly unfounded and accelerated decisions were affirmed during 2011 (relating to six positive cases), and some 94 per cent of all recommendations relating to decisions under the Dublin Convention/Regulation were upheld (relating to five positive cases). A total of 642 appeals were on hand by the Tribunal at the end of December 2011.²⁷²

With regard to processing times for applications for asylum at first instance, in 2011 all applications processed under the *Ministerial Prioritisation Directive*²⁷³ were scheduled for interview within nine to 12 working days from date of application and completed within a median processing time of 30 working days

²⁶⁴ Office of the Refugee Applications Commissioner (February 2012). *Monthly Statistical Report December 2011*. Available at www.orac.ie.

²⁶⁵ *Ibid.*

²⁶⁶ Office of the Refugee Applications Commissioner (2012). *Annual Report 2011*. Available at www.orac.ie.

²⁶⁷ *Ibid.*

²⁶⁸ Office of the Refugee Applications Commissioner (February 2012). *Monthly Statistical Report December 2011*. Available at www.orac.ie.

²⁶⁹ Office of the Refugee Applications Commissioner (2012). *Annual Report 2011*. Available at www.orac.ie.

²⁷⁰ Department of Justice and Equality (2012). *Annual Report 2011*. Available at www.justice.ie.

²⁷¹ Refugee Appeals Tribunal (2012). *Annual Report 2012*. Available at www.refappeal.ie.

²⁷² *Ibid.*

²⁷³ As discussed in earlier reports in this series, the *Refugee Act 1996 (as amended)* provides for the accordance of priority to certain classes of asylum applications by the Minister, including applicants from designated safe countries of origin. Non-EU states designated as safe countries of origin are Croatia and South Africa. Asylum applications are not accepted from nationals of other EU member states arising from the *EU Treaty Protocol on Asylum for Nationals of Member States of the EU*. Applications from prioritised countries are processed under accelerated arrangements.

from date of application. All other cases were processed to completion within a median time of 11.7 weeks (including cases which were delayed for medical or other reasons).²⁷⁴ Median processing times for applications by the Refugee Appeals Tribunal (RAT) was 22 weeks for Substantive 15 Day Appeals and five weeks for Accelerated Appeals.²⁷⁵

Regarding the judicial review of cases, at the end of 2011 some 238 cases related to ORAC were on hand. The Office was subject to 79 new legal challenges during the year.²⁷⁶ A total of 234 applications for judicial review against decisions of the Refugee Appeals Tribunal were filed during the year.²⁷⁷ The Courts Service *Annual Report 2011* noted that 59 per cent of the 1,193 applications for judicial review in the High Court during 2011 related to asylum, immigration and refugees (703 cases), representing a decrease of 25 per cent on corresponding figures for 2010. The majority of these judicial reviews related to interim asylum-related orders (147), followed by liberty to apply for judicial review granted (129), and final orders - miscellaneous (117). The waiting time for the High Court in asylum cases was 30 months for pre-leave and five months post-leave. The average waiting time for the priority list (in which asylum lists are included) in the Supreme Court was eight months.²⁷⁸

The overall refugee recognition rate during 2011 was 4.9 per cent.

Table 1: Refugee Recognition Rate, 2004-2011

	2004	2005	2006	2007	2008	2009	2010	2011
Total ORAC Recommendations	6,878	5,243	4,244	3,808	3,932	3,263	1,787	1,447
Total RAT Completed Appeals	6,305	4,029	1,950	1,878	2,568	3,586	2,870	1,290
Positive ORAC Recommendations	430	455	397	376	295	98	24	61
'Positive' RAT Decisions**	717	514	251	203	293	268	129	71
Total Decisions/ Recommendations	13,183	9,272	6,194	5,686	6,494	6,849	4,657	2,737
Total Positive Decisions/ Recommendations	1,147	969	648	579	588	366	153	132
Recognition Rate ORAC %	6.3	8.7	9.4	9.9	7.5	3.0	1.3	4.2
Recognition Rate RAT %	11.4	12.8	12.9	10.8	11.4	7.5	4.5	5.5
Overall Recognition Rate %	8.7	10.5	10.5	10.2	9.0	5.3	3.4	4.9

Source: Derived from Office of the Refugee Applications Commissioner statistics available at www.orac.ie; Refugee Appeals Tribunal statistics available at www.refappeal.ie. Data related to EU Dublin Regulation cases are excluded, including cases deemed withdrawn under Section 22(8) of The *Refugee Act 1996 (as amended)* for 2009-2011 data.

Note: * These data include withdrawn/deemed withdrawn/abandoned cases as 'negative' recommendations/decisions because comprehensive data excluding such cases are not published.
** Recommendations issued by the Refugee Appeals Tribunal to the Minister for Justice and Equality to overturn the decision of the Refugee Applications Commissioner are counted as 'positive decisions'.

²⁷⁴ Office of the Refugee Applications Commissioner (2012). *Annual Report 2011*. Available at www.orac.ie.
²⁷⁵ Refugee Appeals Tribunal (2012). *Annual Report 2011*. Available at www.refappeal.ie.
²⁷⁶ Office of the Refugee Applications Commissioner (2012). *Annual Report 2011*. Available at www.orac.ie.
²⁷⁷ Refugee Appeals Tribunal (2012). *Annual Report 2011*. Available at www.refappeal.ie.
²⁷⁸ The Courts Service (2012). *Annual Report 2011*. Available at www.courts.ie.

During 2011, some 889 applications for subsidiary protection in Ireland were received with the majority of cases relating to nationals of Nigeria (135 applications), Pakistan (98 applications), Democratic Republic of Congo (60 applications), Afghanistan (53 applications) and Somalia (39 applications). A total of 13 grants took place during the year.

7.1.3 Resettlement

In 2011, Ireland continued to participate in the UNHCR-led Resettlement Programme for vulnerable refugees. Some 994 persons have been resettled in Ireland under this Programme since 2000. During 2011, 45 persons were resettled from Eritrea (nine persons), Ethiopia (six persons), Iraq (six persons), Morocco (one person) and Sudan (23 persons).²⁷⁹ This includes the relocation of nine persons, for resettlement purposes, from Malta to Ireland.²⁸⁰

UNHCR made a submission to the Office of the High Commissioner for Human Rights (OHCHR) for possible inclusion in its Compilation Report to be produced in respect of the Universal Periodic Review (UPR) on Ireland in March 2011. Recommendations included: the extension of national legal provisions on family reunification to resettled refugees; the introduction of a Single Procedure and the speeding up of decisions on current subsidiary protection claims; and further examination of the introduction of a statelessness determination procedure.²⁸¹

7.1.4 Direct Provision for Applicants for International Protection

Some 917 persons were newly accommodated in direct provision during 2011, with a contracted capacity of 5,984²⁸² persons and 5,423 persons in occupancy at year end.²⁸³ Of the December 2011 occupancy, almost a quarter (24 per cent, representing 1,265 persons) of residents were Nigerian nationals, followed by nationals of DR Congo (7.4 per cent, representing 391 persons), Pakistan (7.2 per cent, representing 380 persons), Zimbabwe (4.5 per cent, representing 237 persons) and Somalia (4 per cent, representing 211 persons). In terms of duration of stay by applicants in direct provision, the Reception and Integration Agency (RIA) monthly report for December 2011 shows that some 3,040 persons had been in direct provision for over 36 months at this time; 802 persons for between 24 and 36 months; 343 persons for between 18 and 24 months; 338 persons for between 12 and 18 months; 131 persons for between nine and 12 months; 151 persons for between six and nine months; 149 persons

²⁷⁹ This refers to country of stated nationality.

²⁸⁰ Information as received from the Office for the Promotion for Migrant Integration. Cited as 24 Sudanese persons residing in Tunisia, ten persons under international protection in Malta and two medical cases (relating to ten persons) in the Department of Justice and Equality (2012). *Annual Report 2011*. Available at www.justice.ie.

²⁸¹ UNHCR (2011). Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' *Compilation Report - Universal Periodic Review: IRELAND*. Available at http://www.unhcr.ie/images/uploads/news/unhcr_upr_2011.pdf.

²⁸² Reception and Integration Agency (2012). *Monthly Statistics Report December 2011*. Available at www.ria.gov.ie.

²⁸³ Reception and Integration Agency (2012). *Annual Report 2011*. Available at www.ria.gov.ie.

for between three and six months and 287 persons for up to three months.²⁸⁴ The *Annual Report 2011* by the Reception and Integration Agency (RIA) notes that €69.5 million was spent on the direct provision system during 2011, a decrease of 12.1 per cent on 2010 figures. It notes that 2011 saw a continuing decline in the number of asylum seekers accommodated by RIA, and that there was a ‘shallower decline’ of numbers in RIA accommodation versus overall numbers of new applicants for international protection due to the ‘continuing increase’ in the length of time residents spent in direct provision.²⁸⁵ RIA continued to provide accommodation to ‘aged-out’ unaccompanied minors during the year (14 new ‘aged-out minors’ during 2011) for persons transferred from Health Service Executive (HSE) care to RIA accommodation. Of note also is that RIA provided assistance with the voluntary return of destitute EU12 nationals during 2011 (during 2011 some 416 persons were assisted at a cost of €98,721) and accommodation provision to potential or suspected victims of trafficking referred by An Garda Síochána.

During 2011 the system of direct provision accommodation continued to prompt much media and parliamentary debate. A coalition of NGOs, the NGO Alliance Against Racism, provided a shadow report to the United Nations Committee on the Elimination of Racial Discrimination on areas where it believed the State is failing to meet its commitments under the Convention. Regarding the practice of direct provision it called for a ‘radical review’ of the direct provision system and noted that there was no evidence that the State had taken

the requisite measures to ensure that its policy of direct provision and dispersal of asylum seekers and others seeking protection does not have negative consequences for those involved.

It added that the current policy had shown to have ‘a number of negative mental and physical impacts on those who reside under the regime’. The Shadow Report also stated that the policy of dispersal of persons seeking international protection had ‘isolated’ asylum seekers from both their community and the wider community. The absence of an adequate complaints mechanism was also criticised as was the standard of accommodation for asylum seekers which was described as ‘often unsuitable’ to needs, particularly with regard to overcrowding, poor recreational facilities, lack of childcare, and the absence of a female-only accommodation centre under direct provision for persons seeking protection on gender-based violence grounds.²⁸⁶ In a presentation by the

²⁸⁴ Reception and Integration Agency (2012). *Monthly Statistics Report December 2011*. Available at www.ria.gov.ie. It is noted that this figure is taken from the Department of Justice and Equality AISIP database. As a result this figure does not correspond directly with RIA figures as provided in the December statistical report.

²⁸⁵ Reception and Integration Agency (2012). *Annual Report 2011*. Available at www.ria.gov.ie. It was noted that during 2011, some 58 per cent of RIA residents had claimed international protection three or more years previously; during 2010 the comparable figures was 46 per cent.

²⁸⁶ NGO Alliance Against Racism (2011). *NGO Alliance Against Racism Shadow Report In Response to the Third and Fourth Periodic Reviews of Ireland Under the UN International Convention on the Elimination of All Forms of Racial Discrimination*. Available at www.immigrantcouncil.ie

Government to the United Nations Committee on the Elimination of Racial Discrimination, it was stated in February 2011 that the Government

was satisfied [that] the services provided to asylum seekers represented the most efficient and effective means of support while they awaited decisions on their applications

and that of the €1.275 billion spent on the asylum system over the past five years, some €424.43 million had been spent on direct provision.²⁸⁷ The length of time of accommodation for persons seeking international protection within direct provision accommodation continued to attract attention during 2011. In May 2011, *The Irish Times* cited figures that over a third of asylum seekers living in direct provision centres had been there for over three years due to a delay in processing of applications.²⁸⁸ The lack of an ‘adequate and transparent’ complaints system again attracted media attention later in 2011 when a number of NGOs (including NASC, Doras Luimní and the Free Legal Advice Centre) criticised the continued absence. It called for a complaints system to be withdrawn from the Reception and Integration Agency (RIA) and for the remit of the Office of the Ombudsman to be extended to asylum seekers.²⁸⁹

A report prepared by the Irish Refugee Council on behalf of the NGO Forum on Direct Provision echoed a number of the earlier topics regarding suggested amendments to the system in current use. The report called for a review of the system and recommended that the current policy of dispersal was detrimental to asylum seekers and should be replaced by ‘a comprehensive reception policy’. Outlining a number of concerns such as the length of time of persons in direct provision and inability to work or study beyond second level, lack of tailoring of accommodation for vulnerable groups and lack of a fair system of dispersal between centres, it also stated that significant regional variations were in practice regarding the accommodation of persons in ‘guesthouses, hotels, hostels, mobile homes, system-built facilities, or in the case of Mosney, a former holiday camp’.²⁹⁰

In November 2011 the Irish Refugee Council (IRC) submitted a report to the European Committee against Racism and Intolerance (ECRI) in which it commented upon the Third Report on Ireland adopted by ECRI on 15 December 2006. As well as advocating for the provision of early legal advice for asylum seekers, the IRC highlighted a number of concerns related to direct provision. It noted that ‘at least a third of residents are children’ who are growing up ‘not only in a form of institutionalisation but also in poverty’ and that the allowance for each asylum seeker remained at the same rate as when it was introduced in

²⁸⁷ *The Irish Times* (23 February 2011). ‘Government defends record on racism and human rights’. Available at www.irishtimes.com.

²⁸⁸ *The Irish Times* (27 May 2011). ‘Lawyers reject claims of legal racket’. Available at www.irishtimes.com.

²⁸⁹ *The Irish Times* (19 July 2011). ‘System Needed for Complaints by Asylum Seekers, Say Groups’. Available at www.irishtimes.com.

²⁹⁰ The Irish Refugee Council (2011). *Direct Provision and Dispersal: Is there an alternative?* Available at www.irishrefugeecouncil.ie.

2002. This was stated as leaving parents unable to fund their children to participate fully in their local community. The lack of harmonisation of the management of direct provision was noted, with the system ‘primarily in private hands’. It was acknowledged that while RIA had reviewed their complaints system, the current system ‘lacks independence and integrity and is not generally trusted by residents’.²⁹¹

In a response to a Parliamentary Question in June 2011 based on an *Irish Times* article in June 2011 in which the Minister for Justice, Equality and Defence was quoted as stating that ‘*forty-nine asylum seekers have taken their own lives while living in direct-provision centres over the past decade*’,²⁹² it was stated that between 2002 and May 2011 some 46 asylum seekers had died while being provided with accommodation by the Reception and Integration Agency (RIA). The RIA subsequently stated on its website that the article was ‘*based on a misinterpretation of a Dáil Question answered by the Minister for Justice and Equality on 1 June 2011*’.²⁹³

7.1.5 Reform

In March 2011 the *Immigration, Residence and Protection Bill 2010* was restored following a general election and change of government when the Minister for Justice, Equality and Defence stated that it was his intention to ‘*bring forward amendments to the Bill at Committee Stage*’.²⁹⁴ By year end it remained unenacted.²⁹⁵

The Irish Refugee Council published a *Roadmap for Asylum Reform* during 2011 in which they highlighted six points for a ‘good asylum system’: a single protection procedure; clear, good-quality and transparent decision-making; humane reception conditions including the right to work; care for separated children on a par with that offered to Irish children in care; special consideration for the needs of vulnerable individuals and groups; and effective remedies. The Report called for an emphasis on ‘efficiency, fairness and transparency’ via a single protection procedure, sustainable decisions and a robust independent appeals process. It highlighted median processing times at first instance as being six to seven weeks for prioritised applications or nine weeks for non-prioritised applications; 33 weeks for substantive appeals or nine weeks for accelerated appeals at second instance stage; an average of 27 months for a pre-leave hearing for judicial review and a further four months for

²⁹¹ The Irish Refugee Council (2011). Submission by the Irish Refugee Council to the European Commission against Racism and Intolerance. Available at <http://www.irishrefugeecouncil.ie/wp-content/uploads/2011/08/Submission-to-the-European-Commission-against-Racism-and-Intolerance.Nov11.pdf>.

²⁹² The article states that the Minister clarified that ‘most of these deaths occurred not in the centres themselves but in hospitals and other locations where the State body with responsibility for asylum seekers, the Reception and Integration Agency, had no remit’. *The Irish Times* (8 June 2011). ‘Dáil told 49 asylum seekers took own lives’. Available at www.irishtimes.com.

²⁹³ www.ria.gov.ie.

²⁹⁴ Parliamentary Question (7 April 2011).

²⁹⁵ The Bill was subsequently withdrawn during 2012.

a full hearing; and a median processing time of two years for an application for subsidiary protection.²⁹⁶

7.1.6 Case Law - Asylum

7.1.6.1 Adverse Credibility Findings Render Moot Findings Regarding Internal Relocation

O.E. v. Refugee Appeals Tribunal, Unreported, High Court, Smyth J, 30 March 2011

The Refugee Appeals Tribunal affirmed the Commissioner's recommendation against the applicant, a Nigerian national who claimed to have been persecuted by reason of his homosexual orientation, on the grounds that he was not credible because of inconsistencies in his account and the facts that he could not recall the name on the false passport and that he had not sought asylum in the Netherlands when he passed through a Dutch airport on his way to Ireland.

The applicant sought leave to challenge the decision on the ground, inter alia, that the Tribunal had made a finding to the effect that he could safely relocate within Nigeria if he concealed his sexual orientation. It was not accepted on behalf of the respondent that any such finding had been made, and it was argued that the applicant's claim had been dismissed on the credibility grounds alone. The High Court accepted the respondent's argument, finding that the Tribunal's decision was based on adverse credibility findings rather than on any finding with respect to the possibility of internal relocation. In particular, the Court was satisfied that when assessing the applicant's credibility, the Tribunal was entitled to have regard to the reason given by the applicant for failing to claim asylum in the first safe country the applicant entered since departing his country of origin.

7.1.6.2 Refugee Appeals Tribunal Required to Make a Clear Decision on Credibility

U.S.I. v. Minister for Justice, Equality and Law Reform, Unreported, High Court, Cooke J, 7 April 2011

The applicant claimed to have been persecuted by her step-mother in Nigeria. The Refugee Appeals Tribunal made no clear finding with respect to her credibility but found that she would be able to avail herself of State protection in Nigeria. The applicant challenged the Tribunal's decision on the grounds that it was unclear and that no finding appeared to have been made with respect to her credibility.

The Court observed that the position the Tribunal had left the applicant in led to an unsatisfactory situation which would have implications later if the

applicant were to apply for subsidiary protection or humanitarian leave to remain. The High Court was satisfied, however, that there had been no substantive error of law on the part of the Tribunal and that it was within the Court's jurisdiction to remit the appeal for further consideration by the Tribunal member concerned. For this reason, the Court quashed the Tribunal decision to the extent only that it omitted an express reasoned finding as to the applicant's credibility, and remitted the decision to the Tribunal with a recommendation that it be further considered by the same Tribunal member.

7.1.6.3 Decision-Maker Must Take Care Not to be at Cross Purposes With Applicant Before Making Adverse Credibility Findings

H.R. v. Refugee Appeals Tribunal and Minister for Justice, Equality and Law Reform, Unreported, High Court, Cooke J, 15 April 2011

The applicant, a Belarusian national, claimed that she had been arrested by the Belarusian authorities while carrying literature supportive of the opposition. The Refugee Appeals Tribunal found that the applicant was not credible and based this finding on her demeanour while giving evidence during her appeal hearing and because it found, inter alia, that she provided vague and non-specific evidence with respect to her journey to Ireland, that she had not mentioned that her brother had been active in the opposition.

The High Court said that a decision-maker must be careful not to misplace reliance upon demeanour and risk construing as deliberate lack of candour a demeanour which may be the result of nervousness, of the stress of the occasion and even of the embarrassment of being an asylum seeker. The Court stated that an apparent hesitation and uncertainty may well be attributable to difficulties of language and comprehension and that before a decision-maker bases a rejection of a claim upon a lack of credibility based mainly on the personal appearance and demeanour of the claimant, the decision-maker ought to be fully confident that the basis of the claim and all relevant facts and circumstances recounted have been fully and correctly understood and that there is no possibility that the decision-maker and claimant have been at cross purposes on any material point.

The Court found that it was unclear why the Tribunal considered it significant that the applicant's evidence had been vague and non-specific and that the Tribunal had erred with respect to the finding that the applicant had not mentioned her brother's opposition activity, when details of his involvement were present in the interview record. The Court found that this was material to the conclusion on credibility, and quashed the Tribunal's decision.

7.1.6.4 No Duty on the Minister to Consider Submissions on Asylum

O.S. and F.O.S. v. Minister for Justice, Equality and Law Reform, Unreported, High Court, Hogan J, 20 April 2011

The applicants, mother and daughter Nigerian nationals, claimed that the daughter was at risk of female genital mutilation in Nigeria. They were unsuccessful before both the Refugee Applications Commissioner and the Refugee Appeals Tribunal. They then wrote to the Minister and submitted that the Tribunal decision was wrong and that no protection was available to them in Nigeria. They asked the Minister to exercise his discretion²⁹⁷ to grant them declarations of refugee status notwithstanding the negative recommendation of the Commissioner and the Tribunal. The Minister refused to consider these submissions and refused them declarations of refugee status. The applicants challenged the Minister's decision on the grounds that he had failed to exercise his discretion in accordance with law.

The High Court held that the Ministerial discretion was not a freestanding discretion. Rather, the asylum system comprising the Commissioner, the Tribunal and the Minister had to be understood as a single, seamless administrative procedure. There was, accordingly, no duty on the Minister to consider the submissions furnished by the applicants, and for this reason, the reliefs sought by the applicants were refused.

7.1.6.5 Impairment of Right to Receive a Basic Education Amounts to Persecution

E.D. v. Minister for Justice, Unreported, High Court, Hogan J, 10 November 2011

Central to the applicant's claim in this case was that he would suffer persecution if returned to Serbia because he was likely to face pervasive discrimination such as would impair his right to receive a basic education. The Refugee Appeals Tribunal found he would 'in all likelihood face discrimination if sent to his country of nationality', but was not persuaded that such discrimination would rise to the level of persecution.

The Court held that, having regard to the country information, the Tribunal had erred in law in its construction of what constitutes persecution in that, having found that there was a real risk that the applicant would not get a basic education if he were returned to Serbia, the Tribunal was then bound to find that this amounted to persecution.²⁹⁸

²⁹⁷ Pursuant to Section 17(1)(b) of the *Refugee Act 1996*.

²⁹⁸ Within the meaning of Section 2 of the *Refugee Act 1996*.

7.2 DEVELOPMENTS FROM THE EU PERSPECTIVE

7.2.1 Legislative Developments

7.2.1.1 *The European Communities (Asylum Procedures) Regulations 2011 (S.I. No. 51 of 2011)*

These Regulations give further effect in Irish law to *Directive 2005/85/EC* ('The Procedures Directive'), particularly in respect of transposing the Directive's minimum standards in relation to the asylum interview and on appeal; safe countries of origin; the time in which the Commissioner will issue a decision; and in respect of the process regarding fresh asylum applications.

7.2.1.2 *The Refugee Act 1996 (Asylum Procedures) Regulations 2011 (S.I. No. 52 of 2011)*

This instrument transposed certain aspects of *Directive 2005/85/EC* regarding asylum procedures, particularly regarding minors; safeguards in respect of the conduct of the asylum interview, and regarding the language of notices to asylum applicants.

7.2.1.3 *The European Communities (Eligibility For Protection) (Amendment) Regulations 2011 (S.I. No. 405 of 2011)*

In July 2011, the Minister for Justice and Equality signed *S.I. No. 405 of 2011*, which amended *S.I. No. 518 of 2006*, transposing *Directive 2004/83/EC*, and which introduced a fee for travel documents for those eligible for subsidiary protection.

7.2.2 European Asylum Support Office

Ireland continued to participate as a member of the European Asylum Support Office (EASO) management board during 2011.

7.2.3 Failure by Ireland to Give Effect to *Council Directive 2005/85/EC*

In Case C-431-10 *Commission v. Ireland* ruled on 7 April 2011, the Court of Justice declared that Ireland failed to comply with Article 43 of *Directive 2005/85/EC*, and ordered the State to pay the costs of the action. The European Commission had initiated proceedings against Ireland in the Court of Justice for failure to notify complete transposition measures of *Directive 2005/85/EC*.

7.2.4 Case Law - Dublin Regulation

7.2.4.1 Court of Justice holds that transfer under the Dublin Regulation must not be in conflict with fundamental rights

Joined cases C-411/10 NS and C-493/10 M.E. [2011] ECR I-0000

The two referring Courts, the Court of Appeal of England and Wales, and the Irish High Court referred a number of questions relating to 'Greek transfers' under the Dublin Regulation to the Court of Justice. The first question considered by the Court of Justice was, essentially, whether a decision adopted by a Member State on the basis of Article 3(2) of the Dublin Regulation to examine a claim for asylum which is not its responsibility under the criteria in the Dublin Regulation falls within the scope of EU law, and Article 51 of the Charter. The Court replied, *inter alia*, that the discretionary power conferred on the Member States by Article 3(2) forms part of the mechanism for determining the Member State responsible for an asylum application, and that a Member State exercising that discretionary power must be considered as implementing EU law within the meaning of Article 6 TEU and Article 51(1) of the Charter.

The second set of questions related to, *inter alia*; (a) whether Member State is obliged to assess compliance of a receiving Member State with EU fundamental rights; (b) whether a conclusive presumption that a receiving Member State will observe fundamental rights is precluded; (c) whether a host Member State is obliged to accept responsibility for examining an asylum claim where a responsible State is found not to be in compliance with fundamental rights; and (d) whether national 'safe country' provisions are compatible with Article 47 of the Charter. The Court considered these matters together. The Court stated, *inter alia*, that Member States must make sure that they do not rely on an interpretation of secondary legislation which would be in conflict with the fundamental rights protected by the EU.

The Court stated that it must be assumed that the treatment of asylum seekers in all Member States complies with the Charter, the Geneva Convention, and the ECHR, but that it is not inconceivable that the system may experience major operational problems. The Court said it would not be compatible with the aims of the Dublin Regulation were the slightest infringement of secondary EU law to prevent the transfer of an asylum seeker. It went on to state, however, that if there are substantial grounds for believing that there are systemic flaws in the asylum procedure and reception conditions for asylum applicants in a Member State, resulting in inhuman or degrading treatment, within the meaning of Article 4 of the Charter, transfer to such a State would be incompatible with the Charter. Accordingly, the Court found that the presumption that Member States comply with the Charter, Geneva Convention, and ECHR must be regarded as rebuttable, and that a conclusive presumption that a Member State responsible under the Dublin Regulation observes fundamental rights is precluded under EU law.

The Court ruled that Article 4 of the Charter must be interpreted as meaning that a Member State may not transfer an asylum seeker under the Dublin Regulation where it cannot be unaware that systematic deficiencies in the asylum procedure and reception conditions in a receiving Member State amount to substantial grounds for believing that the asylum seeker would face

a real risk of being subjected to inhuman or degrading treatment under Article 4. The Court further ruled that, subject to Article 3(2) of the Dublin Regulation, where a Member State finds that it is impossible to transfer an applicant to another Member State under the Dublin Regulation, the Member State must continue to examine the criteria in Chapter III of the Dublin Regulation in order to establish whether one of the following criteria enables another Member State to be identified as responsible for the examination of the asylum application.

Finally, in respect of the second set of questions, the Court ruled that the Member State in which the applicant is present must ensure that it does not worsen a situation where an applicant's fundamental rights have been infringed by using a procedure for determining the Member State responsible which takes an unreasonable length of time, and that, if necessary, the Member State where the applicant is present must examine the application under Article 3(2) of the Regulation. In respect of Greece, the Court found that the extent of the infringement of fundamental rights described in *M.S.S. v. Belgium and Greece*, unreported, ECtHR, 21 January 2011, shows that there existed in Greece a systemic deficiency in the asylum procedure and reception conditions. The Court noted that information such as that cited by the ECtHR regarding relevant risks to which asylum seekers would be exposed enables Member States to assess the functioning of the Member States' asylum systems, making it possible to evaluate risks.

7.2.4.2 Reliance on Article 7 of the Dublin Regulation Should be Timely

Aslam v. Minister for Justice and Equality, Unreported, High Court, Hogan J, 29 December 2011

This judgment of the Irish High Court dealt with three issues. Firstly, considering that Islamic marriages by proxy are not necessarily considered valid in Ireland, the question arose whether the applicant's case fell within the scope of Art. 7 of the Dublin Regulation. The Court opined that while the marriage presented some 'unusual features', and while discrepancies were found in the marriage certificate, the 'conflict of law rules should be open-minded, tolerant, flexible and accommodating of different legal cultures and traditions'. Moreover, the Court observed that the Irish legislation dealing with family reunification does not require the marriage to be recognisable as valid in Irish law. Accordingly, the Court decided that the applicant should be regarded as married for the purposes of the application of Article 7.

The second issue was whether it was too late for the applicant to rely on the terms of Article 7 in challenging the validity of the transfer order. The Court held that the language of Article 7 makes it clear that the applicant has to choose the enjoyment of the right set forth in it 'at the appropriate time and place'. The applicant, however, did not disclose information regarding her

marriage at the relevant time. Not only did she state she was single in her asylum claim, but she also failed to avail of the right of appealing the initial transfer order. Hence, in the view of the Court, the applicant ‘elected to have her asylum application dealt with on the basis that she was single and unmarried’ and it was therefore now too late for her to invoke Article 7 of the Regulation.

The third issue related to the applicant’s medical condition. As a transfer back to the UK by boat or plane was deemed to be unnecessarily harmful for the applicant and her unborn child, the Court granted an interlocutory injunction restraining her transfer by either sea or by air to the UK. However, the Court decided not to restrain the Minister from transferring the applicant by road to Northern Ireland on the understanding that she would not be removed from the island pending the birth of her child.

7.2.5 Case Law - ‘Qualification Directive’

7.2.5.1 High Court Refuses Arguments that the Irish Subsidiary Protection System is Unlawful

B.J.S.A (Sierra Leone) v. Minister for Justice, Equality and Law Reform, Unreported, High Court, Cooke J, 12 October 2011

The applicant sought an interlocutory injunction restraining deportation pending the determination of an application for leave for judicial review of, inter alia, a decision refusing to grant him subsidiary protection on the grounds (1) that the decision was invalid because the procedure in place under the Irish Regulations failed to properly transpose Article 4.1 of *Directive 2004/83/EC* in respect of an obligation for the decision-maker to cooperate with the applicant; and (2) that the subsidiary protection procedure in place, in having no appeal, was flawed in light of the principle of equivalence.

The Court considered whether the applicant’s case demonstrated a fair issue to be tried, as required for an interlocutory injunction. Regarding the ‘cooperation’ point, the Court said that implicit in the applicant’s argument was the proposition that subsidiary protection had been enacted as an independent entitlement with a stand-alone right to an assessment and adjudication, including a right to an appeal. The Court held found this proposition to be unfounded and based on a mistaken understanding of the role of subsidiary protection in the common asylum system. The Court stated that *Directive 2004/83/EC* is not concerned with procedure, minimum procedural standards being laid down exclusively in *Directive 2005/85/EC*, and, except where a Member State employs a single or unified procedure covering both forms of protection, such not being the case in Ireland, *Directive 2005/85/EC* imposes no minimum procedural standards in respect of the processing of applications for subsidiary protection.

The Court found there was no deficiency in the Irish Regulations by reason of the absence of any express repetition of the words ‘in cooperation with the applicant’. The Court opined that the cooperative nature of the first instance assessment phase is reflected in the Irish legislative regime throughout the asylum process. The Court stated that this is not to say that the Minister, as the deciding authority under the transposing Regulations, is relieved of an obligation of cooperation in appropriate cases, and that the process must conform to the normal rules of fair procedures.

The Court held that the claim that cooperation requires a draft determination be submitted for comment before it is adopted was unfounded because, *inter alia*, it is inconsistent with the express terms of *Directive 2005/85/EC*. The Court stated that where Article 4.1 of *Directive 2004/83/EC* refers to the duty of cooperation in respect of the application, it meant ‘application for international protection’. The Court noted that Article 14.2 of the ‘Procedures Directive’ recognises that the report of the personal interview may be communicated to the asylum seeker after the decision has been adopted, and opined that it would be inconsistent with this for a duty of cooperation in Article 4.1 to be construed as imposing on a determining authority a mandatory obligation to submit either the report or a draft decision to an applicant for prior comment.

The Court held that there was no deficiency in the manner in which *Directive 2004/83/EC* had been transposed in national law. Furthermore, the Court held that as the right to an effective remedy by way of an appeal under Article 39 of *Directive 2005/85/EC* applies only to the subsidiary protection procedure if it forms part of a unified procedure, the Irish Regulations, therefore, were not deficient in not providing an appeal in respect of subsidiary protection.

In respect of the ‘equivalence’ issue, for the Court, the immediate flaw in the applicant’s argument was that, as a matter of Irish law, there was no superior remedy by way of appeal against a first instance determination of an asylum application, so that the procedures under the *Refugee Act 1996* did not constitute a comparator for the purpose of applying the EU principle of equivalence. The Court opined that at least until 1 December 2007 (the date of expiry of the period for transposition of *Directive 2005/85/EC*), the *Refugee Act 1996* provided that the only definitive determination of an asylum application was that made by the Minister under that Act, and neither the Commissioner nor the Tribunal had any competence to make a negative decision in respect of an asylum application.

The Court stated that it is only since the requirements of *Directive 2005/85/EC* and, in particular, Annex 1, became effective in Irish law that the Refugee Applications Commissioner’s report fell to be considered as a first instance determination by a ‘determining authority’, and that there has been right of appeal to the Tribunal. Thus, in the view of the Court, insofar as the provisions of the 1996 Act can now be pointed to as providing a two-stage determination for an asylum application including a right to an effective remedy by way of an

appeal, this is only because of the manner in which the State adapted the arrangements of the 1996 Act in order to comply with the requirements of *Directive 2005/85/EC*. For all these reasons, the Court was satisfied that the test for granting an interlocutory injunction had not been made out.

7.2.5.2 Failure to Designate the Minister for Justice, who Decides on Subsidiary Protection Decisions, as a ‘Determining Authority’ held Not to be a Structural Flaw in the Domestic Regime Transposing *Directive 2004/83/EC*

S.L. v. Minister for Justice and Law Reform, Unreported, High Court, Cooke J, 6 October 2011

The applicants claimed that the procedures in place under the Irish Regulations²⁹⁹ implementing *Directive 2004/83/EC*, contain a structural flaw were flawed because the Minister had not been formally designated as a ‘determining authority’ as required by Article 4.1 of *Directive 2005/85/EC*.

The Court held, *inter alia*, that Article 3.4 of *Directive 2005/85/EC* meant that Member States must achieve the common procedural standards in the asylum process and were free, but not obliged, to apply the same procedures in any other form of international protection, including subsidiary protection. The Court further held that Article 3.3 of *Directive 2005/85/EC* meant that where a Member State has a ‘single combined procedure’ for asylum and subsidiary protection, the minimum standards must apply to that unified procedure, such course not having been taken in Ireland.

The Court stated that *Directive 2005/85/EC* applied only to asylum, except where a Member State availed of Article 3.4 of that Directive. The Court held that this construction of the Directive was a full answer to the ground sought to be advanced. The Court further held that as a matter of Irish law the Minister was the ‘determining authority’,³⁰⁰ to whom applications for subsidiary protection are made, and who is the authority that determines whether an applicant is a person eligible for subsidiary protection. The Court stated that Union law does not prescribe what legislative or administrative instrument should be employed at national level regarding the designation of a ‘determining authority’, subject to the principles of equivalence and effectiveness.

7.2.5.3 Ireland’s ‘Super-Added’ Provision to Article 4(2) of the Qualification Directive, Eschewing need for Future Repeat of Past Persecution

S.N. (Uganda) v. Minister for Justice, Equality and Law Reform, Unreported, High Court, Hogan J, 27 July 2011

²⁹⁹
³⁰⁰

The European Communities (Eligibility for Protection) Regulations 2006 (*S.I. No. 518 of 2006*).
Regulation 4 of the 2006 Regulations.

The applicant, a Ugandan national, claimed, *inter alia*, that she had been regularly beaten, raped, and burned with melted plastic on many occasions. A medico-legal report stated that her scars were consistent with her claims. The Refugee Appeals Tribunal had refused the applicant's appeal stating, *inter alia*, that even if it were in a position to conclude that the applicant had suffered past persecution, the country information did not support a claim that the applicant would face persecution in the future, for a Convention reason, if returned to Uganda. The Minister later concluded that the applicant was not entitled to subsidiary protection, finding that the applicant had not shown substantial grounds that she would face a real risk of suffering serious harm if returned to Uganda.

The applicant questioned whether the Minister's decision to refuse to grant the applicant subsidiary protection contravened the domestic law³⁰¹ transposing the Qualification Directive by failing to consider and state a conclusion on the claims that she had suffered serious harm and that there were compelling reasons as evidenced by reports on her medical condition which made her eligible for protection based on previous serious harm alone.

The Court stated that while the Irish transposing provision³⁰² mirrors Article 4(4) of *Directive 2004/83/EC*, it goes further in that its final proviso

but compelling reasons arising out of previous persecution or serious harm alone may nevertheless warrant a determination that the applicant is eligible for protection

finds no counterpart in the Directive.

The Court accepted that the counter exception provision was an incidental and supplemental provision to the transposition of *Directive 2004/83/EC*.³⁰³ The Court opined that the 'super-added' provision must be treated essentially as a species of national law that hovers over the terms of Article 4(4) of the Directive, but which must be interpreted in a manner compatible with the Directive. The Court further accepted that the 'super added' provision must be construed as adding to Article 4(4) in a manner which is in ease of the applicant by providing for a more favourable standard for determining eligibility for protection per Article 3 of the Directive.

The Court stated that the task for the Minister was three-fold: (1) to ask himself whether the applicant had suffered serious harm in the past. If the answer to this question was yes, the Minister was required (2) to ask whether there were good reasons to consider that such serious harm would not be repeated if the applicant was returned to her country of origin. If the answer to that question was yes, the Minister was still required (3) to apply the counter exception and

³⁰¹ Regulations 5(1) and (2) of the *European Communities (Subsidiary Protection) Regulations 2006 (S.I. No. 518 of 2006)*.

³⁰² Regulation 5(2) of the 2006 Regulations.

³⁰³ Within the meaning of Section 3(2) of the *European Communities (Subsidiary Protection) Regulations 2006 (S.I. No. 518 of 2006)*.

ask whether there were compelling reasons arising out of previous persecution or serious harm alone such as might warrant a determination that the applicant was eligible for protection.

In respect of (1), the Court found that while the Minister took the view that there were many other possible causes for the injuries in question, the Minister was still obliged to address the question of whether the applicant did in fact suffer serious harm, namely, whether the injuries were inflicted by State actors in the manner alleged. The Court found that this was a critical question that the Minister reached no firm view on. The Court held that the Minister was required to ask whether in light of the country information it is possible that the injuries were inflicted by State actors. The Court found that the Minister did not address his mind to whether the applicant suffered serious harm. In the alternative, the Court found that the reasons for the conclusion on whether the applicant suffered serious harm were not sufficiently clear.

Regarding (3), the Court found that if the Minister was satisfied that there was no reason for considering that the previous harm would be repeated, he was obliged nonetheless to consider whether the historic serious harm may be such that the fact of its occurrence alone gives rise to compelling reasons for recognising eligibility. The Court found that the Minister did not give any consideration to the counter example.

The Court opined that a curious feature of the Directive is that it defines ‘actors of persecution or serious harm’, but the term is nowhere else used.

7.2.5.4 High Court Asks the Court of Justice Whether the Duty of Cooperation under Article 4(1) of the Qualification Directive Means that the Decision-Maker is Obligated to Supply an Applicant with a Draft Decision in Advance for Comments.

M.M. v. Minister for Justice, Equality and Law Reform and Ors, Unreported, High Court, Hogan J, 18 May 2011

The applicant was a national of Rwanda who claimed refugee status in Ireland. The Refugee Applications Commissioner recommended that he not be declared a refugee. This recommendation was confirmed by the Refugee Appeals Tribunal on the grounds that the applicant’s claim was not credible. The negative recommendation was accepted by the Minister and the applicant was denied refugee status. He then applied for subsidiary protection.³⁰⁴ The Minister relied heavily on the negative decisions of the Commissioner and the Tribunal in refusing the applicant subsidiary protection. The Minister found that the applicant had not established that he would be at risk of serious harm if he were to be returned to Rwanda.

³⁰⁴

Under the terms of the *European Communities (Eligibility for Protection) Regulations 2006*, transposing the ‘Qualification Directive’.

The applicant's challenge was based on Article 4(1) of *Council Directive 2004/83/EC* (incorporated in Ireland by the 2006 Regulations), which states that

'Member States may consider it the duty of the applicant to submit as soon as possible all elements needed to substantiate the application for international protection. In cooperation with the applicant it is the duty of the Member State to assess the relevant elements of the application.'

The applicant argued that Article 4 imposed a duty on the Minister to communicate with him during the course of the assessment of his application. Specifically, he argued that in the event of a proposed decision adverse to him, this duty of cooperation meant that the Minister was obliged to supply him with a draft decision in advance for his comments.

The High Court considered a 2007 decision of the Dutch Council of State in which it had been held that the Dutch authorities were obliged to inform applicants of the results of the assessment of their applications before a decision had been made so as to facilitate them in remedying elements that might incur a negative decision. In the circumstances, the High Court decided, pursuant to Article 267 TFEU, to refer a question to the Court of Justice of the European Union in the following terms:

In a case where an applicant seeks subsidiary protection status following a refusal to grant refugee status and it is proposed that such an application should be refused, does the requirement to cooperate with an applicant imposed on a Member State in Article 4(1) of Council Directive 2004/83/EC require the administrative authorities of the Member State in question to supply to such applicant the results of such an assessment before a decision is finally made so as to enable him or her to address those aspects of the proposed decision which suggest a negative result?

The Court suggested that the question should be answered in the negative.

7.2.5.5 Where there are Two Applicants for Asylum Who Are Considered and Refused Together, it is Incumbent on the Decision-Maker to State Clearly Why the Claim of Each Applicant is Rejected

F.G.W. v. Refugee Appeals Tribunal, Unreported, High Court, Cooke J, 5 May 2011

The applicants were a mother and daughter with different countries of origin. The mother was born in Liberia, and the daughter was born in Ivory Coast. The mother's claim for asylum was based, in respect of the Ivory Coast, that if returned there her husband might kill her and her daughter, and in respect of Liberia, that she endured past persecution, particularly rape, in that country. The applicants sought to quash the Refugee Appeal Tribunal's decision, essentially, on the grounds that the Tribunal: (1) failed to consider the

mother's fear of persecution by reason of being raped in Liberia; (2) breached the domestic law transposing *Directive 2004/83/EC*³⁰⁵ in failing to consider properly the mother's personal circumstances, and in particular the previous harm she suffered, and her present physical and mental condition; and (3) failed to give separate consideration to the child's claim in respect of Ivory Coast.

Regarding (1) & (2), the Court acknowledged that the domestic transposing regulations³⁰⁶ provide that evidence of previous serious harm is to be regarded as a 'serious indication', not as conclusive proof, of an applicant's well-founded fear unless there are good reasons to consider that such harm will not be repeated, and found that the Tribunal's decision could only be read as concluding that the lapse of time and changes that had taken place in Liberia meant that the applicant no longer faced any real risk of the repetition of the past events.

The Court acknowledged the regulations contained a 'counter exception', but found that notwithstanding the difficulties encountered by the mother, she had remarried and lived for thirteen years in the Ivory Coast, and this strongly suggested she succeeded in putting her experiences behind her, and that the evidence as a whole, including a medico-legal report, did not identify any continuing consequence of the rape and assault that might be described as a compelling reason to warrant a determination in her favour.

Regarding (3), the Court found that the substantive analysis of the Tribunal was exclusively by reference to the mother, and that given the absence of any consideration of the daughter in the first instance decision, the Tribunal's decision could not provide an inferential basis for its rejection of the claim. The Court was cognisant that no specific claim on the child's behalf had been articulated by the applicants, but held that the manner in which the daughter had been dealt with was unsatisfactory. The Court said it must be borne in mind that the facts raised the possibility that the daughter might be repatriated as a very young adult to a country other than the one to which her mother might be repatriated. The Court held that where there are two applicants for asylum who are dealt with together, it is incumbent on the Tribunal to state clearly, however briefly, why the claim of each applicant is rejected. The Court added that it is not sufficient that it should be left to the Minister to infer why a claim was refused.

³⁰⁵ Regulation 5 of the *European Communities (Eligibility for Protection) Regulations 2006*.

³⁰⁶ Regulation 5(2) of the 2006 Regulations.

7.2.6 Case Law - 'Procedures Directive'

7.2.6.1 The Court of Justice is Asked to Rule on Ireland's Prioritisation of Asylum Applications and Effectiveness of Asylum Appeals

H.I.D. v. Minister for Justice, Equality and Law Reform, Unreported, High Court, Cooke J, 9 February 2011 (decision on certificate to appeal and regarding preliminary questions to the Court of Justice: 13 April 2011)

The applicants claimed that their asylum claims had not been lawfully determined by means of a procedure which complies with the minimum standards required to be met by *Council Directive 2005/85/EC* in that (a) the processing of the applications had been unlawfully prioritised or accelerated as a result of a Direction given by the Minister which the applicants claimed was incompatible with the provisions of the Directive and in particular Article 23 thereof; and (b) that the procedures established under the domestic law, the *Refugee Act 1996*, deprived the applicants of an effective remedy against the first instance determination of their applications before a court or tribunal in compliance with the requirements of Chapter V of the Directive.

The High Court found that the instances in which an application for asylum may be prioritised or accelerated in Article 23 of the 'Procedures Directive' were not exhaustive, and that Member States remain entitled to organise the asylum process to suit their national needs. The Court held that Article 23 neither required Member States to accord priority to cases such as those listed nor did it expressly or by implication preclude priority being granted to other cases. The Court further held that the respondent's Direction that Nigerian applications be prioritised did not constitute unlawful discrimination, because it was objectively justified on the grounds that over a substantial number of years, Nigerians constituted the single largest category of applicants by country of origin and the vast majority of applications from Nigerians were decided to be unfounded. The Court also noted that the applicants had not shown that they had suffered any procedural disadvantage as a result of the prioritisation of their applications.

With respect to the applicants' argument that the asylum system failed to provide them with an effective remedy before a court or tribunal against a negative determination of their applications, the Court did not accept that the right of appeal to the Tribunal and the availability of judicial review failed to provide for an effective remedy as required by Article 39. The Court observed that the remedy before the Tribunal took the form of a full appeal on both matters of fact and law and entails, in most cases, an oral hearing *de novo*. The Court further held that the Tribunal was a 'court or tribunal' for the purposes of Article 39 and that it was sufficiently independent and guarded against Ministerial intervention.

The applicants sought a certificate to appeal the decision to the Supreme Court, and in that context the High Court, by way of a preliminary reference to the Court of Justice, asked (a) whether a Member State is precluded by the

provisions of *Directive 2005/85/EC*, or by general principles of EU Law, from adopting administrative measures which require that a class of asylum applications defined on the basis of the nationality or country of origin of the asylum applicant be examined and determined according to an accelerated or prioritised procedure, and (b) whether Article 39 of the Directive was to be interpreted to the effect that the effective remedy:

‘thereby required is provided for in national law when the function of review or appeal in respect of the first instance determination of applications is assigned by law to an appeal to the Tribunal established under Act of Parliament with competence to give binding decisions in favour of the asylum applicant on all matters of law and fact relevant to the application notwithstanding the existence of administrative or organisational arrangements which involve some or all of the following:

- *The retention by a government Minister of residual discretion to override a negative decision on an application;*
- *The existence of organisational or administrative links between the bodies responsible for first instance determination and the determination of appeals;*
- *The fact that the decision making members of the Tribunal are appointed by the Minister and serve on a part-time basis for a period of three years and are remunerated on a case by case basis;*
- *The retention by the Minister of power to give directions of the kind specified in ss. 12, 16(2B)(b) and 16(11) of the above Act?’*

The Court of Justice has heard oral arguments in the case, and the Advocate General’s opinion is due in 2012.

7.2.7 Case Law - Time Limits for Challenges to Asylum Decisions

7.2.7.1 14-Day Time Limit for Review of Asylum Decisions Held To Be in Breach of the Principles of Equivalence and Effectiveness

T.D. and Ors v. Minister for Justice, Equality and Law Reform and Others, Unreported, High Court, Hogan J., 25 January 2011

The applicants’ application for judicial review of their asylum decisions was outside the 14-day time limit for such applications prescribed under domestic law.³⁰⁷ The applicants argued that they could be barred from asserting EU rights only if the time limits set down by domestic law complied with the principles of equivalence and effectiveness as required by EU law, and that in this case the situation was otherwise.

The High Court found that the principle of equivalence required that the time limits in question be comparable to those applied in other broadly similar actions in the sphere of judicial review. The Court compared the 14-day time limit at issue with the general six-month period for certiorari³⁰⁸ and the exceptional eight-week period provided for under the domestic planning and environmental protection statutes and concluded that the 14-day time limit provision did not comply with the principle of equivalence.

With respect to the principle of effectiveness, the Court held that, notwithstanding the power of the Court to extend the time for the bringing of an application under the domestic status, the provision might still leave an applicant in a position whereby he or she could not predict with any degree of certainty how that power might be extended in any given case, giving rise to a lack of predictability and consistency. For these reasons, the Court held that the 14-day time limit provision did not comply with the principle of effectiveness. In the circumstances, the Court held that whereas the applicants would not otherwise be within time and would not merit an extension of time, the situation was otherwise inasmuch and insofar as they challenged the operation of the Refugee Act for alleged non-compliance with the Asylum Procedures Directive. The Court held that the 14-day time limit provision failed the requirements of equivalence and effectiveness and that, for this reason, they could not be relied on by the State against the applicants. The matter is under appeal to the Supreme Court.

Chapter 8

Unaccompanied Minors and Other Vulnerable Groups

8.1 DEVELOPMENTS WITHIN THE NATIONAL PERSPECTIVE

8.1.1 Unaccompanied Minors

On a national level, activities outlined under commitments in the 2009 Joint Protocol on Missing Children³⁰⁹ and the *Implementation Plan from the Report of the Commission to Inquire into Child Abuse, 2009*³¹⁰ continued during 2011.

Some 26 unaccompanied minors applied for asylum in Ireland during 2011.³¹¹ A total of 99 referrals to the Dublin-based Team for Separated Children Seeking Asylum took place during the year, with 31 minors subsequently reunited with caregivers and 42 accommodated in residential units.³¹²

8.1.1.1 Changes to Care Arrangements

In January 2011, the Health Service Executive (HSE) confirmed that all unaccompanied minors were now cared for in either foster placements or residential units following the closure of hostel accommodation on 31 December 2010. The HSE also stated that it aims to provide a dedicated social worker for each unaccompanied minor.³¹³ An 'equity of care' principle for unaccompanied minors is in place.³¹⁴ The Dublin-based Team for Separated Children Seeking Asylum now acts primarily as an intake and assessment service for all unaccompanied minors, with three shorter-term and one medium-to-longer term residential units in use where unaccompanied minors remain for a

³⁰⁹ Health Service Executive (2009). An Garda Síochána and Health Service Executive Joint Protocol on Missing Children. Available at http://www.hse.ie/eng/services/news/2009_Archive/April_2009/An_Garda_S%C3%A0Dochana_and_Health_Service_Executive%C2%A0_%C2%A0JOINT_PROTOCOL_ON_MISSING_CHILDREN.html. The Protocol sets out the roles and responsibilities of both agencies in relation to children missing from State care, including unaccompanied minors. The Protocol outlines arrangements for addressing issues relating to children in State care who go missing, and sets out the actions to be taken by both organisations when a missing child in care report is made to An Garda Síochána.

³¹⁰ Office of the Minister for Children (2009). *Implementation Plan from the Report of the Commission to Inquire into Child Abuse, 2009*. Available at http://www.omc.gov.ie/documents/publications/Implementation_Plan_from_Ryan_Commission_Report.pdf. The Plan contains a review of the number of, and care provisions for, unaccompanied minors. A commitment is made to allocate a social worker to unaccompanied minors in care, and for them to be placed in 'accommodation suitable for their needs and inspected like any other children's hostels' Department of Justice and Equality.

³¹¹ Social Work Team for Separated Children Seeking Asylum.

³¹² *The Irish Times* (10 January 2011). 'Number of missing children falls as new policies adopted'. Available at www.irishtimes.com.

³¹³ The 'equity of care' policy contained within the *Implementation Plan from the Report of the Commission to Inquire into Child Abuse, 2009* sought to end the use of separate hostels for unaccompanied minors and to accommodate them 'on a par with other children in the care system by December 2010'.

period of three to six months after referral. A national policy regarding transfers of unaccompanied minors is in place and since early 2011, ‘quality matching’ with foster families on a national basis has taken place. The Team for Separated Children identifies, secures and funds the foster placement for the duration of the young person’s time in care and undertakes additional monitoring of placements to ensure the placement is still viable.

Prior to turning 18 years, all unaccompanied minors are allocated a leaving and after care worker. After turning 18 years, the HSE continues to offer a limited service on an as needed / as requested basis.

In a seminar paper addressing the position of unaccompanied minors in foster care placements, Barnardos reiterated a number of issues of concern, including a lack of information regarding outcomes of unaccompanied minors within the care system and an evaluation of such; a more child-centred approach towards age assessment where it is not conducted by an immigration officer or member of An Garda Síochána; and the position of transfer of ‘aged-out’ minors to adult direct provision centres upon turning 18 years.³¹⁵

8.1.1.2 Unaccompanied Minors Missing from Care

In January 2012 a newspaper article stated that three unaccompanied minors under HSE care who went missing during 2011 had not been traced. It stated that a spokesperson for the HSE had noted a pattern in recent years of children missing from care being of Chinese nationality, with increases in the ‘Christmas season’ and that there was

substantial operational experience to indicate that some of these individuals may be adults who have disappeared before their true age could be assessed.

The article also outlines indicators which might contribute to such disappearances as outlined by the Department of Children and including cases where a minor may be nearing 18 whose asylum claim has been refused, and is ‘reacting to the pending threat of deportation’; the person has entered Ireland consensually to work and is using the ‘child protection service as a fast-track into the State’; and where traffickers may be placing a minor in care ‘as an easy route’.³¹⁶ The *Joint Protocol on Missing Children*³¹⁷ (see *Annual Policy Report 2010* for further discussion) continued in operation during 2011.

In a 2011 analysis on the topic, Barnardos noted that a ‘separated child who goes missing from care is unlikely to be found’. It noted that there had been a

³¹⁵ Barnardos (September 2011). Separated Children in Foster Care. *Seminar Paper*. Available at www.barnardos.ie.

³¹⁶ *The Irish Times* (3 January 2012). ‘Unescorted minors in care of HSE still missing’. Available at www.irishtimes.com.

³¹⁷ Health Service Executive (2009). *An Garda Síochána and Health Service Executive Joint Protocol on Missing Children*. Available at www.hse.ie. The Protocol sets out the roles and responsibilities of both agencies in relation to children missing from State care, including unaccompanied minors, and sets out the actions to be taken by both organisations when a missing child in care report is made to An Garda Síochána.

‘lack of child centred approach’ in dealing with unaccompanied minors which ‘impacted negatively on the quality of care given to separated children in the State’. In addition, it noted that ‘only a fraction’ of missing unaccompanied minors who are missing are listed on the missing person’s website run by An Garda Síochána.³¹⁸

8.2 DEVELOPMENTS FROM THE EU PERSPECTIVE

None to report.

Chapter 9

Global Approach to Migration

9.1 DEVELOPMENTS WITHIN THE NATIONAL PERSPECTIVE

9.1.1 Dialogue with India and China

During 2011 Ireland participated in ongoing dialogue with India and China regarding promotion of business and trade. As part of this process, contact with diaspora organisations took place with regard to informal cooperation.³¹⁹

9.1.2 Global Irish Economic Forum

A second Global Irish Economic Forum took place in Dublin Castle on 7-8 October, 2011. The primary purposes of the 2011 Forum were to engage with the Irish diaspora in developing Ireland's global business and trade relations; to discuss face-to-face the Government's priorities for economic renewal with key members of the international business community; and to strengthen ties with the Irish diaspora as a key part of the Government's efforts to restore Ireland's international reputation.³²⁰

9.2 DEVELOPMENTS FROM THE EU PERSPECTIVE

Ireland participates as a Member State in all EU-Third Country framework and partnership agreements in force.

³¹⁹ Irish Naturalisation and Immigration Service (INIS).

³²⁰ www.globalirishforum.ie. Convened in 2009, the Forum aimed primarily at 'developing a new and more strategic level of engagement with the most influential members of the Irish Diaspora' particularly with regard to contributing to overall efforts at economic recovery. A permanent global network of identified, influential members of the Diaspora was also established as 'The Global Irish Network', and was launched in February 2010.

Chapter 10

Implementation of EU Legislation

10.1 TRANSPOSITION OF EU LEGISLATION 2011

10.1.1 Activity During 2011 Relating to Transposition of Prior EU Legislation

Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance).

Transposition required by: 30 April 2006.

Status: The Directive was substantially transposed in *S.I. 656 of 2006*, which was amended by *S.I. 310 of 2008* (in light of and to take account of the *Metock* ruling). In April 2011 the Minister for Justice and Equality signed into being the *Immigration Act 2004 (Visas) Order 2011 (S.I. No. 146 of 2011)*. This instrument gave effect to certain aspect of *Directive 2004/38/EC*, particularly regarding waiving the visa requirement for Third Country Nationals with EU residence cards. The Order specifies the classes of non-Irish nationals who are exempt from Irish visa requirements and those who are required to be in possession of a valid Irish transit visa when transiting within a port within the State. The principal change effected by this Order is that non-Irish nationals who are family members of a European Union citizen and holders of a document called ‘Residence card of a family member of a Union citizen’ as referred to in Article 10 of *Directive 2004/38/EC* of the European Parliament and of the Council of 29 April 2004, are not subject to an Irish visa requirement when landing in the State.

Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status

Transposition required by: 1 December 2007 (transposition regarding Article 15 by 1 December 2008).

Transposing Measures: In *Case C-431-10 Commission v. Ireland* ruled on 7 April 2011, the Court of Justice declared that Ireland failed to fulfil its obligations under Article 43 of *Directive 2005/85/EC*, and ordered the State to pay the costs of the

action. In February 2011, the Minister for Justice and Law Reform made two statutory instruments with the aim of transposing provisions from the Directive:

- *The European Communities (Asylum Procedures) Regulations 2011 (S.I. No. 51 of 2011)*

These Regulations, which were signed by the Minister for Justice and Law Reform in February 2011, give further effect in Irish law to the *Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status*, particularly in respect of procedures regarding the interview for asylum, safe countries of origin, and subsequent asylum claims.

- *The Refugee Act 1996 (Asylum Procedures) Regulations 2011 (S.I. No. 52 of 2011)*

This instrument, which was signed by the Minister for Justice and Law Reform in February 2011, transposed certain aspects of *Directive 2005/85/EC* regarding asylum procedures (particularly regarding minors); safeguards in respect of the conduct of the asylum interview; and the language of notices to applicants for asylum.

Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data

Transposition required by: 5 September 2006

Transposition Measure: This Directive was transposed via the *European Communities (Communication of Passenger Data) Regulations 2011 (S.I. No. 597 of 2011)*.

Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of Third Country Nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted

Transposition required by: 10 October 2006.

Status: Partially transposed by *S.I. No. 518 of 2006* and the *Refugee Act 1996, as amended*, relied upon to give effect otherwise. In 2011, the *European Communities (Eligibility For Protection) (Amendment) Regulations 2011 (S.I. No. 405 of 2011)* was signed, and this amended *S.I. 518 of 2006* to give further effect to the Directive, introducing a fee for travel documents for beneficiaries of subsidiary protection. Similarly, although not expressly referring to *Directive 2004/83/EC*, in July 2011 the Minister also made the *Refugee Act 1996 (Travel Document And Fee) Regulations 2011 (S.I. No. 404 of 2011)*, which introduced a fee for travel documents for refugees.

10.1.2 Ireland and Relevant EU Legislation Adopted in 2011

Commission Decision 2011/152/EU of 3 March 2011 amending Decision 2008/22/EC laying down rules for the implementation of Decision No 573/2007/EC of the European Parliament and of the Council establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme ‘Solidarity and Management of Migration Flows’ as regards Member States’ management and control systems, the rules for administrative and financial management and the eligibility of expenditure on projects co-financed by the Fund (notified under document C(2011) 1290), (OJ L 62, 9.3.2011, p. 46–59)

Status: Ireland is bound by the basic Act and as a consequence by this Decision.

Council Decision 2011/349/EU of 7 March 2011 on the conclusion of a Protocol between the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland, (OJ L 160, 18.6.2011, p. 37–38)

Status: Ireland is participating in this Decision.

Commission Decision 2011/148/EU of 2 March 2011 amending Decision 2008/456/EC laying down rules for the implementation of Decision No 574/2007/EC of the European Parliament and of the Council establishing the External Borders Fund for the period 2007 to 2013 as part of the General programme ‘Solidarity and Management of Migration Flows’ as regards Member States’ management and control systems, the rules for administrative and financial management and the eligibility of expenditure on projects co-financed by the Fund (notified under document C(2011) 1160), (OJ L 61, 8.3.2011, p. 28–41)

Status: This Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part.

Council Decision 2011/305/EU of 21 March 2011 on the conclusion, on behalf of the European Union, of an Agreement between the European Community and the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation and the Principality of Liechtenstein on supplementary rules in relation to the External Borders Fund for the period 2007 to 2013, (OJ L 137, 25.5.2011, p. 1–2)

Status: This Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part.

Council Decision 2011/369/EU of 9 June 2011 amending the Schengen consultation network (technical specifications) OJ L 166, 25.6.2011, p. 22–25

Status: This Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part.

Council Decision 2011/117/EC of 18 January 2011 on the conclusion of the Agreement between the European Union and Georgia on the facilitation of the issuance of visas, (OJ L 52, 25.2.2011, p. 33–33)

Status: This Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part.

Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection Text with EEA relevance (OJ L 132, 19.5.2011, p. 1–4)

Status: Ireland is not participating in this Directive.

Commission Decision 2011/151/EU of 3 March 2011 amending Decision 2008/457/EC laying down rules for the implementation of Council Decision 2007/435/EC establishing the European Fund for the Integration of Third Country Nationals for the period 2007 to 2013 as part of the General programme ‘Solidarity and Management of Migration Flows’ as regards Member States’ management and control systems, the rules for administrative and financial management and the eligibility of expenditure on projects co-financed by the Fund (notified under document C(2011) 1289) (OJ L 62, 9.3.2011, p. 32–45)

Status: Ireland is bound by Decision 2008/457/EC and as a consequence by this Decision, which amends that Decision.

Commission Decision 2011/502/EU of 10 August 2011 on setting up the Group of Experts on Trafficking in Human Beings and repealing Decision 2007/675/EC (OJ L 207, 12.8.2011, p.14-21)

Status: Directly implemented.

Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, (OJ L 101, 15.4.2011, p. 1–11)

Status: Ireland is participating in this Directive.

Regulation (EU) No 493/2011 of the European Parliament and of the Council of 5 April 2011 amending Council Regulation (EC) No 377/2004 on the creation of an immigration liaison officers network, OJ L 141, 27.5.2011, p. 13–16

Status: Ireland is taking part in the adoption of this Regulation. Ireland's participation is also required under Protocol 21 to the Lisbon Treaty for non-Schengen-related aspects of the Regulation.

2011/177/EU: Commission Decision of 2 March 2011 amending Decision 2008/458/EC laying down rules for the implementation of Decision No 575/2007/EC of the European Parliament and of the Council establishing the European Return Fund for the period 2008 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows' as regards Member States' management and control systems, the rules for administrative and financial management and the eligibility of expenditure on projects co-financed by the Fund (notified under document C(2011) 1159), (OJ L 77, 23.3.2011, p. 32–45)

Status: Ireland is bound by Decision No. 575/2007/EC, and, as a consequence, by this Decision.

Council Decision 2011/118/EU of 18 January 2011 on the conclusion of the Agreement between the European Union and Georgia on the readmission of persons residing without authorisation, (OJ L 52, 25.2.2011, p. 45–46)

Status: Ireland is not participating in this Decision.

Agreement between the European Union and Georgia on the readmission of persons residing without authorisation, (OJ L 52, 25.2.2011, p. 47–65)

Status: Ireland is not participating in this Decision.

Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, relating to the abolition of checks at internal borders and movement of persons, (OJ L 160, 18.6.2011, p. 19–20)

Status: This is a development of an aspect of the Schengen *acquis* in which Ireland does not participate.

Commission Implementing Decision 2011/406/EU of 1 July 2011 amending the SIRENE Manual (notified under document C(2011) 4574) (OJ L 186, 15.7.2011, p. 1–37)

Status: *Ireland* is participating to the extent that it does not concern supplementary information exchange in relation to Article 96 of the Schengen Convention.

Council Decision 2011/352/EC of 9 June 2011 on the application of the provisions of the Schengen acquis relating to the Schengen Information System in the Principality of Liechtenstein (OJ L 160, 18.6.2011, p. 84–87)

Status: Ireland is not covered by this Decision, which applies to Liechtenstein specifically.

10.2 EXPERIENCES, DEBATES IN THE (NON-) IMPLEMENTATION OF EU LEGISLATION

10.2.1 Ireland's Transposition of *Directive 2005/85/EC*

Ireland opted into *Directive 2005/85/EC*. The State's position was that the administrative procedures under the *Refugee Act, 1996 (as amended)*, gave effect to the Directive, had the State had not otherwise given effect to the Directive by way of dedicated legislation by 2010. The European Commission brought infringement proceedings against Ireland for its failure to transpose provisions of the Directive in Case C-431/10 *Commission v. Ireland* on 1 September 2010.³²¹ In April 2011, the Seventh Chamber of the Court of Justice of the European Union handed down its judgment in the case, declaring that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with *Directive 2005/85/EC*, Ireland had failed to fulfill its obligations under Article 43 of that Directive, and ordered that Ireland pay the costs of the action.

Shortly before the Court of Justice's ruling, the Minister for Justice made two statutory instruments with the aim of transposing provisions from the Directive: *The European Communities (Asylum Procedures) Regulations 2011 (S.I. No. 51 of 2011)*, and *the Refugee Act 1996 (Asylum Procedures) Regulations 2011 (S.I. No. 52 of 2011)*.

³²¹

See Joyce, C. (2011). *Annual Policy Report on Migration and Asylum: December 2011*. Available at www.emn.ie and www.esri.ie.

Appendix I Major Legislation in the Area of Migration and Asylum

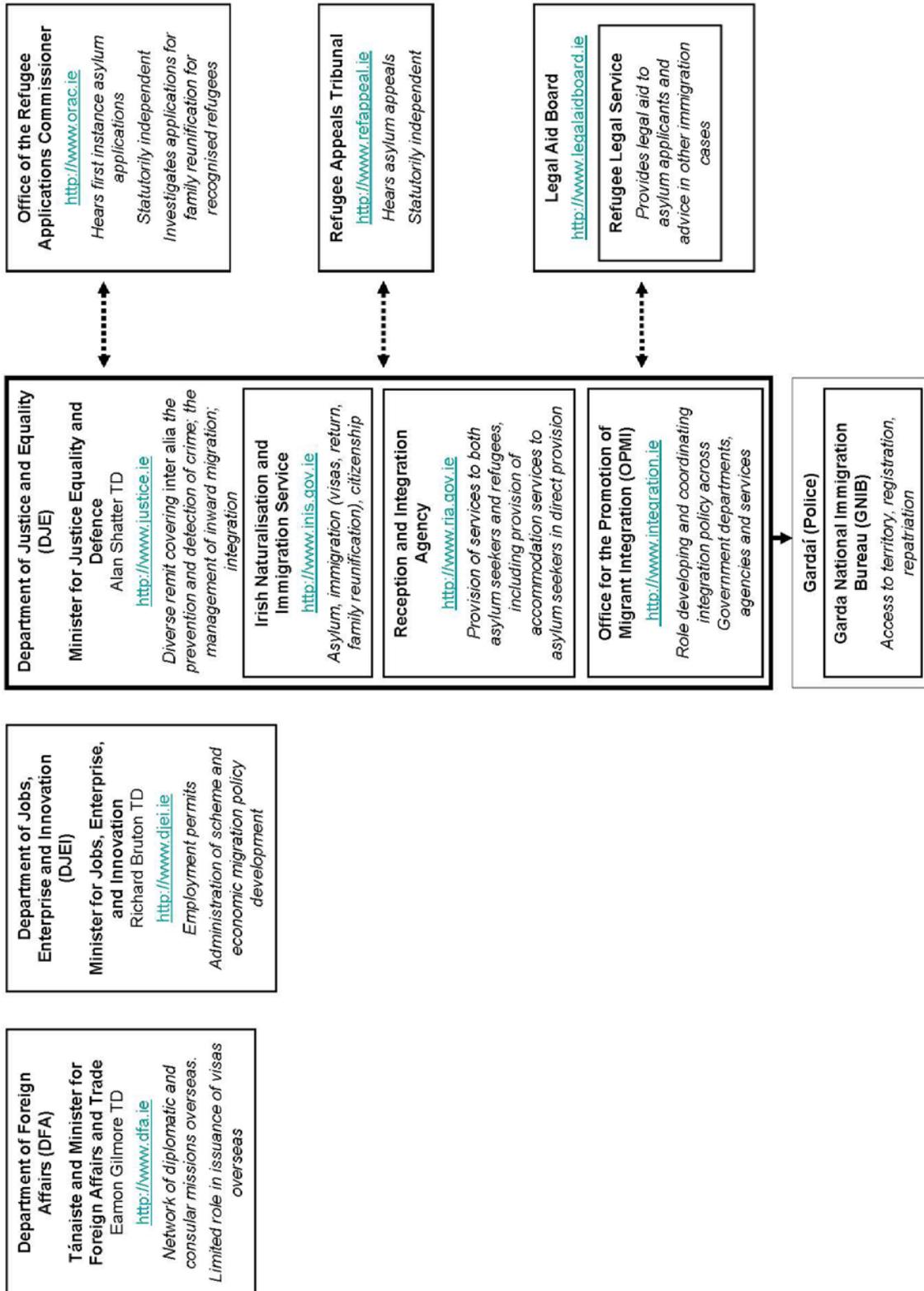
- The *Refugee Act, 1996* set out, for the first time, a system for the processing of asylum applications in Ireland.
- The *Immigration Act, 1999* set out the principles, procedures and criteria, which govern the detention and removal of foreign nationals from the State, and made provision for the issuing of deportation and exclusion orders.
- The *Immigration Act, 2003* introduced carrier liability whereby a carrier can be held responsible and fined accordingly for bringing an undocumented immigrant to the State. Provision was also made for the return of persons refused leave to land, usually by the carrier responsible, to the point of embarkation.
- The *Immigration Act, 2004* included a wide range of provisions that would previously have been contained in the Orders made under the 1935 Act. It made provision for the appointment of immigration officers and established criteria for permission to land. The Act empowered the Minister to make orders regarding visas and approved ports for landing, and it imposed limits on the duration of a foreign national's stay. Certain obligations were imposed on carriers, and persons landing in the State were required to be in possession of a valid passport or identity document. It also outlined a requirement for foreign nationals to register with the Gardaí (police).
- The *Illegal Immigrants (Trafficking) Act, 2000* created an offence of smuggling illegal immigrants, with significant penalties on conviction and extends the powers of An Garda Síochána (Police) to enter and search premises, and to detain in relation to such activities. The Act also contained special provisions in relation to judicial review of decisions in the asylum and immigration processes.
- The statute law governing Irish citizenship is the *Irish Nationality and Citizenship Act, 1956*. The 1956 Act was amended by *the Irish Nationality and Citizenship Act 1986, 1994, 2001 and 2004*.
- The *Employment Permits Act, 2003* was enacted to facilitate the accession of ten new EU Member States in 2004 and introduced particular offences for both employers and employees working in breach of employment permit legislation.
- The *Employment Permits Act, 2006* enabled the introduction of significant changes to the existing employment permits system and came into entry in 2007. Reflecting the general policy of meeting most domestic labour needs from within the enlarged EU, the 2006 Act contained a reformed system with three elements including a type of 'Green Card' for any position with an annual salary of €60,000 or more in any sector, or for a restricted list of

occupations, where skill shortages have been identified, with an annual salary range from €30,000 to €59,999; a re-established Intra-Company transfer scheme for temporary transnational management transfers; a Work Permit scheme for a very restricted list of occupations up to €30,000 and where the shortage is one of labour rather than skills.

- The *European Communities (Eligibility for Protection) Regulations, 2006 (S.I. 518 of 2006)* give effect to *Council Directive 2004/83/EC*, which came into force in October 2006. The Regulations give effect to the Directive's criteria for eligibility for subsidiary protection and provisions for international protection assessment criteria.
- *The European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I. 656 of 2006)* as amended transpose *Council Directive 2004/38/EC* (the Free Movement/Citizenship Directive) into Irish law.
- The *Criminal Law (Human Trafficking) Act, 2008* created offences criminalising trafficking in persons for the purposes of sexual or labour exploitation, or for the removal of their organs, and criminalised the selling or purchasing of human beings.
- The *European Communities (Asylum Procedures) Regulations, 2011 (S.I. 51 of 2011)* give further effect to *Council Directive 2005/85/EC* by amending the *Refugee Act 1996*, inter alia, regarding procedures for the asylum interview, safe countries of origin, and fresh asylum claims.
- The *Refugee Act 1996 (Asylum Procedures) Regulations, 2011 (S.I. 52 of 2011)* give further effect to *Council Directive 2005/85/EC* by amending the *Refugee Act 1996*, inter alia, in respect of the provision of interpreters, and the treatment of unaccompanied minors.

Appendix II Schematic Representation of Immigration and Asylum-Related Institutions in Ireland in 2012

(simplified for illustration purposes)



Appendix III Statistical Data

The tables below contain further relevant statistical data for 2011.

Table A1: Gross and Net Migration Flows, 1987-2011

Year (ending April)	Outward	Inward 1,000s	Net
2011	76.4	42.3	-34.1
2010	65.3	30.8	-34.5
2009	65.1	57.3	-7.8
2008	45.3	83.8	38.5
2007	42.2	109.5	67.3
2006	36.0	107.8	71.8
2005	29.4	84.6	55.1
2004	26.5	58.5	32.0
2003	29.3	60.0	30.7
2002	25.6	66.9	41.3
2001	26.2	59.0	32.8
2000	26.6	52.6	26.0
1999	31.5	48.9	17.3
1998	28.6	46.0	17.4
1997	25.3	44.5	19.2
1996	31.2	39.2	8.0
1995	33.1	31.2	-1.9
1994	34.8	30.1	-4.7
1993	35.1	34.7	-0.4
1992	33.4	40.7	7.4
1991	35.3	33.3	-2.0
1990	56.3	33.3	-22.9
1989	70.6	26.7	-43.9
1988	61.1	19.2	-41.9
1987	40.2	17.2	-23.0

Source: CSO, Population and Migration Estimates, various years, available in O'Connell, P.J et al. (2012). International Migration in Ireland, 2011. ESRI *Working Paper* 435. Available at www.esri.ie.

Table A2: Certificates of Registration by Nationality and Stamp, 2011

Total Registrations by Nationality 2011		Total GNIB Registrations by Stamp 2011	
Nationality	No.	Stamp	No.
Indian	17,582	Unrecorded	7,038
Nigerian	14,771	Stamp 1	11,759
Brazilian	14,380	Stamp 1A	397
Chinese	14,116	Stamp 2	41,718
Philippine	11,988	Stamp 2A	4,791
American	11,777	Stamp 3	12,981
Pakistani	7,608	Stamp 4	73,026
South African	4,767	Stamp 4 EU Fam	7,964
Malaysian	4,569	Stamp 5	1,516
Mauritian	3,777	Stamp 6	35
Others	55,890	Total	161,225
Total	161,225		

Source: Irish Naturalisation and Immigration Service (May 2012).

Table A3: Employment Permits Issued and Renewed, 1998 - 2011

Year	Permits Issued	Permits Renewed	Total Permits Issued (incl. group permits)
2011	3,184	2,016	5,200
2010	3,394	3,877	7,271
2009	4,024	3,938	7,962
2008	8,481	5,086	13,567
2007	10,147	13,457	23,604
2006	8,254	16,600	24,854
2005	8,166	18,970	27,136
2004	10,821	23,246	34,067
2003	22,512	25,039	47,551
2002	23,759	16,562	40,321
2001	29,951	6,485	36,436
2000	15,735	2,271	18,006
1999	4,597	1,653	6,250
1998	3,830	1,886	5,716

Source: Department of Jobs, Enterprise and Innovation.

Table A4: Asylum Seekers 1992-2011

Year	Number of Applications
2011	1,290
2010	1,939
2009	2,689
2008	3,866
2007	3,985
2006	4,314
2005	4,323
2004	4,766
2003	7,900
2002	11,634
2001	10,325
2000	10,938
1999	7724
1998	4626
1997	3883
1996	1,179
1995	424
1994	362
1993	91
1992	39

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

Earlier table first appeared in O'Connell, P.J et al. (2012). International Migration in Ireland, 2011. ESRI Working Paper 435. Available at www.esri.ie.

Table A5: Applications for Asylum by Main Country of Nationality 2007 - 2011

Ranking	2007		2008		2009		2010		2011	
1	Nigeria	1,028	Nigeria	1,009	Nigeria	570	Nigeria	387	Nigeria	182
2	Iraq	285	Pakistan	237	Pakistan	257	China	228	Pakistan	175
3	China	259	Iraq	203	China	194	Pakistan	200	China	142
4	Pakistan	185	Georgia	181	DR Congo	102	DR Congo	71	DR Congo	70
5	Georgia	174	China	180	Zimbabwe	91	Afghanistan	69	Afghanistan	67
6	Sudan	158	DR Congo	173	Georgia	88	Ghana	57	Zimbabwe	66
7	DR Congo	151	Moldova	141	Moldova	86	Cameroon	56		
8	Somalia	145	Somalia	141	Somalia	84	Moldova	56		
9	Moldova	133	Sudan	126	Ghana	82	Georgia	53		
10	Eritrea	112	Zimbabwe	114	Iraq	76	South Africa	53		
All others		1,355		1,361		1,059		709		588
Total		3,985		3,866		2,689		1,939		1,290

Source: Office of the Refugee Applications Commissioner (ORAC). Available at www.orac.ie.

Earlier table first appeared in O'Connell, P.J et al. (2012). International Migration in Ireland, 2011. ESRI Working Paper 435. Available at www.esri.ie.

Table A6: Applications for Leave to Remain granted under Section 3, Immigration Act 1999

Year	Number of Applications
2011	1,968
2010	188
2009	659
2008	1,278
2007	859
2006	217
2005	154
2004	209
2003	59
2002	98
2001	53
2000	11
1999	22
Total	3,619

Source: Department of Justice and Equality.

*This figure includes cases granted following their consideration under Section 3 of the *Immigration Act 1999 (as amended)* and the cases of those persons who claimed a link to the *Zambrano* Judgment to advance their case to remain in the State.

Table A7: Applications for Subsidiary Protection 2006 - 2011

Year	Applications Received	Applications Granted
2011	889	13
2010	1,466	2
2009	1,758	21
2008	1,498	7
2007	1,341	2
2006*	185	0

Source: Department of Justice and Equality.

Note: *Subsidiary Protection regulations came into force on 10 October 2006.

Table A8: Enforced Deportation Orders by Nationality, 2010, 2011

2010		2011	
Country	No.	Country	No.
Nigeria	209	Nigeria	124
Georgia	45	Moldova	21
Moldova	10	South Africa	21
Brazil	9	Georgia	18
South Africa	9	Pakistan	18
Others	61	Others	78
Total	343		280

Source: Quinn, E. and Kingston, G. (2012.) *Practical Measures for Reducing Irregular Migration: Ireland*. Available at www.esri.ie.

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