

EUROPEAN MIGRATION  
NETWORK

ANNUAL POLICY  
REPORT ON MIGRATION  
AND ASYLUM 2009:  
IRELAND

Corona Joyce

# THE ECONOMIC AND SOCIAL RESEARCH INSTITUTE

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European Migration  
Network

Annual Policy Report  
on Migration and  
Asylum 2009:  
Ireland

Corona Joyce

2010

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

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

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This report is the sixth in a series of Annual Policy Reports, a series that is intended to provide a coherent overview of immigration trends and policy development during consecutive periods beginning in January 2003.

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## ABBREVIATIONS AND IRISH TERMS

<i>Dáil</i>	<i>Parliament, lower house</i>
<i>ECHR</i>	<i>European Convention on Human Rights</i>
<i>ECtHR</i>	<i>European Court of Human Rights</i>
<i>EURES</i>	<i>European Employment Services</i>
<i>FÁS</i>	<i>Training &amp; Employment Authority</i>
<i>Gardaí/Garda Síochána</i>	<i>Police</i>
<i>GNIB</i>	<i>Garda National Immigration Bureau</i>
<i>HIQA</i>	<i>Health Information and Quality Authority</i>
<i>IBC/05</i>	<i>Irish Born Child Scheme 2005</i>
<i>IBIS</i>	<i>Irish Border Information System</i>
<i>I-BOC</i>	<i>Irish Border Operations Centre</i>
<i>ICI</i>	<i>Immigrant Council of Ireland</i>
<i>INIS</i>	<i>Irish Naturalisation and Immigration Service</i>
<i>IOM</i>	<i>International Organization for Migration</i>
<i>IRC</i>	<i>Irish Refugee Council</i>
<i>JHA</i>	<i>Justice and Home Affairs</i>
<i>OECD</i>	<i>Organisation for Economic Cooperation and Development</i>
<i>Oireachtas</i>	<i>Parliament, both houses</i>
<i>ORAC</i>	<i>Office of the Refugee Applications Commissioner</i>
<i>PPSN</i>	<i>Personal Public Service Number</i>
<i>RAT</i>	<i>Refugee Appeals Tribunal</i>
<i>Tánaiste</i>	<i>Deputy Prime Minister</i>
<i>Taoiseach</i>	<i>Prime Minister</i>
<i>UNHCR</i>	<i>United Nations High Commissioner for Refugees</i>

# EXECUTIVE SUMMARY

This report is the sixth 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.

Ireland continued to experience a period of economic crisis in 2009, with Gross National Product (GNP) and employment both contracting by over 8 per cent. The recession and financial crisis also led to a very rapid deterioration in the public finances and a dramatic shortfall of government revenue over expenditure. Two budgets took place in Ireland during 2009: a supplementary budget in April 2009 and Budget 2010 in December 2009. Changes arising included a reduction in Overseas Development Aid (ODA) and an overall reduction of 15 per cent in figures allocated to 'Immigration and Asylum' services within government departments.

During 2009 local elections were held in Ireland on 5 June, the same day as voting in the European Elections and two by-elections in Dublin South and Dublin Central.

On 22 April 2009, John Curran was appointed Minister of State at the Departments of Community, Rural and Gaeltacht Affairs; Education and Science; and Justice, Equality and Law Reform with special responsibility for Integration and Community.<sup>1</sup>

In October 2009, a *Renewed Programme for Government* was agreed by the Green Party and Fianna Fáil. Regarding immigration and integration, the Programme outlined a number of planned changes following on from the commencement of the *Immigration, Residence and Protection Bill, 2008*. Changes included announcement of schemes for consideration of cases of persons who have become undocumented through no fault of their own and for non-EEA work permit holders who have become redundant; consideration of extension of the Ombudsman's remit in relation to certain immigration matters, having 'due regard for the need to avoid systemic delays'; and removal of the Labour Market Needs Test for current and future work permit holders who have been made redundant. Regarding unaccompanied minors, the Programme announced the introduction of a scheme to examine the cases of 'aged-out' unaccompanied minors over the age of 18 years on a 'case-by-case basis' and asserted that government would 'operate fully the provisions of the *Immigration, Residence and Protection Bill* as they relate to unaccompanied minors', and committing to reviewing the Act and 'if necessary, improve its operation in this regard'.

<sup>1</sup> In 2010, the name of the Department of Community, Rural and Gaeltacht Affairs was changed to the Department of Community, Equality and Gaeltacht Affairs; the name of the Department of Education and Science was changed to the Department of Education and Skills; and the name of the Department of Justice, Equality and Law Reform was changed to the Department of Justice and Law Reform.

The most notable developments in the area of asylum and migration during 2009 concerned employment permit holders, arguably reflecting a changed economic context. 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 an employment permits under the *Spousal/Dependent Scheme* and reintroduction of a Labour Market Needs Test. New arrangements regarding work permit holders on short-term assignments were also announced, as were provisions for a six-month time allowance to seek new employment for all work permit holders who have been made redundant. Work permits for jobs paying less than €30,000 per annum will only be granted in 'exceptional' cases. Regarding dependents, spouses and dependants of first-time work permit applicants whose applications were received on or after 1 June 2009 cannot be considered for an employment permit under the *Spousal/Dependant Scheme*. In cases where the application for the principal permit holder's first employment permit was received on or after 1 June 2009, spouses/dependants of Green Card holders and Researchers only are eligible to apply for a Spousal/Dependant Permit. In addition, changes regarding the reintroduction of a Labour Market Needs Test were announced during 2009, with all vacancies for which an application for a work permit is made requiring advertisement with the FÁS/EURES employment network for at least 8 weeks, in addition to local and national newspapers for six days. This is to ensure that in the first instance a national of the EEA or Norway, Iceland, Liechtenstein and Switzerland, or in the second instance a national of Bulgaria or Romania, cannot be found to fill the vacancy.

In August 2009, the Minister for Justice, Equality and Law Reform announced policy changes regarding employment permits for non-EEA nationals who have held permits for five years or more, and easing of the immigration rules for redundant non-EEA migrant workers. Applying to both those made redundant after five years working on a permit and to those still in employment, employment permit holders for more than five consecutive years will be provided with immigration permission to reside in Ireland and to work without the need for an employment permit. August 2009 also saw the announcement, with immediate effect, of an increase in 'breathing space' of six months to seek other employment for any worker who has been made redundant and has held an employment permit for less than five years.

In September 2009, the Minister for Justice, Equality and Law Reform announced a Scheme for foreign nationals who have become undocumented through no fault of their own after previously holding a work permit. The Scheme was announced with the purpose of providing a temporary immigration permission of four months within which to seek legitimate employment, or if they are already employed, within which to obtain an employment permit from the Department of Enterprise, Trade and Employment. In October 2009, the Department of Enterprise, Trade and Employment confirmed that a Labour Market Needs Test will not be required in respect of work permit applications from current and future employment permit holders who have been made redundant.

Regarding legislation enacted during 2009, several statutory instruments in the area of asylum and migration were passed during the year. *S.I. No.*

453 of 2009, the *Immigration Act 2004 (Visas) (No.2) Order 2009* was signed on 16 November 2009 and is due to be enacted on 1 January 2010. It revoked *S.I. No. 239 of 2009, the Immigration Act 2004 (Visas) Order 2009* which came into effect on 1 July 2009. The principal change effected by the Order was that nationals of Mauritius are subject to an Irish visa requirement as from 1 January 2010. The Order specifies the classes of non-Irish nationals who are not required to be in possession of a valid Irish visa when travelling to Ireland (including EU nationals), as well as nationalities who are required to have a transit visa when travelling through Ireland to another country. The Order also includes certain non-Irish national holders of a valid Convention travel document issued by specified countries,<sup>2</sup> a valid permanent residence card issued under Regulation 16 of the Regulations of 2006, or a valid residence card issued under Regulation 7 of the Regulations of 2006, as being exempt from requiring a valid Irish visa when landing in the State. Changes to applicable fees for the initial granting of long-term residency permission to a non-EEA national took place in July 2009 with the introduction of *S.I. 287 of 2009, the Long-Term Residency (Fees) Regulations 2009*. Under the Regulations, a fee of €500 is payable on the initial granting of a long-term residency permission to a non-EEA national, a move which was criticised by several NGOs as being cost prohibitive. Regarding access to welfare payments, the *Social Welfare and Pensions (No.2) Act 2009* of December 2009 introduced amendments to the habitual residence condition concerning individuals either seeking or having been granted a protection status. Under the amendment, asylum seekers or those awaiting a decision on leave to remain in Ireland cannot be considered as 'habitually resident'. Much related discussion regarding the eligibility of protection applicants and those seeking leave to remain in the State for social welfare assistance took place during the year, with several appeals of such cases taking place.

The *Prohibition of Female Genital Mutilation Bill 2009* was proposed by way of Private Members' Bill by Jan O'Sullivan TD of the Labour Party on 7 May 2009. The Bill seeks to codify the crime as distinct from the offence of 'causing serious harm', so as to avoid ambiguity as to whether the law would recognise as a defence to a charge of causing serious harm in this context, that the victim of FGM had consented to a 'surgical treatment' or, in the case of a minor, that her parents had given consent on her behalf.<sup>3</sup>

In September 2009, the Minister for Justice, Equality and Law Reform announced a review of non-EEA student immigration in full-time education. As part of this review, a set of 20 key proposals were proposed and a public consultation process on the issue was announced. The new proposals include capping the amount of time a non-EEA student should spend in Ireland, and the creation of a two-tier system for students (Tier 1 reserved for degree level and above, Tier 2 for English language and further education sectors). Submissions under the public consultation process were accepted up until the end of October 2009.

<sup>2</sup> A valid Convention travel document is specified as being issued by Belgium, Czech Republic, Denmark, Finland, Germany, Iceland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovak Republic, Spain, Sweden, or Switzerland and where the intended purpose of the travel to the State by the holder of such a travel document is solely for a visit of up to a maximum period of 3 months.

<sup>3</sup> Available at <http://www.oireachtas.ie/viewdoc.asp?DocID=11843>

There was a sharp decrease in the number of new employment permits issued in 2009 year-on-year from 2008, with the overall number of permits issued falling by 41 per cent to 7,962 permits. Arguably, decreased figures of both new permits and renewals may reflect the changed economic context during 2009 when Ireland continued to experience a period of economic recession. Figures for 2009 also show that the number of new work permits issued fell by 53 per cent to 4,024 permits, with the number of renewals falling year-on-year by 23 per cent during 2009 to some 3,938 permits. Regarding overall Certificates of Registration, some 166,387 Certificates (referring to new registrations and renewals) were issued during 2009, representing a slight increase of comparable figures for 2008 when 164,344 such Certificates were issued.

During 2009 some 2,939 applications for General Permission to Remain in the State were received, and 1,313 applications were approved. There were 2,070 applications for residence in Ireland by spouses of an EU national and under the EU Free Movement Directive 2004/38/EC during 2009. Of the main applicant countries (excluding EU2 applications), Pakistani nationals were the largest single grouping representing 384 applications.

During 2009 some 123,082 visas were issued by Irish authorities worldwide, including 57,411 re-entry visas. During the same year 133,967 visa applications were received.

Some 2,689 applications for asylum were received during 2009, a decrease of 30 per cent on corresponding figures of 3,866 applications during 2008. The main stated countries of nationality of those seeking asylum during 2009 were Nigeria (569 applications), Pakistan (257 applications), China (194 applications), Democratic Republic of Congo (102 applications) and Zimbabwe (91 applications). Some 56 applications for asylum were submitted by unaccompanied minors in 2009. There was a sharp decrease (48 per cent year-on-year) in the number of persons granted permission by the Minister for Justice, Equality and Law Reform for leave to remain in the State during the year, with 659 persons granted such a status in accordance with section 3 of the *Immigration Act, 1999* (as amended). Some 2,089 applications for Subsidiary Protection in the State were made during 2009, with 24 cases granted Subsidiary Protection status. During 2009 some 191 refugees were admitted to Ireland under the Resettlement Programme with the majority from the Democratic Republic of Congo (84 persons) and Myanmar/Burma (82 persons). In July 2009, the Minister for Justice, Equality and Law Reform confirmed acceptance of two detainees from Guantanamo Bay for resettlement in Ireland.

During 2009, 895 applications for family reunification were received, with some 731 cases approved during the same period.

Some 27,765 applications for naturalisation were submitted in 2009 with 4,531 certificates of naturalisation issued. Of the 25,582 cases processed during 2009, a total of 12,242 were rejected as invalid and 6,011 were deemed ineligible. Of the 7,329 eligible applications for naturalisation processed, some 5,868 cases were granted and 1,461 refusals made during the same timeframe.

A further call for renewal of permission to remain in the State was made during 2009 for those initially granted permission to remain in the State under the *Irish Born Child Scheme, 2005 (IBC/05)* and who were subsequently granted further permission to remain under the *IBC Renewals Scheme, 2007*.

Under the Scheme, permission to remain in Ireland will be renewed for a further period of three years, save in exceptional circumstances, and subject to conditions. By the end of 2009, some 14,254 applications for renewal had been received, with 14,139 granted positive decisions and 115 applications refused.

During 2009 some ten persons received the 60 day ‘recovery and reflection’ period to remain in Ireland, and 11 persons were granted temporary residence permits.<sup>4</sup> Overall, some 68 incidents of alleged human trafficking offences were reported to An Garda Síochána, involving 49 adults and 17 minors. Of this number, 40 were in the asylum process in Ireland; 15 required immigration permission, five were in the care of the HSE as minors; four were EU citizens and a further two voluntarily left the State.<sup>5</sup> In April 2009 the Health Service Executive and An Garda Síochána signed a *Joint Protocol on Missing Children* which 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 report is made concerning a missing child in State care. The Office of the Minister for Children and Youth Affairs published an *Implementation Plan from the Report of the Commission to Inquire into Child Abuse, 2009* in July of this year.<sup>6</sup> The Plan contained a review of the number of, and care provisions for, unaccompanied minors. A commitment was 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’. A *National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009 – 2012* was published by the Department of Justice, Equality and Law Reform in June 2009. An output of the Interdepartmental High Level Group, the National Action Plan outlined previous measures already undertaken by Government in the area, identified areas which required further action and outlined structures which will bring Ireland into line with its international obligations and allow for the ratification of the *Council of Europe Convention on Action against Trafficking in Human Beings* and the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. Action points include awareness (legislative measures and training of officials), protection (services for victims of trafficking, including child victims, and provision for a legislative basis for a ‘recovery and reflection’ period currently in operation on an administrative basis), and prosecution and investigation.

Some 1,077 Deportation Orders were signed during 2009, with 291 effected. Nationals of Nigeria, South Africa, Brazil, Georgia and China were represented as the main countries of stated origin of those deported. During the same timeframe, 243 Transfer Orders were effected under the Dublin Regulation, with the majority being to the United Kingdom (193 Orders) and France (10 Orders). Of those transferred under the Dublin Regulation, nationals of Nigeria constituted the largest single grouping

<sup>4</sup> A further EU national had been granted a temporary residence permit.

<sup>5</sup> Department of Justice, Equality and Law Reform (2010) *Annual Report 2009*. Available at [www.justice.ie](http://www.justice.ie).

<sup>6</sup> Office of the Minister for Children (July 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](http://www.omc.gov.ie/documents/publications/Implementation_Plan_from_Ryan_Commission_Report.pdf).

followed by Pakistani and Somali nationals. Some 4,899 persons were refused leave to land at Irish ports during 2009. In 2009 in Ireland, 539 persons opted to be assisted to return home voluntarily. Of this figure, 405 persons were assisted to return by the International Organization for Migration (IOM) and 134 persons received administrative assistance to return by the Department of Justice, Equality and Law Reform. Overall, the majority of returnees were of Brazilian nationality with nationals of Moldova, Nigeria, Georgia and Mauritius also constituting large groupings.

Central Statistics Office (CSO) figures for 2009<sup>7</sup> showed a decrease in overall net immigration, together with increased emigration resulting in a return to net outward migration for the first time since 1995. The total number of immigrants into the State in the year to April 2009 fell by 26,500 to 57,300, while the number of emigrants has shown a marked increase of almost 40 per cent on the previous year to 65,100. As a result net migration is estimated to have fallen from net inward migration of 38,500 in 2007-2008 to a net outflow of 7,800 by April 2009. Immigration of all non-Irish national groups showed a decline during this time, with those from EU12 countries showing the largest decrease of almost 60 per cent.

No EU legislation relating to migration and asylum was transposed in Ireland in 2009. The decision to opt-in to the European Migration Network by exercising its option to notify the Council and the Commission via Article 4 of the fourth Protocol set out in the *Treaty of Amsterdam*, was approved by *Commission Decision adopted on 28 April 2009, reference COM (2009) 2708* in respect of *Council Decision 2008/381/EC of 14 May 2008*.

<sup>7</sup> CSO (September 2009) *Population and Migration Estimates April 2009*. Available at [www.cso.ie](http://www.cso.ie).



# 1. GENERAL STRUCTURE OF THE POLITICAL AND LEGAL SYSTEM IN IRELAND

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

Ireland is a parliamentary democracy. The two houses of the Oireachtas (Parliament) are Dáil Éireann (the House of Representatives) and Seanad Éireann (the Senate). The Constitution was enacted in 1937 and it defines the powers and functions of the President, the Government and the Oireachtas. The Government is led by the Taoiseach (the Prime Minister, Brian Cowen T.D. as of year end 2009) and Tánaiste (Deputy Prime Minister, Mary Coughlan as of year end 2009). Each of the Dáil's 166 members is a Teachta Dála (TD), who is directly elected by the people. General elections take place at least once every five years. The current government is the 28th Government of Ireland and was formed on the 7 May 2008 following the election of Brian Cowen as Taoiseach. While initially composed of Fianna Fáil, the Green Party, the Progressive Democrats and two independent TDs, following the disbandment of the Progressive Democrats in 2009 it now consists of Fianna Fáil and the Green Party with the support of three independent TDs.

There are 15 government departments, each headed by a minister. Three departments are involved in migration management in Ireland. The Department of Justice, Equality and Law Reform has a range of responsibilities including immigration policy and services, crime and security, law reform, equality and human rights and has overall responsibility for the Irish Naturalisation and Immigration Service (INIS) and the Reception and Integration Agency (RIA). The Department also has political responsibility for the national police force, An Garda Síochána, including the Garda National Immigration Bureau (GNIB).<sup>8</sup> The Department of Enterprise, Trade and Employment<sup>9</sup> administers the employment permit schemes and formulates economic migration policy. The Department of Foreign Affairs has responsibility for the issuing of visas to immigrants via consular services in countries where the

<sup>8</sup> Further information on the specific activities of each government department, including the Irish Naturalisation and Immigration Service (INIS) and the Reception and Integration Agency (RIA) can be found in previously-published reports in this series and Quinn (2009) *The Organisation of Asylum and Migration Policies in Ireland*. Available at [www.esri.ie](http://www.esri.ie).

<sup>9</sup> In 2010, the name of the Department of Enterprise, Trade and Employment was changed to the Department of Enterprise, Trade and Innovation

Department of Justice, Equality and Law Reform does not operate a dedicated visa office. The Garda National Immigration Bureau (GNIB) is responsible for all immigration related to Garda (police) operations in the State and is under the auspices of An Garda Síochána and, in turn, the Department of Justice, Equality and Law Reform. The GNIB carries out deportations, border control, and investigations related to illegal immigration and trafficking in human beings. An Garda Síochána has personnel specifically dealing with immigration in every Garda district, at all approved ports and airports and at a border control unit attached to Dundalk Garda Station.

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

### **1.1.1 MAIN MINISTRIES IN THE AREA OF ASYLUM AND MIGRATION**

There are three main ministries involved in the area of asylum and migration in Ireland.<sup>10</sup> In addition the Department of Health and Children, which is responsible for administration of the Health Service Executive (HSE), is tasked with providing care for unaccompanied third-country minors in the State.

#### *1.1.1.1 Department of Justice, Equality and Law Reform*

The Department of Justice, Equality and Law Reform<sup>11</sup> is responsible for immigration management and the Minister of that Department has ultimate decision-making powers in relation to immigration and asylum. The Office of the Minister of State with special responsibility for Integration Policy<sup>12</sup> is tasked with supporting the integration of legally resident migrants in Ireland. In addition the Garda National Immigration Bureau (GNIB)<sup>13</sup> and the Anti-Human Trafficking Unit<sup>14</sup> are housed within the Department.

The Irish Naturalisation and Immigration Service (INIS)<sup>15</sup> is responsible for administering the statutory and administrative functions of the Minister for Justice, Equality and Law Reform in relation to asylum, visa, immigration and citizenship processing, asylum and immigration policy, repatriation, and reception and integration.

<sup>10</sup> In-depth discussion and analysis on the institutional context of asylum and migration in Ireland is provided in Quinn (2009) *The Organisation of Asylum and Migration Policies in Ireland*. Available at [www.esri.ie](http://www.esri.ie).

<sup>11</sup> [www.justice.ie](http://www.justice.ie).

<sup>12</sup> [www.integration.ie](http://www.integration.ie)

<sup>13</sup> <http://www.garda.ie/Controller.aspx?Page=31&Lang=1>

<sup>14</sup> <http://www.justice.ie/en/JELR/Pages/WP09000005>

<sup>15</sup> <http://www.inis.gov.ie>

The INIS also brings the Reception and Integration Agency (RIA)<sup>16</sup> under its aegis. The Reception and Integration Agency (RIA) is responsible for coordinating the provision of services to both asylum seekers and refugees. Since 2004 it has also been responsible for supporting the repatriation, on an ongoing basis and for the Department of Social and Family Affairs,<sup>17</sup> of nationals of the new EU Member States who fail the Habitual Residence Condition attached to social assistance payments and require assistance in returning to their country of origin.

A two-pillar structure exists for asylum application processing, consisting of The Office of the Refugee Applications Commissioner (ORAC),<sup>18</sup> and The Refugee Appeals Tribunal (RAT).<sup>19</sup> Both ORAC and RAT have their own independent statutory existence, while maintaining strong links with the Department to ensure their input into the coordination of asylum policy.

The Refugee Documentation Centre (RDC)<sup>20</sup> is an independent library and research service within the Legal Aid Board.<sup>21</sup> The Refugee Legal Service (RLS)<sup>22</sup> 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.<sup>23</sup>

#### *1.1.1.2 Department of Enterprise, Trade and Employment*

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

- The Economic Migration Policy Unit<sup>24</sup> contributes to the Department's work in formulating and implementing labour market policies by leading the development and review of policy on economic migration and access to employment in Ireland.
- The Employment Permits Section<sup>25</sup> implements a vacancy-driven employment permits system in order to fill those labour skills gaps which cannot be filled through domestic/EU supply. The Employment Permits Section processes applications for employment permits, issues guidelines and procedures information and produces online statistics on applications and permits issued.

<sup>16</sup> <http://www.ria.gov.ie>

<sup>17</sup> <http://www.welfare.ie>

<sup>18</sup> [www.orac.ie](http://www.orac.ie)

<sup>19</sup> [www.refappeal.ie](http://www.refappeal.ie)

<sup>20</sup> <http://www.legalaidboard.ie/lab/publishing.nsf/Content/RDC>

<sup>21</sup> [www.legalaidboard.ie](http://www.legalaidboard.ie)

<sup>22</sup> [http://www.legalaidboard.ie/lab/publishing.nsf/Content/Refugee\\_Legal\\_Service](http://www.legalaidboard.ie/lab/publishing.nsf/Content/Refugee_Legal_Service)

<sup>23</sup> The Legal Aid Board website states that 'Legal aid and advice is also provided in appropriate cases on immigration and deportation matters'. Available at [http://www.legalaidboard.ie/lab/publishing.nsf/Content/Refugee\\_Legal\\_Service](http://www.legalaidboard.ie/lab/publishing.nsf/Content/Refugee_Legal_Service)

<sup>24</sup> <http://www.entemp.ie/labour/migration/index.htm>

<sup>25</sup> <http://www.entemp.ie/labour/workpermits>

### 1.1.1.3 *The Department of Foreign Affairs*

The Department of Foreign Affairs<sup>26</sup> has responsibility for the issuance of visas via Irish Embassy consular services in cases where the Department of Justice, Equality and Law Reform does not have a dedicated visa office present within the country.<sup>27</sup> 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, Equality and Law Reform.

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## 1.2 General Structure of the Legal System in the Area of Migration and Asylum

The modern Irish legal system is based on Common Law as modified by subsequent legislation and by the 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. 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. Bills can either be initiated by Private Members' Bills or by Government and whether 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 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 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.<sup>28</sup>

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

<sup>26</sup> [www.dfa.ie](http://www.dfa.ie)

<sup>27</sup> See Quinn (2009) for further discussion.

<sup>28</sup> Quinn (2009) provides a discussion on the structure of the Irish legal system, specifically the place of immigration and asylum within it.

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<sup>29</sup>), 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 as from the mid-1990s, several pieces of legislation were introduced to deal with immigration and asylum issues in Ireland.

Regarding domestic legislation dealing with refugees and asylum seekers, the most notable piece of legislation is the *Refugee Act 1996*, as amended. In addition, *S.I. No. 518 of 2006* seeks to ensure compliance with *EU Directive 2004/83/EC*.<sup>30</sup> Ireland is also a signatory to the *Dublin Convention*, and is subject to the *Dublin Regulation*,<sup>31</sup> which succeeded that Convention and which determines the EU Member State responsible for processing asylum applications made in the EU. Domestic immigration law in Ireland is based on various pieces of immigration legislation, including the *Aliens Act of 1935* and Orders made under it, the *Illegal Immigrants (Trafficking) Act 2000*, and the *Immigration Act 1999, 2003 and 2004*.<sup>32</sup> The *Immigration, Residence and Protection Bill 2008* constitutes a single piece of proposed legislation for the management of both immigration and protection issues, and by the end of 2009 the Bill was scheduled for Report Stage within the Dáil and remained unenacted at year end.<sup>33</sup>

<sup>29</sup> *S.I. No. 395/1946 Aliens Order 1946; S.I. No. 128/1975 Aliens (Amendment) Order 1975.*

<sup>30</sup> *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.

<sup>31</sup> *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.

<sup>32</sup> See Quinn (2009) for further discussion on this issue, particularly legislative development.

<sup>33</sup> The *Immigration, Residence and Protection Bill, 2008* was withdrawn in 2010, with the *Immigration, Residence and Protection Bill, 2010* launched in June 2010 incorporating many amendments to the 2008 Bill, which had arisen during the legislative process. See Quinn, Stanley, Joyce and O'Connell (2008) *Handbook on Immigration and Asylum in Ireland 2007* for further discussion on this issue. A list of relevant legislation (and description) in the area of migration and asylum is included in Annex II.

# 2. POLITICAL; POLICY AND LEGISLATIVE; AND INSTITUTIONAL DEVELOPMENTS

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## 2.1 General Political Developments during 2009

### 2.1.1 ECONOMIC CRISIS

As referenced in the *Annual Policy Report on Migration and Asylum 2008: Ireland*, after two decades of exceptional and sustained growth, the Irish economy went into crisis in 2008. The crisis was precipitated by the global financial crisis, but this led rapidly to a bursting of the property bubble, which in turn fundamentally undermined the financial integrity of the main Irish banks and generated a fiscal crisis of the state, whose revenues had become overly dependent upon taxes on property transactions. The most severe economic contraction occurred in 2009: Gross National Product and employment both contracted by over 8 per cent. The recession and financial crisis have also led to a very rapid deterioration in the public finances and a dramatic shortfall of government revenue over expenditure.

### 2.1.2 ELECTIONS

On 5 June 2009, local elections were held in Ireland, the same day as voting in the European Elections and two by-elections in Dublin South and Dublin Central.

### 2.1.3 CHANGE IN GOVERNMENTAL APPOINTMENTS

On 22 April 2009, John Curran was appointed Minister of State at the Departments of Community, Rural and Gaeltacht Affairs; Education and Science; and Justice, Equality and Law Reform with special responsibility for Integration and Community.

### 2.1.4 BUDGET 2009 (SUPPLEMENTARY) AND BUDGET 2010

Two budgets took place in Ireland during 2009: a supplementary budget in April 2009 and Budget 2010 in December 2009. Changes arising from the supplementary budget included a reduction in Overseas Development Aid (ODA). Budget 2010 saw an allocation of €5.355 million in funding to the

Office of the Minister of State for Integration, compared to a revised estimate of €5.165 million for 2009.

Budget 2010 also saw an overall reduction of 15 per cent in figures allocated to 'Immigration and Asylum' services within government departments. Of this, there was a reduction of 24 per cent in the allocated budget of the Irish Naturalisation and Immigration Service (INIS); a 6 per cent reduction in the allocated budget for legal aid provision to asylum seekers; a 21 per cent reduction in funds under the European Refugee Fund; and a reduction of 9 per cent for accommodation for asylum seekers.<sup>34</sup>

## 2.2

### General Overview of the Main Policy and Legislative Debates

#### 2.2.1 IMMIGRATION ACT 2004 (VISAS) (NO.2) ORDER 2009

*S.I. No. 453 of 2009*, the *Immigration Act 2004 (Visas) (No.2) Order 2009* was signed on 16 November 2009 to be enacted on 1 January 2010. It revoked *S.I. No. 239 of 2009*, the *Immigration Act 2004 (Visas) Order 2009*, which came into effect on 1 July 2009. The principal change effected by the Order is that nationals of Mauritius are subject to an Irish visa requirement from 1 January 2010. The Order specifies the classes of non-Irish nationals who are not required to be in possession of a valid Irish visa when travelling to Ireland (including EU nationals), as well as nationalities who are required to have a transit visa when travelling through Ireland to another country. The Order also includes certain non-Irish national holders of a valid Convention travel document issued by specified countries,<sup>35</sup> a valid permanent residence card issued under Regulation 16 of the Regulations of 2006 or a valid residence card issued under Regulation 7 of the Regulations of 2006 as being exempt from requiring a valid Irish visa when landing in the State.<sup>36</sup>

#### 2.2.2 IMMIGRATION ACT 2004 (VISAS) ORDER 2009

*S.I. 239 of 2009*, the *Immigration Act 2004 (Visas) Order 2009*, was signed on 10 June 2009 and specified the classes of non-nationals required to be in possession of a valid Irish transit visa when arriving at a port in the State for purposes of passing through the port in order to travel to another state. The change effected by the Order is that nationals of Taiwan are, from 1 July 2009, no longer subject to an Irish visa requirement.<sup>37</sup> It was revoked by *S.I. No.453 of 2009* (detailed above), to be enacted on 1 January 2010.

<sup>34</sup> Department of Finance (2009). *2010 Estimates for Public Services and Summary Public Capital Programme*. Available at <http://www.budget.gov.ie/Budgets/2010/Documents/Estimates%20Book%202010.pdf>

<sup>35</sup> A valid Convention travel document is specified as being issued by Belgium, Czech Republic, Denmark, Finland, Germany, Iceland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovak Republic, Spain, Sweden, or Switzerland and where the intended purpose of the travel to the State by the holder of such a travel document is solely for a visit of up to a maximum period of 3 months.

<sup>36</sup> *S.I. No. 453 of 2009*, the *Immigration Act 2004 (Visas) (No.2) Order 2009* is available at <http://www.irishstatutebook.ie/2009/en/si/0453.html>.

<sup>37</sup> *S.I. 239 of 2009*, the *Immigration Act 2004 (Visas) Order 2009* is available at <http://www.irishstatutebook.ie/2009/en/si/0239.html>.



### 2.2.3 LONG-TERM RESIDENCY (FEES) REGULATIONS 2009

*S.I. 287 of 2009*, the *Long-Term Residency (Fees) Regulations 2009* was introduced in July 2009 and provides for a fee of €500 on the initial granting of long-term residency permission to a non-EEA national.<sup>38</sup>

### 2.2.4 RENEWED PROGRAMME FOR GOVERNMENT 2009

In October 2009, a Renewed Programme for Government was agreed by the Fianna Fáil and Green Party. Regarding the area of immigration and integration, the Programme outlined a number of planned changes following on from the publication of the *Immigration, Residence and Protection Bill, 2008*. Changes included the announcement of schemes for consideration of cases of persons who have become undocumented through no fault of their own, and for non-EEA work permit holders who have become redundant (as announced in September 2009); consideration of extension of the Ombudsman's remit in relation to certain immigration matters, having 'due regard for the need to avoid systemic delays'; and removal of the Labour Market Needs Test for current and future work permit holders who have been made redundant. It was noted that policy in this area would be 'kept under review in light of the changing needs of the national labour market'. Regarding unaccompanied minors, the Programme announced the introduction of a scheme to examine the cases of 'aged-out' unaccompanied minors over the age of 18 years on a 'case-by-case basis' and asserted that government would 'operate fully the provisions of the *Immigration, Residence and Protection Bill* as they relate to unaccompanied minors', and committed to reviewing the Act and 'if necessary, improve its operation in this regard'.<sup>39</sup>

### 2.2.5 CHANGES RELATED TO ECONOMIC MIGRATION

There were several changes related to the situation for employment permit holders in Ireland during 2009, arguably reflecting a changed economic context.<sup>40</sup> A change to revised fees for employment permits was 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 and employment permits, certain categories removed) and to apply to prospective first-time entrants to Irish labour market from 1 June 2009; revised renewal procedures and fees; changes to eligibility for an employment permits under the *Spousal/Dependents Scheme*; and reintroduction of a Labour Market Needs Test excluding applications in respect of particular high skills positions.

<sup>38</sup> *S.I. 287 of 2009*, the *Long-Term Residency (Fees) Regulations 2009* is available at <http://www.irishstatutebook.ie/2009/en/si/0287.html>.

<sup>39</sup> Government of Ireland (2009) *Renewed Programme for Government*. Available at [http://www.taoiseach.gov.ie/eng/Publications/Publications\\_2009/Renewed\\_Programme\\_for\\_Government\\_October\\_2009.pdf](http://www.taoiseach.gov.ie/eng/Publications/Publications_2009/Renewed_Programme_for_Government_October_2009.pdf)

<sup>40</sup> See Section 3.4.1 for further discussion of these developments.



New arrangements regarding work permit holders on short-term assignments were also announced, as were provisions for a three month time allowance to seek new employment for all work permit holders who have been made redundant and have worked in Ireland for less than five years.

In August 2009, a change in policy on employment permits for non-EEA national holders of permits of five years or more was announced. Such nationals who have been legally resident and work permit holders (later extended to include other permissions to work such as a working visa, authorisation) for five or more consecutive years will be exempt from the requirement to hold a work permit and will be entitled to have their residence permission renewed for twelve months, regardless of whether they are employed or voluntarily unemployed at the time of renewal. This permission will be renewable depending on their circumstances, with the Department of Justice, Equality and Law Reform clarifying at the time of announcement that this was not to be an unconditional permit, with holders expected to work, support themselves and any dependents, and seek new employment if made redundant. The announcement acknowledged that those who had worked in the State for five years would be eligible for applications for long-term residence and/or citizenship, and may have such applications pending.

August 2009 also saw the announcement, with immediate effect, of an increase to six months in 'breathing space' for any worker who has been made redundant and has held an employment permit for less than five years. This six-month time period would apply from the date of their redundancy within which to seek alternative employment. The Labour Market Needs Test will not be required in respect of work permit applications from current and future employment permit holders who have been made redundant. In October 2009 the Renewed Programme for Government signalled an intention to remove the labour market needs test for 'current and future work permit holders who have been made redundant,' a measure which was confirmed that same month by the Department of Enterprise, Trade and Employment.<sup>41</sup>

In September 2009, the Minister for Justice, Equality and Law Reform announced a temporary Scheme for foreign nationals who have become undocumented through no fault of their own after previously holding an employment permit. Previously, a scheme for this category of migrants had been signalled in the *Towards 2016, Review and Transitional Agreement 2008-2009*. The Scheme was announced with the purpose of providing successful applicants with a temporary immigration permission of four months within which to seek legitimate employment, or if they are already employed, within which to obtain an employment permit from the Department of Enterprise, Trade and Employment. Applications under the Scheme were required to be submitted before 31 December 2010, with some 185 applications received by the Department of Justice, Equality and Law Reform.

<sup>41</sup> Department of Enterprise, Trade and Employment (2009) *Renewed Programme for Government, October 2009 – Redundant Permit Holders*. Available at <http://www.entemp.ie/labour/workpermits/redundantprogrammeforgovernmentoctober09.htm>

### **2.2.6 REVIEW OF NON-EEA STUDENT IMMIGRATION**

In September 2009, the Minister for Justice, Equality and Law Reform announced a review of non-EEA student immigration in full-time education. The aim of the process was as ‘part of a comprehensive overhaul by Government of the international education system in Ireland, combining regulatory and organisational reform, a more co-ordinated approach to marketing and development and better alignment with Ireland’s approach to immigration generally’. As part of this review, a set of 20 key proposals were proposed and a public consultation process on the issue was announced. The new proposals include capping the amount of time a non-EEA student should spend in Ireland, and creation of a two-tier system for students (Tier 1 reserved for degree level and above; Tier 2 for English language and further education sectors.) Submissions under the public consultation process were accepted until the end of October 2009. The Government received over 100 submissions on the proposals and the Minister for Justice, Equality and Law Reform has constituted an Interdepartmental Committee to evaluate the submissions received with a view to bringing final recommendations to Government. As of year end, the provisions set out in the Consultation Paper were not yet in force.

# 3. SPECIFIC DEVELOPMENTS IN ASYLUM AND MIGRATION

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## 3.1

### Control and Monitoring of Immigration

#### 3.1.1. IRISH BORDER INFORMATION SYSTEM (IBIS)

In January 2009 the Minister for Justice, Equality and Law Reform announced the approval by Government of the first phase of a new border control system to be introduced in 2010. The Irish Border Information System (IBIS) is intended to address 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 ‘immigration, Garda, customs and other watch-lists’.<sup>42</sup> 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. Announced at a meeting of Justice and Home Affairs Ministers, the Minister supported the Czech Presidency’s move ‘to use shared technology in the fight against...illegal immigration’, and the European Union Integrated Border Management Strategy.

#### 3.1.2 IMMIGRATION ACT 2004 (VISAS) (NO.2) ORDER 2009

*S.I. No. 453 of 2009*, the *Immigration Act 2004 (Visas) (No.2) Order 2009* was signed on 16 November 2009, with a date of enactment of 1 January 2010. It revoked *S.I. No. 239 of 2009*, the *Immigration Act 2004 (Visas) Order 2009* which came into effect on 1 July 2009. The principal change effected by the Order is that nationals of Mauritius are subject to an Irish visa requirement as from 1 January 2010. The Order specifies the classes of non-Irish nationals who are not required to be in possession of a valid Irish visa when travelling to Ireland (including EU nationals), as well as nationalities who are required to have a transit visa when travelling through Ireland to another country. The Order also includes certain non-Irish national holders of a valid Convention travel document issued by specified

<sup>42</sup> Department of Justice, Equality and Law Reform (15 January 2009). ‘Ahern Announces New Border Control System’. *Press Release*. Available at <http://www.justice.ie/en/JELR/Pages/PR09000014>

countries,<sup>43</sup> a valid permanent residence card issued under Regulation 16 of the Regulations of 2006 or a valid residence card issued under Regulation 7 of the Regulations of 2006 as being exempt from requiring a valid Irish visa when landing in the State.

### 3.1.3 ISSUANCE OF RESIDENCE, WORK PERMITS

There was a sharp decrease in the number of new employment permits issued in 2009 year-on-year from 2008, with the overall number of permits (new and renewals) issued falling by 41 per cent to 7,962 permits. As discussed in previous reports in this series, a marked increase in permits issued occurred during 2007 (attributable perhaps to the new employment permit scheme in operation since January 2007), with figures decreasing during 2008. Arguably, decreased figures of both new permits and renewals may reflect the changed economic context during 2009 when Ireland continued to experience a period of economic recession, including an increase in overall unemployment rates<sup>44</sup> from 4.6 per cent in 2007 to 11.8 per cent during 2009. Figures for 2009 show that the number of new permits issued fell by 53 per cent to 4,024 permits, with the number of renewals falling year-on-year by 23 per cent during 2009 to 3,938 permits.<sup>45</sup>

As discussed earlier in the text, in April 2009 new fees for employment permits where the application for the non-EEA national's first employment permit was received in the State on or after 1 June 2009 were announced. While the fees for first application for a work permit and all Green Card, Spousal/Dependant and Intra-Country Transfer permits remain the same, the primary changes related to renewal of work permits. All first employment applications for a work permit received after the end of May 2009 would be subject to an increased renewal fee depending on whether the term was for six months or less (an increase of 50 per cent, from €500 to €750); up to 24 months (an increase of 50 per cent, from €1,000 to €1,500); and up to 36 months (an increase of 50 per cent, from €1,500 to €2,250). This increase in fees has been the subject of much criticism by various NGOs.

During 2009 some 2,939 applications for General Permission to Remain<sup>46</sup> in the State were received, with decisions taken on 1,807 cases. Of these, 1,313 applications were approved.

<sup>43</sup> A valid Convention travel document is specified as being issued by Belgium, Czech Republic, Denmark, Finland, Germany, Iceland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovak Republic, Spain, Sweden, or Switzerland and where the intended purpose of the travel to the State by the holder of such a travel document is solely for a visit of up to a maximum period of 3 months.

<sup>44</sup> Seasonally adjusted standardised unemployment rates used. Available at [www.cso.ie](http://www.cso.ie).

<sup>45</sup> See the Department of Enterprise, Trade and Employment website ([www.entemp.ie](http://www.entemp.ie)) for further information.

<sup>46</sup> The category of 'General Permission to Remain' includes Change of Status; De Facto Relationship with Irish Nationals; De Facto Relationship with Non - EEA Nationals; Dependants of Non - EEA or Irish Nationals; Extension of C Visit Visa; Extension of Student Conditions; Extension of Visitors Conditions including Self Sufficiency; Extension of Work Permit Conditions; Medical Treatment; Missionaries; Stamp 4 (original circumstances changed); Doctors; Turkish Association; Undocumented Scheme (Scheme closed).

### 3.1.4 EU TREATY RIGHTS BASED ON BEING A SPOUSE OF AN EU NATIONAL

As discussed in the *Annual Policy Report on Migration and Asylum 2008: Ireland*, during 2008 several cases concerning third-country national spouses of an EU citizen residing in Ireland were taken to the European Court of Justice (ECJ) (headed by the *Metock* case),<sup>47</sup> with the ECJ subsequently finding that the Government should not prevent third-country spouses of EU citizens from living in Ireland on the basis of not having prior lawful residence in a Member State, and thus providing residency rights to significant numbers of non-EU national spouses who had been served with 'intent to deport' notices by the Department of Justice, Equality and Law Reform beginning in 2007. It also caused the Government to amend a 2006 Regulation stipulating that third-country non-EU nationals married to EU citizens must have resided in another Member State before moving to Ireland, and in July 2008 *the European Communities (Free Movement of Persons) (Amendment) Regulations 2008 (S.I. No. 310 of 2008)* was published.

During 2009 there were 2,070 applications for residence in Ireland by spouses of an EU national and under the EU Free Movement Directive 2004/38/EC. Of the main applicant countries (excluding EU2 applications), Pakistani nationals were the largest single grouping representing 384 applications. Nationals of Nigeria (238 applications), Brazil (148 applications), India (121 applications) and South Africa (117 applications) were also represented in the largest groups within applications.

### 3.1.5 VISA APPLICATIONS

During 2009 some 123,082 visas were issued by Irish authorities worldwide, including 57,411 re-entry visas. During the same year 133,967 visa applications were received.

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## 3.2

### Refugee Protection and Asylum

#### 3.2.1 OVERVIEW OF REFUGEE PROTECTION AND ASYLUM

Some 2,689 applications for asylum were received during 2009, a 30 per cent decrease on corresponding figures of 3,866 applications during 2008. The main stated countries of nationality of those seeking asylum during 2009 were Nigeria (569 applications), Pakistan (257 applications), China (194 applications), Democratic Republic of Congo (102 applications) and Zimbabwe (91 applications). A total of 470 applications were 'on hand' at the Office of the Refugee Applications Commissioner at year-end (of which 87 of these cases were 'on hand' for over 6 months), with 2,311 cases 'on hand' in the Refugee Appeals Tribunal (RAT).

There was a sharp decrease in the number of persons granted permission by the Minister for Justice, Equality and Law Reform for leave to remain in the State during 2009. Some 659 persons were granted leave to remain in the State following submissions pursuant to section 3 of the

<sup>47</sup> Case C-127/08-*Metock and Ors v Minister for Justice, Equality and Law Reform*, Unreported, European Court of Justice, 25/07/2008; Unreported, High Court, Finlay Geoghegan J., 14/03/2008

*Immigration Act, 1999* (as amended), in comparison to 1,278 persons during 2008.

Some 2,089 applications for Subsidiary Protection in the State were made during 2009. Of these, 24 cases had been granted Subsidiary Protection status, with 653 refusals. Overall, 33 applications for Subsidiary Protection have been granted since the Subsidiary Protection Regulations came into force on 10 October 2006, representing 0.6 per cent of all applications.

The overall refugee recognition rate during 2009 was 5.1%.<sup>48</sup>

Ireland continued to participate in the Resettlement Programme for vulnerable refugees in conjunction with UNHCR during 2009 with an annual quota of 200 persons. Refugees are selected for resettlement during the quota year but in many cases may not arrive in Ireland until the following year. During 2009 some 192 refugees were admitted to Ireland under the Resettlement Programme with the majority from the Democratic Republic of Congo (84 persons) and Myanmar/Burma (82 persons). In July 2009, the Minister for Justice, Equality and Law Reform confirmed acceptance of two detainees from Guantanamo Bay for resettlement in Ireland.<sup>49</sup> The Minister stated that Ireland would be complying with arrangements agreed by the European Union Member States the previous month concerning monitoring of former detainees accepted by Member States for resettlement. It was added that while the two individuals for resettlement would not be admitted to Ireland as refugees within the Geneva Convention definition, the 'norms of official procedure in respecting the rights of the two men to their privacy' would be adhered to, and no public disclosure of information would be made. A review of the Resettlement Programme is currently taking place by the Office of the Minister of State for Integration and is expected to be finalized in the near future.

Training for Immigration Officers regarding the taking of applications for asylum took place during 2009 in conjunction with UNHCR and the Garda Training College. As part of the commitment of An Garda Síochána in this area, since June 2009 an in-house trainer has been providing this training within the College.

<sup>48</sup> Figure provided by the Department of Justice, Equality and Law Reform (March 2010). It may be noted that calculation of refugee recognition rates that take adequate account of first instance and appeal stages are inherently problematic because they involve the comparison of annual numbers of applications and decisions, and the latter can relate to applications over a number of years. Ideally the measure should view the first instance and appeal stages as one integrated process and avoid double counting of individual applicants.

<sup>49</sup> Department of Justice, Equality and Law Reform (29 July 2009). 'Statement by Dermot Ahern T.D. Minister for Justice, Equality and Law Reform'. Press Release. Available at <http://www.justice.ie/en/JELR/Pages/Statement%20by%20Dermot%20Ahern%20T.D.%20Minister%20for%20Justice,%20Equality%20and%20Law%20Reform>

### 3.2.2 OFFICE OF THE REFUGEE APPLICATIONS COMMISSIONER

There was considerable litigation in 2009 regarding the extent to which decisions of the Office of the Refugee Applications Commissioner (ORAC) may be challenged by way of judicial review in the High Court rather than by way of appeal to the Refugee Appeals Tribunal. This issue was considered both from the perspective of Irish judicial review principles as they relate to the domestic legislation, and also from the perspective of compliance with Council Directive 2004/83/EC which was transposed into Irish domestic law by the *European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006)*. The jurisprudence emerging from these cases suggests that it is only in exceptional cases where errors are capable of having continuing adverse effects on the applicant, and of a sort that cannot be rectified by way of appeal, that judicial review will lie in respect of decisions of the ORAC.

In the case of *A.K. (Kayode) v. The Refugee Applications Commissioner*,<sup>50</sup> the applicant sought to quash the decision of the ORAC on the basis that insufficient regard was had to the fact that the applicant's mother had qualified as a refugee and her case was closely similar to that of the applicant. The trial judge at the judicial review hearing refused to quash the decision of the ORAC, but granted leave to appeal his decision having certified that the decision involved a point of law of exceptional public importance. The essence of the point of law was whether the High Court would be correct to use its discretion not to quash a decision of the ORAC where the issues raised by the applicant principally (but not exclusively) related to the quality of the decision rather than a defective application of the legal principles. This discretion would be exercised following a consideration of the facts of the case and based on the view that the matters complained of should properly be rectified on appeal. The Supreme Court agreed with the High Court and distinguished this situation from one in which there would be no appeal. Consequently, notwithstanding that an applicant may prove that the merits of their case were not properly weighed, the High Court should nonetheless refuse to quash the decision on the basis that it could be remedied on appeal to the Refugee Appeals Tribunal. The net effect of the Supreme Court judgment was that there was a reduction in new legal challenges against the Office of the Refugee Applications Commissioner and some 302 ORAC cases were withdrawn from the Court list, usually for consideration at appeal by the Refugee Appeals Tribunal.

Judicial review of the ORAC is still possible following the Supreme Court decision, and an example of such a case is *M (J) v Refugee Appeals Commissioner & Minister for Justice, Equality and Law Reform*.<sup>51</sup> This was a case in which a Zimbabwean asylum seeker received a negative decision on the basis that he was entitled to acquire nationality in Mozambique, in circumstances where the authorised officer had not questioned the applicant sufficiently to ascertain if this option was in fact open to him, and where only a written appeal of this decision lay. It was held that the process by which the Commissioner reached his decision was capable of having

<sup>50</sup> *A.K. (Kayode) v. The Refugee Applications Commissioner*, ex tempore judgment of Murray C.J., 28th January, 2009.

<sup>51</sup> *M (J) v Refugee Appeals Commissioner & Minister for Justice, Equality and Law Reform* [2009] IEHC 352.

continuing adverse effects on the applicant in the course of the appeal and the Court was satisfied that the defects could not be cured on appeal.

By contrast, in the case of *R (A) v Minister for Justice, Equality and Law Reform & Refugee Applications Commissioner*<sup>52</sup> where the applicant had lived in Bangladesh from the age of three into adulthood, and was refused asylum from Myanmar/Burma, where he is a citizen, on the basis that Bangladesh was his country of habitual residence. It was held that the ORAC did not come to this finding in an appropriate manner, but also that identification of a country of habitual residence within the jurisdiction and function of the ORAC and consequently the report as a whole was not unlawful to the extent that it is deprived of the necessary jurisdictional basis. The Court also remarked that it is highly desirable that if the need for intervention of the High Court by way of judicial review arises, it should only be invoked at the completion of the asylum process.

### 3.2.3 REFUGEE APPEALS TRIBUNAL

During 2009, the Refugee Appeals Tribunal continued to make provisions for access for applicants' legal representatives to decisions under the Refugee Appeals Tribunal Decisions Archive, which was introduced in late 2008, and contains all decisions (granted and refused) issued by the Tribunal for 2006, 2007, 2008 and up to and including October 2009. The Archive also contains all set aside (granted) decisions for 2000 to 2005. New decisions are added to the Archive on a monthly basis, with all information edited to exclude possible identification of applicants. Pre-2006 Tribunal decisions not contained in the Archive continue to be available for access on the pre-existing electronic library of decisions based within the offices of the Tribunal. A facility for applicants' legal representatives to submit previous decisions and make on-line submissions in support of their clients' appeal applications is also now in place.<sup>53</sup>

### 3.2.4 ACCOMMODATION FOR ASYLUM SEEKERS

The Reception and Integration Agency (RIA) accommodated 6,494 persons as of the end of 2009, with expenditure during 2009 for asylum accommodation services amounting to €86.5 million.<sup>54</sup>

In a Dáil committee discussion in October 2009, the Secretary General of the Department of Justice, Equality and Law Reform noted that at this time that some 1,500 of the 7,000 people in asylum accommodation had been in such accommodation for longer than three years.<sup>55</sup>

<sup>52</sup> *R(A) v Minister for Justice, Equality and Law Reform & Refugee Applications Commissioner* [2009] IEHC 480.

<sup>53</sup> See the website of the Refugee Appeals Tribunal for further information on this topic. Available at <https://decisions.refappeal.ie/>.

<sup>54</sup> Department of Justice, Equality and Law Reform (2010) *Annual Report 2009*. Available at [www.justice.ie](http://www.justice.ie).

<sup>55</sup> Committee of Public Accounts (8 October 2009). Available at <http://debates.oireachtas.ie/DDebate.aspx?F=ACC20091008.xml&Node=H5&Page=3>.

See also

<http://www.irishtimes.com/newspaper/frontpage/2009/0912/1224254386438.html>



### 3.2.5 COMMENTS ON THE IMMIGRATION, RESIDENCE AND PROTECTION BILL, 2008

In 2009 the Irish Refugee Council published a number of recommendations regarding enactment of a proposed single protection procedure, provisions for which were contained in the *Immigration, Residence and Protection Bill 2008*.<sup>56</sup> Recommendations included that of reassurance from the Minister for Justice, Equality and Law Reform that protection applications will be ‘determined impartially’ under the new procedure and under the responsibility of the INIS; the recording of initial and substantive interviews; an amendment of the published Bill to ‘reflect the shared duty on the applicant and the Minister to ascertain all the facts relevant to a protection claim’; and the inclusion of a defence regarding carrier liability into the Bill in cases carriers may have reason to believe that ‘a person travelling to the State intends to make an application for protection of is in need of protection’. A withdrawal of provision for summary deportation within the Bill is also recommended.

### 3.3 Unaccompanied Minors and Other Vulnerable Groups

#### 3.3.1 UNACCOMPANIED MINORS

During 2009 some 201 unaccompanied minors were referred to HSE care in the Dublin region. Of this number, 66 minors were reunited with family members/care givers and 126 were subsequently placed in HSE care. A total of 28 unaccompanied minors were determined as ‘Others’ (such as age assessed as being older than 18 years old), and 48 unaccompanied minors were reported as missing from State care. Some 56 applications for asylum were submitted by unaccompanied minors in 2009.

##### 3.3.1.1 Government Publications

In April 2009 the Health Service Executive and An Garda Síochána signed a *Joint Protocol on Missing Children* which 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. Included in the Protocol is the establishment of a Garda liaison role with the HSE care placements at an operational, local level and which includes a mechanism to identify children in care who are frequently reported missing.<sup>57</sup>

The Office of the Minister for Children published an *Implementation Plan from the Report of the Commission to Inquire into Child Abuse, 2009* in July of this year.<sup>58</sup> The Plan contains a review of the number of, and care provisions

<sup>56</sup> Irish Refugee Council (2009) *The Single Protection Procedure*. Available at [www.irishrefugeecouncil.ie](http://www.irishrefugeecouncil.ie).

<sup>57</sup> Health Service Executive (23 July 2007). *An Garda Síochána and Health Service Executive Joint Protocol on Missing Children*. Press release available at [http://www.hse.ie/eng/services/newscentre/2009\\_Archive/April\\_2009/An\\_Garda\\_S%20%ADochana\\_and\\_Health\\_Service\\_Executive%20%AO\\_%C2%AOJOINT\\_PROTOCOL\\_ON\\_MISSING\\_CHILDREN.html](http://www.hse.ie/eng/services/newscentre/2009_Archive/April_2009/An_Garda_S%20%ADochana_and_Health_Service_Executive%20%AO_%C2%AOJOINT_PROTOCOL_ON_MISSING_CHILDREN.html)

<sup>58</sup> Office of the Minister for Children (July 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](http://www.omc.gov.ie/documents/publications/Implementation_Plan_from_Ryan_Commission_Report.pdf)

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’:

31. *The HSE will end the use of separately run hostels for separated children seeking asylum and accommodate children in mainstream care, on a par with other children in the care system (by December 2010).*

32. *In the interim, the HSE will inspect and register residential centres and hostels where separated children seeking asylum in the care of the HSE are placed, in accordance with the Child Care Act 1991, pending the commencement of the Health Act 2007 for children’s residential services (ongoing).*

### 3.3.1.2 Care Provisions for Unaccompanied Minors

During 2009, debate regarding care provision for unaccompanied minors continued to occur within a parliamentary and media context. As discussed in the *Annual Policy Report on Migration and Asylum 2008: Ireland*, concerns regarding an equitable level of care for unaccompanied minors to that of Irish out-of-home minors in State care had taken place during 2008 in both contexts. A report by the Ombudsman for Children’s Office published in 2009 examined concerns that HSE-run residential hostels for unaccompanied minors operated to lower standards than those stipulated in various pieces of legislation for national childcare residential centres, and that the hostels were outside the remit of independent inspection by HIQA.<sup>59</sup> Joyce and Quinn (2009) highlighted a lack of resources regarding allocation of dedicated, trained care staff on site in hostels and cases of managers and security staff only on site during evening hours and at weekends. The Ombudsman for Children’s Office report highlighted a commitment within the *Implementation Plan of the Report of the Commission to inquire into Child Abuse* (discussed in section 3.3.1.1) to end the use of separately run hostels for unaccompanied minors and to commence ‘a process to change its model of care for separated children so that foster care and residential arrangements will be more easily accessible to this group’.

Debate concerning unaccompanied minors going missing while in State care continued to take place, with figures citing an approximation of 7 per cent of unaccompanied minors dealt with by the Health Service Executive (HSE) between 2000 and 2008 having subsequently gone missing.<sup>60</sup> In June 2009, figures cited by *The Irish Times* stated that some 23 unaccompanied minors had disappeared from HSE managed hostels since the beginning of 2009.<sup>61</sup> Year-end figures of minors recorded as missing from care stood at 47 cases, with the HSE stating that some 36 of these minors were of Chinese nationality.<sup>62</sup> In addition, and as discussed in detail in Joyce and Quinn (2009), the HSE noted that the trends showed that the majority of unaccompanied minors who subsequently went missing from State care

<sup>59</sup> Ombudsman for Children’s Office (2009) *Separated Children Living in Ireland*.

<sup>60</sup> Health Service Executive report *The Review of Adequacy of Services for Children and Families, 2008* as cited in the *Irish Times* (4 November 2009).

<sup>61</sup> *The Irish Times* (17 June 2009) ‘Disappeared: 20-plus children missing from HSE care’. Available at [www.irishimes.com](http://www.irishimes.com).

<sup>62</sup> *The Irish Times* (1 February 2010) ‘Most minors who went missing from care were Chinese’. Available at [www.irishtimes.com](http://www.irishtimes.com).

presented at ports of entry at weekends or in the evening. In an overall context, the numbers of minors missing from State care during 2009 had decreased sharply from previous years, attributed to increased coordination between the HSE, GNIB and local Gardaí. Specific measures to combat the disappearance of minors while in State Care and to be introduced under the Joint Protocol discussed in 3.3.1.1 included collaborative interviewing by social workers and Gardaí of suspected unaccompanied minors at ports of entry, planned observation of ‘at-risk’ minors and sharing of photographic identification of minors between the HSE and Gardaí.

### 3.3.2 CASE LAW

#### 3.3.2.1 *Unaccompanied Minors*

A legal case which prompted media discussion during 2009 was *A (M) v Minister for Justice, Equality and Law Reform & Ors*<sup>63</sup> which concerned the decision of the Minister to deport a 19 year old Nigerian woman who was the elder half-sister of two Nigerian minor boys who were in the care of the State. All three had arrived in the State as unaccompanied minors having been abandoned in the State by their father. The court found in the circumstances that the Minister had not conducted a sufficient analysis of the right to respect for family life that three enjoyed, and quashed the deportation order in respect of her.

In a related issue, the Immigrant Council of Ireland (ICI) has highlighted an ongoing issue regarding legal instruction on behalf of unaccompanied minors under HSE care. With the majority of unaccompanied minors in the care of the HSE placed there under ‘voluntary’ care (without a care order or parental/guardian consent), the HSE thus does not retain the capacity to act on their behalf in connection with the instruction of legal representatives.

#### 3.3.2.2 *Female Genital Mutilation*

As discussed earlier in this text, the *Annual Policy Report on Migration and Asylum 2008: Ireland* discussed a legal case involving an assertion that if returned to Nigeria, an applicant mother's two daughters would be forced to undergo Female Genital Mutilation similar to their sister who allegedly died from the practice in Nigeria in 1994. The case was decided in January 2009 in favour of the Minister for Justice, Equality and Law Reform who refused to consider applications for subsidiary protection because Deportation Orders in respect of the applicants had been signed prior to the coming into force of *S.I. No. 518 of 2006*. The decision has been appealed to the Supreme Court, and the outstanding case brought against Ireland in the ECtHR in 2008 by the same applicant had not yet concluded as of the end of 2009.<sup>64</sup>

Parliamentary discussion was prompted by this case and two days after judgment was delivered, Senator Ivana Bacik requested a debate on Female Genital Mutilation in the Seanad, noting that it was especially warranted in the wake of the recent case judgment.<sup>65</sup> The *Prohibition of Female Genital*

<sup>63</sup> *A (M) v Minister for Justice, Equality and Law Reform & Ors* [2009] IEHC 245.

<sup>64</sup> *I (E P)(A Minor) & Ors v Minister for Justice, Equality and Law Reform* [2009] IEHC 61)

<sup>65</sup> Seanad Debates (Thursday 29th January 2009) Vol. 193, No.8. Available at <http://debates.oireachtas.ie/Xml/30/SEN20090129.PDF>

*Mutilation Bill, 2009* was proposed by way of Private Members' Bill by Jan O'Sullivan TD of the Labour Party, on 7 May 2009. The Bill seeks to codify the crime as distinct from the offence of 'causing serious harm', so as to avoid ambiguity as to whether the law would recognise as a defence to a charge of causing serious harm in this context, that the victim of FGM had consented to a 'surgical treatment' or, in the case of a minor, that her parents had given consent on her behalf. It states in the explanatory memorandum that the Bill was reacting to the phenomenon of the practice of FGM entering developed countries with some immigrants who are holding on to their customs and identity.<sup>66</sup>

## 3.4 Economic Migration

### 3.4.1 ADMINISTRATIVE DEVELOPMENTS

As referenced earlier in the text, there were a number of administrative developments in the area of economic migration in Ireland during 2009, arguably reflecting changed economic circumstances in the State.

In April 2009 the Department of Enterprise, Trade and Employment announced a revision of the list of occupations eligible for Green Cards in the €30,000-€59,999 per annum category. Skills determined to no longer require inclusion on the occupational shortage category included those within the healthcare, financial services and industry/services category. All removed occupations continued to be eligible for Green Cards where the salary payable to the jobholder is €60,000 or more per annum.<sup>67</sup> In the same month, the Department of Enterprise, Trade and Employment reiterated a policy of providing up to three months from date of redundancy for Green Card holders to find new employment.<sup>68</sup>

Also in April 2009, and with effect from 1 June 2009, the Department of Enterprise, Trade and Employment announced a number of changes to eligibility requirements for new work permits for prospective first-time entrants to the Irish labour market. The measures related to qualifying conditions for both work permits in the lower skills/qualifications areas and which could be 'increasingly' filled by Irish or EU citizens, and to short-time work permits. Work permits for jobs paying less than €30,000 per annum will only be granted in 'exceptional' cases. Measures included:

- New arrangements applying to first-time new work permit applications received on or after 1 June 2009.
- New arrangements for applying for future renewal of these permits (including revised fees). These changes related primarily to an increase in fees for work permit renewals.
- Spouses/Dependants of first-time new work permit applications received on or after 1 June 2009 cannot be considered for an employment permit under the Spousal/Dependant Scheme. In cases where the application for the principal permit holder's first

<sup>66</sup> *Prohibition of Female Genital Mutilation Bill, 2009*. Available at <http://www.oireachtas.ie/viewdoc.asp?DocID=11843>

<sup>67</sup> Department of Enterprise, Trade and Employment (April 2009). *Revision of the List of Occupations Eligible for Green Cards in the Salary Range €30,000-€59,999*. Available at [www.entemp.ie](http://www.entemp.ie).

<sup>68</sup> Department of Enterprise, Trade and Employment (April 2009). *Revised Arrangements for Green Card Scheme, April 2009*. Available at <http://www.entemp.ie/labour/workpermits/revisedgreencard.htm>.

employment permit is received on or after 1 June 2009, only Spouses/Dependants of Green Card holders and Researchers are eligible to apply for a Spousal/Dependant Permit. Spouses/Dependants of all other employment permit holders who applied for a principal employment permit in the State on or after 1 June 2009 are required to apply for an employment permit in their own right according to standard eligibility criteria.<sup>69</sup>

- Reintroduction of a Labour Market Needs Test. A vacancy for which an application for a work permit is made must be advertised with the FAS/EURES employment network for at least 8 weeks, in addition to local and national newspapers for six days. This is to ensure that in the first instance a national of the EEA or Norway, Iceland, Liechtenstein and Switzerland, or in the second instance a national of Bulgaria or Romania, cannot be found to fill the vacancy.
- New arrangements for all work permit holders placed on short-term working.

In addition, certain categories of work permit holders (horse racing riders, heavy goods vehicle drivers and domestic workers including carers in the home and childminders) were no longer eligible for new work permits and will be eligible for renewal only. A notable change in policy related to an increase in time to seek alternative employment for work permit holders who have been made redundant. Work permit holders in employment for less than five years will have up to six months from the date of redundancy to seek alternative employment and a Labour Market Needs Test will not be required in respect of any subsequent work permit application made.<sup>70</sup>

In August 2009 a change in policy on employment permits for non-EEA national holders of permits of five years or more was announced. The announcement acknowledged that those who had worked in the State for five years would be eligible for applications for long-term residence and/or citizenship, and may have pending applications. Those who have worked lawfully and held an employment permit for five consecutive years and are either still in employment or have been made redundant will no longer require an employment permit. The Department of Justice, Equality and Law Reform will provide such persons with an immigration permission to reside in Ireland and to work without the need for an employment permit. The permission will run for one year initially and be capable of renewal. It is not an unconditional permit and the holders are expected to work, support themselves and any dependents and seek new employment if made redundant. NGOs have commented that arguably this introduction was also to ease certain pressure on the Department of Justice, Equality and Law Reform due to delays in processing applications for long-term residence that may have already been submitted by employment permit holders.

<sup>69</sup> Department of Enterprise, Trade and Employment (April 2009). *Employment Permits Arrangements Schedule of Fees for Employment Permits*. Available at [www.entemp.ie](http://www.entemp.ie)

<sup>70</sup> Department of Enterprise, Trade and Employment (April 2009). *Changes to Work Permits Arrangements, April 2009*. Available at <http://www.entemp.ie/labour/workpermits/revise-work-permit-arrangements-20-june-2009.htm>



An easing of immigration rules for redundant non-EEA migrant workers who have held an employment permit for less than five years was also announced, with an immediate increase from three to six months of 'breathing space' to find alternative employment. In addition, a Labour Market Needs Test will not be required in respect of work permit applications from current and future employment permit holders who have been made redundant.<sup>71</sup>

In September 2009 a new scheme for foreign nationals who have become undocumented through 'no fault of their own' after previously being in possession of a work permit was announced with effect from 1 October 2009. The 'Undocumented Workers' Scheme provided a facility whereby undocumented non-EEA nationals, who can show that their undocumented status is through no fault of their own but due to the action or inaction of their employer, can obtain a temporary immigration permission of four months within which to seek legitimate employment, or, if they are already employed, within which to obtain an employment permit from the Department of Enterprise Trade and Employment. Each case will be considered on its own merit and it was noted that the Scheme was not to be considered a regularisation 'in any sense'. This temporary permission did not apply to other categories of irregular migrants such as those who had entered the State illegally or overstayed their visa permission.<sup>72</sup> The Scheme ran until 31 December 2009 and 185 applications were received.<sup>73</sup> Organisations such as the Immigrant Council of Ireland (ICI) welcomed the Scheme while expressing concerns regarding how 'attractive' the Scheme may be due to the difficulties for many in proving how they had become undocumented and the very limited nature of the remedy.

On 1 September 2009, the Department of Justice, Equality and Law Reform published a set of proposals for reform of non-EEA student immigration and launched a public consultation process on the issue.<sup>74</sup> The proposals contained more than 20 discussion items including capping the length of time a person can spend in Ireland as a student at no more than

<sup>71</sup> Department of Enterprise, Trade and Employment (August 2009). *Policy on Employment Permits for non-EEA nationals who have held permits for 5 years or more and easing of the immigration rules for redundant non-EEA migrant workers*. Available at

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

In October 2009 the Department of Enterprise, Trade and Employment also announced that as part of commitments within the *Renewed Programme for Government - October 2009*, a Labour Market Needs Test will not be required in respect of Work Permit applications from current and future Employment Permit holders who have been made redundant.

<sup>72</sup> Department of Enterprise, Trade and Employment (September 2009) *Undocumented Workers Scheme*. Available at

<http://www.entemp.ie/labour/workpermits/undocumented.htm>; Department of Justice, Equality and Law Reform (14 September 2009). 'Ahern Launches New Work Permit Scheme for Foreign Nationals'. Press Release. Available at: <http://www.justice.ie/en/JELR/Pages/Ahern%20Launches%20New%20Work%20Scheme%20for%20Foreign%20Nationals>

<sup>73</sup> Department of Justice, Equality and Law Reform (2010) *Annual Report 2009*. Available at [www.justice.ie](http://www.justice.ie).

<sup>74</sup> Department of Justice, Equality and Law Reform (1 September 2009). Ahern to overhaul student immigration regime. *Press Release*. Available at <http://www.justice.ie/en/JELR/Pages/Ahern%20to%20overhaul%20student%20immigration%20regime>

five years or two years in further education or English language classes; introducing a two-tier system to facilitate the targeting of incentives towards the upper end of the academic spectrum; a stronger inspection process; possible changes in respect of visas; and new guidelines on work placement or internship. Some transitional measures are set out for those already in the system. A review of current provisions regarding access of students to the labour market is to be the subject of a separate review process. In the announcement, the Minister for Justice, Equality and Law Reform noted the potential of those pursuing advanced degrees as ‘potential entrepreneurs, high skills employees or scientific researchers’ and that a focus should be made at addressing ‘how they can progress within the immigration system after their graduation’. During 2009 the *Third Level Graduate Scheme* (which was introduced in 2007) also continued, with the purpose of allowing legally resident non-EEA third-level graduates to remain in Ireland for the purpose of seeking employment and applying for a Green Card or work permit.

### 3.4.2 MIGRATION FLOWS

Central Statistics Office (CSO) figures for 2009<sup>75</sup> showed a decrease in overall net immigration, together with increased emigration resulting in a return to net outward migration for the first time since 1995. The total number of immigrants into the State in the year to April 2009 fell by 26,500 to 57,300, while the number of emigrants has shown a marked increase of almost 40 per cent on the previous year to 65,100. As a result net migration is estimated to have fallen from net inward migration of 38,500 in 2007-2008 to a net outflow of 7,800 by April 2009. Immigration of all non-Irish national groups showed a decline during this time, with those from EU12 countries showing the largest decrease of almost 60 per cent.

In a measure designed to accurately reflect the migration flows within Ireland (some believed immigrants were travelling home soon after arrival), the CSO undertook a cross-sector analysis of records of the Department of Social and Family Affairs and the Revenue Commissioners based on employment activity in Ireland during 2006. Allocated Personal Public Service Numbers (PPSNs) and employer end-of-year tax returns for non-Irish nationals were used to reveal the extent to which those issued with PPSNs took up and remained in insurable employment.<sup>76</sup> Results published in late 2007 indicated that just under half of those allocated PPSNs between 2002 and 2005 had insurable employment activity in Ireland during 2006 providing some support to the idea that many immigrants were not remaining in Ireland on a long-term basis.<sup>77</sup> A further CSO report published in 2009 looked at similar activity during 2007 and found that of a total of 118,000 non-Irish nationals aged 15 years and older assigned PPSNs in 2004, 45 per cent had insurable employment in Ireland at any time during 2007. Some 651,215 PPSNs were allocated to non-Irish nationals between 2002 and 2006, with almost half of these issued to EU12 nationals. Nationals from the EU10 Accession States accounted for just

<sup>75</sup> CSO (September 2009) *Population and Migration Estimates April 2009*. Available at [www.cso.ie](http://www.cso.ie).

<sup>76</sup> PPSNs are used to access benefits and information from public service agencies more quickly and more easily such as social welfare, revenue, public healthcare and education.

<sup>77</sup> Central Statistics Office (2007). *Foreign Nationals: PPSN Allocations and Employment, 2002-2006*. Available at [www.cso.ie](http://www.cso.ie)

over 60 per cent of non-Irish nationals in employment during 2007, although this varied per economic sector.

### 3.4.3 HABITUAL RESIDENCE CONDITION

Much discussion regarding implementation of a Habitual Residence Condition (HRC) regarding access to social welfare services took place during 2009, with a related new piece of legislation occurring towards the end of the year.

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.

A Habitual Residence Condition attached to social welfare payments was introduced ahead of the accession of ten new Member States to the EU in May 2004. The basic requirement for a person to be deemed 'habitually resident' is to have been resident in Ireland or the UK for a continuous period of two years before making an application for social welfare. The measure was introduced to protect the Irish welfare system in the event of large-scale immigration from EU10 States. Certain amendments to the HRC were introduced in intervening years (and discussed in greater details in previous reports in this series including the *Policy Analysis Report on Asylum and Migration: Ireland 2005*), most notably the introduction of five determining factors for this condition. The *Social Welfare Consolidation Act 2005* incorporated five determining factors for eligibility of meeting of the HRC into Irish law, determined via ECJ case law in the area.<sup>78</sup> No single factor is to be decisive. The five factors are:

- Length and continuity of residence in Ireland or in any other particular country
- Length and purpose of any absence from Ireland
- Nature and pattern of employment
- Applicant's main centre of interest
- Future intentions of applicant as they appear from all the circumstances.

Amendments in December 2009 in the *Social Welfare and Pensions (No.2) Act 2009* 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.<sup>79</sup> Criticism on these amendments centred on the exclusion of those within the asylum system.

<sup>78</sup> See Department of Social and Family Affairs (2010) 'Habitual Residence Condition – Guidelines for Deciding Officers on the determination of Habitual Residence' for further discussion on this topic. Available at <http://www.welfare.ie/EN/OperationalGuidelines/Pages/habres.aspx>.

<sup>79</sup> FLAC News (October – December 2009) *Asylum seekers barred from welfare benefits*. Available at [www.flac.ie](http://www.flac.ie).



During 2009 and assisted by the NGO FLAC (Free Legal Advice Centres), applicants in several cases challenged decisions that they did not meet habitual residence requirements in applications for social welfare by virtue of being either asylum seekers or those seeking leave to remain in the State. Although most of the cases concerned access to Child Benefit, others concerned access to Disability Allowance, Carer's Allowance, State Pension and Guardian's Payment. As stated by FLAC, an assertion by the Department of Social and Family Affairs that individuals within the asylum process could not satisfy the HRC condition was based upon a Supreme Court decision of 2003, *Goncescu v. Minister for Justice et al*<sup>80</sup>. Of the 2009 cases, some nine were requests for a review of appeal decisions to the Chief Social Welfare Appeals Officer who subsequently determined that in all cases the *Goncescu* decision was not relevant as it was determined prior to the introduction of the habitual residence requirement. In addition, the Officer determined that 'there could not be a blanket ban on anyone in the asylum process qualifying for social welfare', with each application to be 'considered on its merits' including the length of time in the State. All nine cases were also found to possess eligibility for benefits.<sup>81</sup>

Other related measures adopted during 2009 included the restriction of rights of migrant workers from the EEA to Supplementary Welfare Allowance in cases where they are involuntarily unemployed after being in employment for less than one year. As a result of the revised circular issued by the Department of Social and Family Affairs, such former workers will now be eligible for Supplementary Allowance for up to six months. In addition, the right to remain in the State for such a worker 'expires 6 months after the cessation of the employment unless the person concerned re-enters employment or has sufficient resources to maintain themselves and their family and so not become a burden on the State'.<sup>82</sup> In other measures and related to access to Child Benefit in particular, EEA migrant workers are now required to certify every three months that they continue to work in the State.

### 3.4.4 RESEARCH

A 2009 report, *Issues and Challenges in the Recruitment and Selection of Immigrant Workers in Ireland - Final Report Prepared for the Employers' Diversity Network of the Public Appointments Service*,<sup>83</sup> sought to explore ways in which employers' recruitment practices impact on foreign workers and on the ways in which potential immigrant employees interact with those processes. Acknowledging that immigrants experienced varied difficulties in relation to recruitment and selection, the report highlighted that these difficulties extend into seeking support from labour market service providers. Reasons for such are identified as a lack of English language proficiency or lack of knowledge regarding the Irish labour market. Restrictions regarding access to work visas and barriers regarding the right to work for non-EEA nationals were also identified as barriers, as were challenges within the recruitment process itself. No organisation interviewed as part of the

<sup>80</sup> *Goncescu v. Minister for Justice et al* [2003] IESC.

<sup>81</sup> FLAC (2010) *FLAC Annual Report 2009*. Available at [www.flac.ie](http://www.flac.ie).

<sup>82</sup> Department of Social and Family Affairs (15 June 2009) *SWA Circular No: 08/09*.

<sup>83</sup> WRC Social and Economic Consultants (2009) *Issues and Challenges in the Recruitment and Selection of Immigrant Workers in Ireland - Final Report Prepared for the Employers' Diversity Network of the Public Appointments Service*. Available at [www.integration.ie](http://www.integration.ie).

research had amended their recruitment process to determine whether it was ‘immigrant-friendly’, although many had altered questions regarding educational requirements on application forms. Overall, employers and applicants held different views regarding the recruitment process, and the authors noted that ‘it is safe to conclude that the extent to which the process of recruitment and selection presents barriers to immigrant workers is viewed very differently by immigrant workers and by employers.’ In addition, the 2009 report also calls for further research as to whether an occupation gap is an ongoing feature of the immigrant experience in Ireland.

McGinnity *et al* (2009)<sup>84</sup> evaluated direct discrimination against minority candidates in the recruitment process for the first time in an Irish context. The study, *Discrimination in Recruitment: Evidence from a Field Experiment*, found that candidates with Irish names were over twice as likely to be invited for interview for advertised jobs as candidates with identifiably non-Irish names, even with equivalent CVs and working permission. No variation regarding the extent of discrimination between minority groupings was found (Asian, African and German names), and rates of discrimination did not appear to vary across the labour market in Ireland.

### 3.5 Family Reunification

During 2009 some 895 applications for family reunification of recognised refugees were received, with some 731 cases approved during the same period. In response to a Parliamentary Question in July 2009 the Minister for Justice, Equality and Law Reform noted that 401 applications were approved in 2008.<sup>85</sup> The average time for processing of applications was listed as taking approximately 24 months and it is reported to be much longer in many cases. Overall, processing times from the receipt of the file in ORAC Family Reunification Unit from the Department of Justice, Equality and Law Reform to the completion of the investigation of the family reunification application and issue of the Section 18 report under the *Refugee Act, 1996* were between 16 and 18 weeks on average over the year. ORAC have commented that the Family Reunification Unit in ORAC continued to work closely with the Family Reunification Unit in INIS to streamline their respective work processes with a view to providing a more efficient service to applicants.

#### 3.5.1 PUBLICATION OF REVIEW OF FAMILY REUNIFICATION PROCESS

A report by the Refugee Information Service (RIS), *The Challenges facing Refugees, Beneficiaries of Subsidiary Protection and Persons granted Leave to Remain, as they seek reunification with their families in Ireland*, was published in July 2009 and sought to outline the family reunification process as related to beneficiaries of international protection.<sup>86</sup> The RIS report cited figures of some 2,600 applications for family reunification made on behalf of almost 5,800 dependent family members between 2003 and 2008. Noting

<sup>84</sup> McGinnity *et al* (2009) *Discrimination in Recruitment: Evidence from a Field Experiment*. Dublin: The Equality Authority and ESRI.

<sup>85</sup> Parliamentary Question No.497 (9 July 2009) Available at <http://debates.oireachtas.ie/Xml/30/DAL20090709A.PDF>.

<sup>86</sup> Catherine Kenny/RIS (2009) *The Challenges facing Refugees, Beneficiaries of Subsidiary Protection and Persons granted Leave to Remain, as they seek reunification with their families in Ireland*. Available at [www.ris.ie](http://www.ris.ie).

expedited processing times in recent years, the report highlighted previous experience of ‘procedural difficulties’ resulting in a processing duration of almost two years in many cases. A lack of clear guidelines for applicants regarding supporting documentation is highlighted, particularly regarding minor applicants for family reunification who may not be able to prove that siblings are dependant upon them. A lack of entitlement for family reunification for partners of recognised refugees who may have fled persecution due to their sexual orientation is also highlighted, while noting that a forthcoming Civil Partnership Bill may theoretically amend such a gap.

Recommendations within the RIS report included overall support to applicants and family members. A broadening of the definition of family to include ‘legal and societal’ developments including civil partnership is recommended, as is a recognition of the composition of family in other cultures and within conflict situations whereby customary caregivers may be via informal fostering or adoption. The RIS report calls on clarification within Irish legislation of the right to family reunification of refugees and holders of subsidiary protection status, and recommends the extension of family reunification for immediate family members to persons granted leave to remain in Ireland. The completion of applications for family reunification within a six month time period is recommended, as is the call for an absence of documentary supporting evidence not to affect the credibility of an application. The report also calls for publication of detailed statistics concerning family reunification, including the number of positive and negative decisions. A right of appeal to an independent body in event of a negative decision is also recommended.

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## 3.6

### Other Legal Migration

#### 3.6.1 CERTIFICATES OF REGISTRATION

Overall, some 166,387 Certificates of Registration (referring to new registrations and renewals) were issued during 2009, representing a slight increase of comparable figures for 2008 when 164,344 such Certificates were issued. A Certificate of Registration is issued by the Garda National Immigration Bureau (GNIB) to lawfully resident non-EEA nationals who expect to stay in the State for more than three months. It verifies that the person has registered with their registration officer. The Certificate of Registration contains the person’s photo, registration number, relevant immigration stamp, and an expiry date. A Certificate of Registration Card contains one of a number of different immigration stamps.<sup>87</sup> Notable

<sup>87</sup> 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

increases in the numbers of Stamps for categories 1A, 4, 4 EUFAM and 5 occurred while numbers of registration under Stamp 1 decreased by 27 per cent to 23,417. The ICI has commented that this decrease is arguably due to both a decrease in new employment permits being issued and an increase in Stamp 4 permits being issued to the non-requirement to renew an employment permit under the newly announced Scheme during 2009.

## 3.7 Integration

### 3.7.1 LAUNCH OF WEBSITE BY THE OFFICE OF THE MINISTER FOR INTEGRATION

Following on from the launch of the policy statement, *Migration Nation - Statement on Integration Strategy and Diversity Management* in 2008, the website of the Office of the Minister of State for Integration, [www.integration.ie](http://www.integration.ie), was launched in June 2009. The website aims to be a key resource for migrants and highlights both the work of the Office and of relevant developments in the area of 'integration and diversity management' taking place on the national and international level. Information regarding national and European funding streams administered by the Office of the Minister of State for Integration is also provided on the website. Links to useful national and international websites are also provided.

### 3.7.2 FUNDING OPPORTUNITIES

A number of funding initiatives were announced and supported by the Office of the Minister of State for Integration during 2009 including a grant for the Health Service Executive (HSE) Community Games and grants to Local Authorities with significant immigrant populations in their area to promote integration initiatives. In November 2009 it was reported that the Minister of State for Integration, Mr John Curran TD, had made integration funding of €916,734 available to date in 2009.<sup>88</sup>

The 2010 Budget saw an increase in funding to the Office of the Minister of State for Integration with €5.465 million allocated in comparison to a revised estimate of €5.165 million for 2009.

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 Law Reform to remain in Ireland without condition as to time. Holders of this stamp do not need an employment permit or business permission in order to work.

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

<sup>88</sup> The Irish Times (4 November 2009). 'Minister for Integration Announces Integration funding made available in 2009'. Available at [www.irishtimes.com](http://www.irishtimes.com).

### 3.7.3 SUBMISSION OF IRELAND'S THIRD AND FOURTH PERIODIC REPORT TO THE UN COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (CERD)

Ireland's combined *Third and Fourth Periodic Report to the UN Committee on the Elimination of Racial Discrimination (CERD)* was submitted in December 2009.<sup>89</sup> Civil society groups and members of the public were invited to submit relevant comments, which were used to inform the preparation of the report with a consultation meeting with civil society undertaken in late 2008. The report outlined activities in the area of anti-racism and integration measures over the past few years, including initiatives progressed under the Government's *National Action Plan against Racism*, which has since been disbanded in the budget cuts. A Shadow Report from civil society is forthcoming.

### 3.7.4 PUBLICATION OF GARDA DIVERSITY STRATEGY AND IMPLEMENTATION PLAN 2009 - 2012

The police *Garda Diversity Strategy and Implementation Plan 2009 - 2012* was published in 2009, which sought to recognise 'existing Diversity and promoting even greater Diversity in our workforce' including 'greater ethnic, cultural and non-Irish national representation at all levels of the organisation'. Of note, the Plan stated that the integration of diversity into employment practice and service delivery should result in 'improved employment conditions, service delivery and police practice across the nine equality grounds – gender, ethnicity, marital status, family status, religion, sexual orientation, disability, age or membership of the Traveller community.'

### 3.7.5 RESEARCH

UNHCR carried out research on the needs of refugees in the area of integration in a *Mapping Integration*<sup>90</sup> study published in April 2009. An outcome of UNHCR Ireland's Age, Gender and Diversity Mainstreaming project 2008/2009, it provides a tool for those involved in refugee integration by mapping the prevailing integration definitions of UNHCR, the European Union (EU), 12 European countries and Ireland. The report found that Ireland is at an integration crossroads, and that both the *Migration Nation* policy document by the Office of the Minister of State for Integration and the draft *Immigration, Residence and Protection Bill 2008* place an increasing expectation on the individual to integrate. Overall recommendations from refugees surveyed for the report included additional support via improved access to education and employment;

<sup>89</sup> Government of Ireland (2009) *Third and Fourth Periodic Report to the UN Committee on the Elimination of Racial Discrimination (CERD)*. Available at [http://www.integration.ie/website/omi/omiwebv6.nsf/page/AXBN-7ZLJ9Z13515711-en/\\$File/Combined%20Third%20and%20Fourth%20Report%20to%20the%20UNCERD%20Committee%20latest.pdf](http://www.integration.ie/website/omi/omiwebv6.nsf/page/AXBN-7ZLJ9Z13515711-en/$File/Combined%20Third%20and%20Fourth%20Report%20to%20the%20UNCERD%20Committee%20latest.pdf)

<sup>90</sup> UNHCR (2009) *Mapping Integration: UNHCR's Age, Gender and Diversity Mainstreaming Project on Refugee Integration in Ireland - 2008/2009. Targeted or Mainstream Support to Refugee Integration? Legislation, Policy and Support in Ireland and Selected European Countries*. Available at [www.unhcr.ie](http://www.unhcr.ie).

improved public knowledge about refugees; better English classes; clearer information regarding government policy and family reunification.

The study explored how refugees experience integration in Ireland and found via a questionnaire that many refugees participating in the survey generally agreed with the integration points outlined in the *EU Common Basic Principles*. Many of those surveyed felt responsible for their own integration, but also viewed a responsibility on the side of government and of the host society to be ‘welcoming and supportive’. Nearly all of those surveyed agreed that language knowledge, employment in Ireland and knowing the values of the society were important for their integration. Regarding language, many of those surveyed felt that the available language courses were not adequately adapted to meet the differing levels of English that refugees may have. Many of those surveyed felt ‘disadvantaged’ in the job market in Ireland due to a lack of work experience in the country and ‘general discrimination’ including their colour, employer preference for candidates from within the EU or a lack of willingness on employers’ side to either provide any employment, or provide employment other than that of a low paid, temporary nature to refugees.

### 3.8

#### Citizenship and Naturalisation

##### 3.8.1 APPLICATIONS FOR NATURALISATION

Some 27,765 applications for naturalisation were submitted in 2009 with 4,531 certificates of naturalisation issued. Of the 25,582 cases processed during 2009, some 12,242 were rejected as invalid and 6,011 were deemed ineligible. Of the 7,329 eligible applications for naturalisation processed, some 5,868 cases were granted and 1,461 refusals made during the same timeframe.

The issue of processing times for applications for citizenship continued to prompt significant discussion during 2009. In response to a Parliamentary Question of July 2009 it was noted that the average processing time for an application for citizenship from application to decision was 23 months.<sup>91</sup> NGOs noted that some presenting cases concerned applicants who had been waiting for several years, with the length of processing being the subject of several court proceedings.<sup>92</sup>

NGOs have commented that issues arising in the naturalisation process are now one of the predominant queries received by them, and are increasingly issues before the courts. In particular, NGOs including the ICI have commented that refusals in applications for naturalisation remains a major issue, notably the issue of refusal on good character grounds for applicants having come to the ‘adverse attention’ of An Garda Síochána.<sup>93</sup>

<sup>91</sup> Parliamentary Question No. 324 (7 July 2009) Available at <http://debates.oireachtas.ie>

<sup>92</sup> E.g. *N-v-MJELR*, [2009] IEHC 354. See Section 3.8.4 for further discussion of this case.

<sup>93</sup> This ground for refusal has been the subject of court proceedings, (e.g. *B -v- MJELR*, Unreported, High Court Mr. Justice Cooke, 18th June 2009, which was on appeal to the Supreme Court at the time of writing.)



### 3.8.2 S.I. No.287 OF 2009, THE LONG TERM RESIDENCY (FEES) REGULATION 2009

*S.I. No.287 of 2009, the Long Term Residency (Fees) Regulation 2009* came into effect on 7 September 2009 and provided for a fee of €500 per initial granting of a status of Long Term Residency to a non-EU national. Previously there had been no charge for processing of such applications. Applications for Long Term Residency in Ireland are currently processed as an administrative scheme. Persons who have been legally resident in the State for a continuous period of five years (i.e. 60 months) or more on the basis of work permits/work authorisation/work visa conditions may apply for a five-year residency extension. In that context, they may also apply to be exempt from employment permit requirements.

During 2009, the Irish Naturalisation and Immigration Service (INIS) announced that Green Card Permit holders whose Permit and Immigration Registration Cards (GNIB card) were due to expire in 2009 will not be required to apply for a renewal permit from the Department of Enterprise, Trade and Employment. These arrangements were subject to the person having 'complied with their previous immigration and employment permit conditions' and being 'of good character'<sup>94</sup> and a permission of one year's duration will be issued subject to the qualifying criteria being met. This status will entitle the Green Card Permit holder to work without an employment permit during the time of permission. It was noted that these arrangements do not confer the full benefits of the residency status. Policy notification during 2009 also indicated that 'subject to parliamentary approval of the *Immigration, Residence and Protection Bill 2008*, further details will be published in due course advising Green Card Permit holders or those who have re-registered of how to apply under the proposed legislation for Long Term Residence'.

### 3.8.3 RENEWAL OF IRISH BORN CHILD SCHEME

In December 2009 a notice of renewal was announced for non-Irish national parents of Irish born children granted leave to remain under the *Irish Born Child Scheme (IBC/05)* and *Irish Born Child Renewals Scheme, 2007*.<sup>95</sup> As discussed in greater detail in earlier reports in this series, in previous years non-Irish parents of Irish-born children had been able to apply for residency in Ireland based on the Irish citizenship of their child. After a referendum in 2004 and a subsequent Constitutional amendment, changes in citizenship provisions were enacted in the *Irish Nationality and Citizenship Act 2004*, which commenced in January 2005. Under the 2009 call for renewal, permission to remain will be renewed for a further period of three years, save in exceptional circumstances, and subject to conditions.

<sup>94</sup> Irish Naturalisation and Immigration Service (21 May 2009). *Renewal of Green Card Work Permit*. Available at [http://www.inis.gov.ie/en/INIS/Pages/Renewal\\_of\\_Green\\_Card\\_Work\\_Permit](http://www.inis.gov.ie/en/INIS/Pages/Renewal_of_Green_Card_Work_Permit)

<sup>95</sup> By year end of 2009, some 14,254 applications for renewal under the 2007 Scheme had been received, with 14,139 granted positive decisions and 115 applications refused.

### 3.8.4 CASE LAW REGARDING CITIZENSHIP AND NATURALISATION

The case of *N (A) v Minister for Justice, Equality and Law Reform*<sup>96</sup> represented an unsuccessful attempt by an applicant for a certificate of naturalisation to reduce the (then) expected processing time of 29 months by seeking a court order compelling the Minister to process the application. The application was processed in 17 months before the Court could make any order. The applicant subsequently failed in his application for the costs of the court application against the Minister because the court was not satisfied that any evidence of unreasonable and unconscionable delay had been established, nor had the applicant established any prejudice by such delay. However, the court decided not to award costs against the applicant in the case.

*H (L G) v Minister for Justice, Equality and Law Reform & Attorney General*<sup>97</sup> concerned a case in which a certificate for naturalisation was refused to a Chinese programme refugee on the basis that she did not meet the requirement that she be of good character because of the criminal records of her sons. In quashing the decision of the Minister, the Court found that the actions of her sons could not go to the character of the applicant and that the Minister was incorrect to have regard to them.

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## 3.9

### Illegal Immigration

#### 3.9.1 READMISSION AGREEMENT

During 2009 Ireland continued to participate in a *National Readmission Agreement* with Nigeria which was concluded in 2001. This Agreement has not yet been fully ratified by Nigeria but it is reported that immigration authorities in both countries are acting ‘in the spirit’ of the agreement, which has since been ‘reviewed and agreed to be working well.’

A number of new initiatives in the area of anti-human trafficking took place during 2009, including publication of a National Action Plan and the expansion of supports (including legal advice) to suspected victims of trafficking.

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## 3.10

### Actions Against Human Trafficking

#### 3.10.1 NATIONAL ACTION PLAN TO PREVENT AND COMBAT TRAFFICKING OF HUMAN BEINGS IN IRELAND 2009 – 2012

A *National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009 – 2012* was published by the Department of Justice, Equality and Law Reform in June 2009. An output of the Interdepartmental High Level Group, the National Action Plan outlined previous measures already undertaken by Government in the area, identified areas which required further action and outlined structures which will bring Ireland into line with its international obligations and allow for the ratification of the *Council of Europe Convention on Action against Trafficking in Human Beings* and the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. Action points include awareness (legislative

<sup>96</sup> *N (A) v Minister for Justice* [2009] IEHC 354

<sup>97</sup> *H (L G) v Minister for Justice, Equality and Law Reform & Attorney General* [2009] IEHC 78.



measures and training of officials), protection (services for victims of trafficking, including child victims and provision for a legislative basis for a 'recovery and reflection' period currently in operation on an administrative basis), and prosecution and investigation. Of note, the National Action Plan identifies support to source countries and highlights the possibility of 'entering into specific anti-human trafficking bilateral agreements with source countries to support them in their efforts to combat human trafficking.'

The National Action Plan also outlined the role of Irish Aid, the Overseas Development Division of the Department of Foreign Affairs, which had entered into the third phase of a comprehensive Partnership Programme with the ILO facilitating the promotion of women's entrepreneurship, the inclusion of people with disabilities in employment, action against forced labour, including human trafficking, and the elimination of child labour.<sup>98</sup>

### 3.10.2 ADMINISTRATIVE AND LEGAL PROVISIONS FOR VICTIMS OF TRAFFICKING

Provision commenced of legal assistance to potential and suspected victims of trafficking by the Refugee Legal Service in November 2009. A range of supports (accommodation, health services, crime prevention advice, interpretation, education etc.) were expanded during 2009 to include the provision of a 'comprehensive individual care plan' by the Health Service Executive (HSE) for each potential or suspected victim of trafficking.<sup>99</sup> Related training was also provided to ORAC frontline staff to increase awareness of human trafficking and to assist in identifying possible trafficking issues during the process of refugee status determination.

During 2009 some ten persons received the 60 day 'recovery and reflection' period to remain in Ireland and 11 persons were granted temporary residence permits.<sup>100</sup> Overall, some 68 incidents of alleged human trafficking offences were reported to An Garda Síochána, involving 49 adults and 17 minors. Of this overall number, 40 were in the asylum process in Ireland, 15 required immigration permission, five were in the care of the HSE as minors, four were EU citizens and a further two voluntarily left the State.<sup>101</sup>

At the time of writing, there have been no convictions in Ireland under the *Criminal Law (Human Trafficking) Act, 2008* which sought to give effect to, amongst other measures, the *Council Framework Decision of 2002 on Combating Trafficking in Human Beings*; the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*; and the *Council of Europe Convention on Action Against Trafficking in Human Beings*.

<sup>98</sup> Department of Justice, Equality and Law Reform (June 2009) *National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009 – 2010*. Available at <http://www.justice.ie/en/JELR/Final%20National%20Action%20Plan2.pdf/Files/Final%20National%20Action%20Plan2.pdf>

<sup>99</sup> Department of Justice, Equality and Law Reform (2010) *Annual Report 2009*. Available at [www.justice.ie](http://www.justice.ie).

<sup>100</sup> A further EU national had been granted a temporary residence permit.

<sup>101</sup> Department of Justice, Equality and Law Reform (2010) *Annual Report 2009*. Available at [www.justice.ie](http://www.justice.ie).

During 2009, one action undertaken by the GNIB to prevent a suspected participant in human trafficking re-entering the State became the subject of a judicial review in the case of *C (J) v Minister for Justice, Equality and Law Reform & Commissioner of Garda Síochána*.<sup>102</sup> The applicant was a Chinese national who had entered the State on foot of a visa and was granted leave to remain in Ireland. He was detained at the border of Ireland and Northern Ireland by the United Kingdom authorities on suspicion of human trafficking because he was in the company of two young female students who had been reported missing to the United Kingdom police. These facts were disclosed to the Irish authorities and a Detective Inspector of the GNIB revoked his leave to remain in Ireland with immediate effect. It was communicated to the United Kingdom authorities that the applicant would be refused permission to re-enter Ireland and that he could not re-enter without re-applying for a visa. There was no subsequent criminal conviction, but the applicant was deported to China by the United Kingdom under their immigration procedures. The applicant sought to quash the decision of the GNIB. In quashing the decision, the Court held that the GNIB were not entitled to exercise their statutory powers in relation to the applicant's leave to remain, as he was not actually within their jurisdiction when these powers were purported to be exercised.

During 2009 a dedicated Investigation and Coordination Unit was established within the Garda National Immigration Bureau (GNIB). This Unit is tasked with coordinating policy and providing expert assistance in investigations regarding human trafficking.

While overall measures have been welcomed, organisations such as the MRCI have continued to highlight persistent issues, including difficulty in identifying victims of trafficking for forced labour by key agencies. MRCI called for 'a shared understanding of the indicators of the different forms of trafficking' by all agencies and organisations working with victims of trafficking.<sup>103</sup> During 2009, the MRCI noted a significant increase in the number of such cases.

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### 3.11 Return Migration

#### 3.11.1 DEPORTATION AND DUBLIN REGULATION TRANSFER ORDERS

During 2009, some 1,077 Deportation Orders were signed, with 291 effected. Nationals of Nigeria, South Africa, Brazil, Georgia and China were represented as the main countries of stated origin of those deported. During the same timeframe, 243 Transfer Orders were effected under the Dublin Regulation, with the majority being to the United Kingdom (193 Orders) and France (ten Orders). Of those transferred under the Dublin Regulation, nationals of Nigeria constituted the largest single grouping followed by Pakistani and Somali nationals. Some 4,899 persons were refused leave to land at Irish ports during 2009.

<sup>102</sup> *C (J) v Minister for Justice, Equality and Law Reform & Commissioner of Garda Síochána* [2009] IEHC 24.

<sup>103</sup> MRCI (10 June 2009) 'Migrants Trafficked for Forced Labour Must be Identified and Protected'. *Press Release*. Available at [www.mrci.ie](http://www.mrci.ie). See also Niall Crowley/MRCI (2010) *Hidden Messages, Overt Agendas*. Available at [www.mrci.ie](http://www.mrci.ie).

During 2009 Ireland participated in eight joint European return operations organised by FRONTEX, and was the lead partner in two of these.

### 3.11.2 VOLUNTARY ASSISTED RETURN

In 2009 in Ireland, 539 persons were assisted in returning home voluntarily. Of this figure, some 405 persons were assisted to return by the International Organization for Migration (IOM) and 134 persons received administrative assistance to return by the Department of Justice, Equality and Law Reform. Overall, the majority of returnees were of Brazilian nationality with nationals of Moldova, Nigeria, Georgia and Mauritius also constituting large groupings.

During 2009, the IOM mission in Ireland operated the Voluntary Assisted Return and Reintegration Programme (VARRP) for asylum seekers and irregular migrants. Under the programme, reintegration assistance was provided to all returnees with up to €600 provided per individual returnee and €1000 per family group. In March 2009, specific eligibility criteria were introduced for irregular migrants accessing the VARRP. These remained in place for the remainder of 2009 and resulted in a fairly balanced uptake of project services between those at various stages of the asylum system and in irregular situations.

Under the European Return Fund, the IOM mission in Ireland implemented a Voluntary Assisted Return and Reintegration Programme for Vulnerable Irregular Nigerian Nationals (VARRP VINN) in conjunction with IOM in The Netherlands, which ended in 2009. In addition, funding from the European Return Fund assisted in production of return-related information for potential VARRP beneficiaries entitled IRRICO 2.

### 3.11.3 JUDICIAL REVIEW

A total of 267 legal challenges via judicial review were instituted by persons facing deportation/transfer or removal from Ireland during 2009. By year end, some 250 judicial review cases were still before the courts.

### 3.11.4 CASE LAW CONCERNING RETURN MIGRATION

In 2008 the Supreme Court made a decision on the level of respect for family life that must be afforded to families comprising foreign national parents and Irish citizen children when making deportation orders pursuant to Article 3 ECHR in *Oguekwe v. The Minister for Justice, Equality and Law Reform*.<sup>104</sup> In 2009 there was further litigation taken in the High Court, which sought either to challenge the appropriateness of the test subsequently applied by the Minister in respect of this type of case, or to broaden the types of cases to which that decision would apply.

<sup>104</sup> *Oguekwe v. The Minister for Justice, Equality and Law Reform* [2008] I.E.S.C. 25.

With respect to the appropriate test to be applied by the Minister, the case of *Alli v. Minister for Justice, Equality and Law Reform*<sup>105</sup> represented the test case in 2009. A Deportation Order had been issued in respect of the applicant who is the father of Irish citizen children. His wife and other non-Irish children were legally resident in the State, and he had entered the State three years after their initial arrival. In refusing his application for leave to remain, the Minister considered whether there were any ‘insurmountable obstacle’ to the family moving with the applicant to Nigeria should he be deported. The applicant submitted that the Minister should have applied a test of reasonableness as outlined in *Oguekwe*. The High Court concluded that there was no material difference between an ‘insurmountable obstacles’ test and a ‘reasonableness’ test. Consequently, leave to seek judicial review was refused and an application for a certificate of appeal to the Supreme Court on a point of law of public importance was also refused.

The applicants in *O (Y) v Minister for Justice, Equality and Law Reform*<sup>106</sup> unsuccessfully sought to include non-parental family members of Irish citizen children within the remit of the *Oguekwe* decision. It concerned a 22 year old Nigerian woman who wished to remain in Ireland with her Nigerian mother, on whom she was not dependent, and with her two much younger sisters who are Irish citizens. It was held that it would only be in the most exceptional circumstances, ‘...involving perhaps the death of a mother or genuinely nurturing father or very serious disability of an Irish child,’ where the need for administrative reasonableness would be extended to consider the proportionality of the decision pursuant to the *Oguekwe* test.

The case of *B (A) & Ors v Refugee Applications Commissioner & Ors*<sup>107</sup> concerned a Nigerian woman and her two children. It was submitted that Irish and non-Irish children are entitled to the same rights and that consequently the *Oguekwe* test was appropriate to the consideration of the Article 8 family rights of non-nationals. The Court rejected this submission and held that it was the test of reasonableness that applies and that the question of proportionality only applies to cases involving Irish citizen children.

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### 3.12 External Relations/ Global Approach

There were no significant developments in this area during 2009.

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### 3.13 Education Provision

A number of reports examining education provision for migrants in Ireland were published during 2009.

<sup>105</sup> *Alli v. Minister for Justice, Equality and Law Reform*, Unreported decision of Clark J, High Court, 2nd December 2009.

<sup>106</sup> *O (Y) v Minister for Justice, Equality and Law Reform* [2009] IEHC 148.

<sup>107</sup> *B (A) & Ors v Refugee Applications Commissioner & Ors* [2009] IEHC 97.

The *OECD Reviews of Migrant Education - Ireland*<sup>108</sup> was published during 2009 and examined the rapid increase in the inflow of immigrant students in recent years and focus of migrant education on first-generation immigrants. The Reviews surmised that unlike most other OECD countries, first-generation immigrant students in Ireland, on average, achieve education outcomes similar to their Irish-born peers, possibly due to similar or higher socio-economic backgrounds of these students to Irish-born peers. The Review highlighted a gap in achievement between students speaking English at home and those who do not. A ‘whole-school approach’ is recommended, involving all teachers, school leaders, parents and communities in order to make schools more culturally and linguistically diverse. Added investment in language provision by all teachers and overall parental involvement are also recommended.

Smyth *et al* (2009) in the research report, *Adapting to Diversity: Irish Schools and Newcomer Students*,<sup>109</sup> analysed the number of ‘newcomer’ students within Irish primary and secondary schools via survey data. Owing to a large scale rapid immigration in the last decade, the ethnic composition of the student body in Irish primary and secondary schools has undergone a substantial change. The aim of the study was to explore the experiences of the new arrivals in the Irish educational system and how Irish schools cope with the challenge of catering for a more diverse student body. Estimating that newcomer students made up approximately 10 per cent of the primary school-going population and 6 per cent of the second-level population in 2007, the study highlighted language difficulties among ‘nearly all’ or ‘more than half’ of newcomer students as expressed by school principals. Other issues cited as challenges to newcomer students included language proficiency and social integration, as well as adaptation to a new educational system. Policy recommendations included the promotion of social integration by intercultural awareness promotion and anti-bullying measures; a greater emphasis on combining withdrawal and within-class support and additional resource provision; and language provision for students seen within that of access to translation. As with the OECD Review, a ‘whole-school approach’ is also recommended.

In June 2009 the Refugee Information Service (RIS) published a position paper regarding access to post-second level education in Ireland for refugees, persons granted Subsidiary Protection and with Leave to Remain status.<sup>110</sup> The paper highlighted a number of recurrent difficulties experienced by those seeking access to post-second level education including lack of proficiency in the English language; status, eligibility for maintenance grants and financial assistance and certain fee structures in place; and wider difficulties faced by migrants and thus requiring an extra layer of support if they are to progress in Ireland. A number of policy recommendations were made including development of a supported English as a Second Language (ESOL) strategy; addressing of eligibility of those granted residency in Ireland to access education without paying higher fee bands; and creation of a ‘one stop shop’ for integration of thought and action for second-level schooling. The RIS position paper also

<sup>108</sup> Taguma *et al* (2009) *OECD Reviews of Migrant Education IRELAND*. Available at <http://www.oecd.org/dataoecd/1/50/44344245.pdf>

<sup>109</sup> Smyth *et al*. (2009) *Adapting to Diversity: Irish Schools and Newcomer Students*. ESRI: Dublin.

<sup>110</sup> Liam Coakley/RIS (2009). *The Challenges and Obstacles facing Refugees, Persons with Leave to Remain and Persons granted Subsidiary Protection, as they seeks to access post-second level education in Ireland*. Available at [www.ris.ie](http://www.ris.ie).

recommended further informed research on the educational experiences of immigrants.

# 4. IMPLEMENTATION OF EU LEGISLATION

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## 4.1 Transposition of EU Legislation 2009

### 4.1.1 TRANSPOSITION OF EU LEGISLATION IN 2009

No EU legislation relating to migration and asylum was transposed in Ireland in 2009. The *Immigration, Residence and Protection Bill 2008*, which was discussed in detail in the *Annual Policy Report on Migration and Asylum 2008: Ireland*, was not enacted into law during 2009 and remained as ready for Report Stage by year end.<sup>111</sup> The Bill seeks to give effect to *Council Directive 2005/85/EC* (“The Procedures Directive”) and *Council Directive 2001/55/EC*, to complement the provisions of the *Criminal Law (Human Trafficking) Act, 2008* giving effect to *Council Framework Decision 2002/629/JHA of 19 July 2002 on Combating Trafficking in Human Beings*, and to integrate into primary legislation the provisions of the *European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006)*, which previously gave effect to *Council Directive 2004/83/EC*.

### 4.1.2 PROPOSED TRANSPOSITION OF EU LEGISLATION

There were no new pieces of legislation that proposed to transpose EU legislation in the State in 2009.

### 4.1.3 LEGISLATIVE ACTS ADOPTED AFTER ENTRY INTO FORCE OF THE AMSTERDAM TREATY (1ST MAY 1999)

The decision to opt in to the European Migration Network by exercising its option to notify the Council and the Commission via Article 4 of the fourth Protocol set out in the *Treaty of Amsterdam*, was approved by *Commission Decision adopted on 28 April 2009, reference COM (2009) 2708* in respect of *Council Decision 2008/381/EC of 14 May 2008*.

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## 4.2 Experiences, Debates in the Implementation of EU Legislation

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

In 2009 there was further litigation in the Irish High Court relating to Ireland’s transposition of *Council Directive 2004/83/EC* which was

<sup>111</sup> The *Immigration, Residence and Protection Bill, 2008* was withdrawn in 2010. In June 2010, the *Immigration, Residence and Protection Bill, 2010* was launched and includes various amendments suggested and/or announced at earlier stages of the 2008 Bill’s passing.

transposed into Irish domestic law by the *European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006)*.

As discussed earlier in the text, the Nigerian applicant in the pending ECtHR case against Ireland in 2008 concerning *refoulement* and the risk of Female Genital Mutilation in respect of her two minor daughters, also commenced proceedings in the Irish High Court in 2008. She sought to challenge the exercise of ministerial discretion not to process her application for subsidiary protection, but was unsuccessful in a judgment delivered on 27 January 2009. The discretion arose owing to the fact that Deportation Orders were signed in respect of the applicant and her daughters prior to the commencement of *S.I. No. 518 of 2006*, and will now be considered by the Supreme Court on appeal.<sup>112</sup>

The case of *T (M S) & Ors v Minister for Justice, Equality and Law Reform*<sup>113</sup> concerned the legality and interpretation of the additional wording in regulation 5(2) of *S.I. No. 518 of 2006* which was not contained in *Council Directive 2004/83/EC*. In outlining serious harm as a basis upon which subsidiary protection would be granted, regulation 5(2) makes an addition to the wording in Article 4.4 of the Directive to the effect that notwithstanding that there may be good reasons to consider that the serious harm complained of will not be repeated, compelling reasons arising out of previous serious harm alone may nevertheless warrant a determination that the applicant is eligible for protection. The Court found that this addition was permissible as it was more favourable to the applicant and not incompatible with the Directive. It was also held that it was within the powers conferred on the Minister to include it by way of statutory instrument as a supplementary provision.

The applicant in *O (V) v Minister for Justice, Equality and Law Reform & Refugee Applications Commissioner*<sup>114</sup> advocated an interpretation of *S.I. No. 518 of 2006* which would oblige the ORAC to consider whether they qualified for subsidiary protection at the ORAC stage once his claim for asylum was rejected.<sup>115</sup> It was also contended that the requirement to consider the matters set out in regulation 5(1)(a) to (e) (namely, matters that shall be taken into account by a protection decision-maker) is mandatory and that in this case it was necessary to consult relevant country of origin information to ensure fair procedures. The court rejected both arguments as a misinterpretation of the law and with respect to the argument under regulation 5, the decision appeared to be founded upon the fact that country of origin information would be irrelevant in a case where general credibility had not been established.<sup>116</sup>

<sup>112</sup> *I (E P)(A Minor) & Ors v Minister for Justice, Equality and Law Reform* [2009] IEHC 61.

<sup>113</sup> *T (M S) & Ors v Minister for Justice, Equality and Law Reform* [2009] IEHC 529.

<sup>114</sup> *O (V) v Minister for Justice, Equality and Law Reform & Refugee Applications Commissioner* [2009] IEHC 21.

<sup>115</sup> Under the present practice it is the Minister who decides this issue, after the asylum application process is concluded, by way of separate application.

<sup>116</sup> A similar argument pursuant to regulation 5 was raised in relation to the appeals stage of the process in the cases of *L (L C) v Refugee Appeals Tribunal & Minister for Justice, Equality and Law Reform* [2009] IEHC 26, and *U (N A) & A (T) v Refugee Appeals Tribunal (Garvey) & Minister for Justice, Equality and Law Reform* [2009] IEHC 283 and was dismissed on a similar basis in both cases.



In *O(J)(A Minor) v Minister for Justice, Equality and Law Reform & Refugee Applications Commissioner*<sup>117</sup> the High Court did not accept the argument that regulation 5 prohibited the ORAC from rejecting the claim of an infant founded upon an identical claim of its mother solely by reference to the outcome of the mother's application at the same stage.

A more in-depth analysis of the requirements of regulation 5 was made by the High Court in *I (G O) v Minister for Justice, Equality and Law Reform & Refugee Applications Commissioner*<sup>118</sup> where it was suggested that ORAC was in breach of its duties as a decision-maker within the meaning of regulation 2 by not taking into considerations the matters in regulation 5 and in particular the obligation to actively search out and assess information. Specifically, it was contended that this is a deficiency incapable of being cured by the statutory appeal where under the *Refugee Act 1996*, the Tribunal member has no equivalent investigative obligation; and further, at the appeal stage a presumption operates against the applicant that they are not a refugee pursuant to section 11A(3) of the 1996 Act. The latter section states that when an appeal is taken, that it shall be for the applicant to show that they are a refugee. The court interpreted this provision as compatible with the regulations and with the aim or standards of the Directive as it did not amount to a presumption that the appellant is not a refugee, but rather it fixed a 'logical framework and procedural starting point' for the appeal. It was also held that the Tribunal member on appeal is not relieved from the obligation to take account of the matters required by regulation 5 or of the need to investigate any new matters that arise owing to section 16(6) of the 1996 Act, which gives the Tribunal the discretionary power to require the ORAC to make further enquiries. The Court stated that as the Directive does not seek to harmonise or alter the national administrative procedures, the crucial point for assessment of compliance with the Directive is when the declaration is made by the Minister after the appeals process. The question is whether at that stage the process as a whole cumulatively attains and applies the minimum standards. It was stated that the crucial flaw in the applicant's argument was the supposition that because both the authorised officer (at the ORAC stage) and the Tribunal member are defined as 'protection decision makers' in regulation 2, that each so called 'decision' in the process must separately and fully comply with the requirements of regulation 5(1) if each is to be lawful.

In *E (S B) v Refugee Appeals Tribunal & Minister for Justice, Equality and Law Reform*<sup>119</sup> leave was granted to judicially review the decision of the RAT in part on the basis that it was a substantial argument that the contested decision was in breach of the obligations imposed by regulation 7 in finding that internal relocation in Nigeria was available to the applicant in circumstances where the issue received no attention or investigation before the ORAC, only passing reference was made to the possibility at the hearing of the appeal, and no specific part of Nigeria was identified or checked as a prospective site for such relocation.

<sup>117</sup> *O(J)(A Minor) v Minister for Justice, Equality and Law Reform & Refugee Applications Commissioner* [2009] IEHC 478

<sup>118</sup> *I (G O) v Minister for Justice, Equality and Law Reform & Refugee Applications Commissioner* [2009] IEHC 463

<sup>119</sup> *E (S B) v Refugee Appeals Tribunal & Minister for Justice, Equality and Law Reform* [2009] IEHC 479.

#### 4.2.2 LITIGATION CONCERNING IRELAND'S TRANSPOSITION OF COUNCIL DIRECTIVE 2004/38/EC.

During 2009 there was also further litigation in the Irish High Court relating to Ireland's transposition of *Council Directive 2004/38/EC. B (I) v Minister for Justice, Equality and Law Reform & Ors*<sup>120</sup> concerned an application by a Romanian national who held a work permit and had permission to reside in the State since October 2000, to quash a decision refusing him a certificate of permanent residence in the State pursuant to the *European Communities (Freedom of Movement of Persons) No. 2, Regulations 2006 (S.I. 656/2006)* which gave effect to *Directive 2004/38/EC*. The Minister's decision was to the effect that in order to make a valid application for permanent residence under this regulation an applicant had to be resident in this State for more than five years as a European citizen. Because Romania became a member of the EU on 1st January, 2007, a Romanian national could not be eligible to make such an application until 1st January, 2012 even if they had been legally resident in the State prior to 2007. In concurring with the Minister's interpretation of the Directive, the High Court rejected the applicant's claim.

The case of *B (B) & R (A K)(A Minor) v Minister for Justice, Equality and Law Reform*<sup>121</sup> concerned a Romanian national who unsuccessfully sought to compel the Minister to consider an application for leave to remain which was pending when Romania acceded to the EU on 1st January 2007. The Minister contended that such applications were invalid once Romania had acceded, and that the proper course was to apply for a work permit. The applicant would not have qualified for a work permit because he was an unskilled worker and wanted leave to remain so that he would have an automatic right to work. In fact this right would not have applied to this applicant, as the position in relation to Romanian nationals had been altered by section 3 of the *Employment Permits Act 2006*, which had the effect of requiring any Romanian national in employment in the State, with leave to remain, to obtain a work permit. In any event it was held that the Minister had no power since 1st January 2007 to make a decision on the application in question and the Minister could not be compelled to do so.

In the case of *O (A N) & Ors v Minister for Justice, Equality and Law Reform*<sup>122</sup> the Nigerian applicant sought to judicially review the refusal of the Minister to issue a residence card to him pursuant to *Council Directive 2004/38/EC* and *S.I. 656/2006* on the basis that he did not qualify under the regulations as the stepfather of an Irish citizen child who was living in Ireland. The application failed owing to the fact that the Directives did not apply to a family member of a citizen of the State in which the application was made, and on the facts of this case, that the applicant was not a 'dependent direct relative' within the meaning of the Directives.

<sup>120</sup> *B (I) v Minister for Justice, Equality and Law Reform & Ors* [2009] IEHC 447.

<sup>121</sup> *B (B) & R (A K)(A Minor) v Minister for Justice, Equality and Law Reform* [2009] IEHC 333.

<sup>122</sup> *O (A N) & Ors v Minister for Justice, Equality and Law Reform* [2009] IEHC 531.

### 4.2.3 LITIGATION CONCERNING COUNCIL REGULATION (EC) No. 343/2003

The case of *Mirza & Ors v. RAT and Minister for Justice, Equality and Law Reform*<sup>123</sup> concerned the operation of *Council Regulation (EC) No. 343/2003* ('the Dublin II Regulation') in relation to transfers to Greece. Each of the applicants had applied for asylum in Ireland having all previously entered Greece. The ORAC concluded that Greece was the appropriate country to determine their application and a judicial review was taken of the Minister's decision to transfer them to that State. Only one of the applicants had made an asylum application in Greece and it had been refused.

The main submissions advanced on behalf of the applicants were that Greece is not acting in compliance with the Dublin II Regulations and that there was a risk of *refoulement* should they be returned. In addition it was argued that in accordance with Article 3(1) of the Regulation there is a presumption that Member States apply the same standard of protection and determine applications in accordance with the Refugee Convention. Such a presumption is not conclusive and in cases where the presumption is rebutted by clear and cogent evidence, it was argued that ORAC is obliged to exercise its discretion under Article 3(2) of the Regulation (known as the 'sovereignty' clause) and to accept responsibility for determining the asylum application in Ireland. Attention was drawn to statistics indicating that first instance decisions taken by Greek police officers had a 0.04% chance of success and that success rates on appeal were just 2.07%. Reliance was also placed on the UNHCR position paper urging Member States to use their discretion under Dublin II not to return the applicants to Greece.

The Court refused judicial review on the basis that there was a distinction between cases where there is a real risk of a breach of Article 3 of the ECHR, and cases where there are concerns about the asylum determination process and reception conditions which fall short of breaches of the Convention. It was held that in the case of the former there may be an obligation to derogate from the Regulation but there can be no obligation to derogate in the case of the latter. The case is now the subject of an appeal on a point of law to the Supreme Court.

<sup>123</sup> *Mirza & Ors v. RAT and Minister for Justice, Equality and Law Reform*, Unreported decision of Clark J, High Court, 21 October 2009.

# ANNEX I – METHODOLOGY, TERMS AND DEFINITIONS

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## A.I.1 Methodology

### A.I.1.1. DEFINITION OF A SIGNIFICANT DEVELOPMENT

For the purpose of the *Annual Policy Report 2009*, specific criteria regarding the inclusion of significant developments and/or debates have been adopted to ensure standard reporting across all national country reports. On an EMN central level, the definition of a ‘significant development/debate’ within a particular year was an event that had been discussed in parliament and had been widely reported in the media. The longer the time of reporting in the media, the more significant the development, and likewise if such developments/debates then led to any proposals for amended or new legislation.

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

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

### A.I.1.2 SOURCES AND TYPES OF INFORMATION USED

The sources and types of information used include:

- published and adopted national legislation;
- government press releases, statements and reports, published government schemes;
- media reporting (both web-based and print-media);
- other publications (European Commission publications);

- I/NGO Annual Reports; publications and information leaflets);
- case law reporting.

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

### **A.I.1.3 STATISTICAL DATA**

Statistics, where available, were taken from published first-source material such as Government/Other Annual Reports and published statistics from the Central Statistics Office. Where noted, and where not possible to access original statistical sources, data were taken from media articles based on access to unpublished documents. Additional statistical reporting contained in *Annex IV – Statistical Data* is taken from governmental websites of the Department of Enterprise, Trade and Employment and Department of Justice, Equality and Law Reform.

### **A.I.1.4 CONSULTED PARTNERS**

In order to provide a comprehensive and reflective overview of national legislative and other debates, a representative sample of core partners were contacted with regard to input on a draft *Annual Policy Report on Asylum and Migration 2009: Ireland*.

- Immigrant Council of Ireland (ICI)
- Migrant Rights Centre Ireland (MRCI)
- Department of Justice, Equality and Law Reform
- Office of the Refugee Applications Commissioner
- Refugee Appeals Tribunal

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## **A.I.2 Concepts and Definitions**

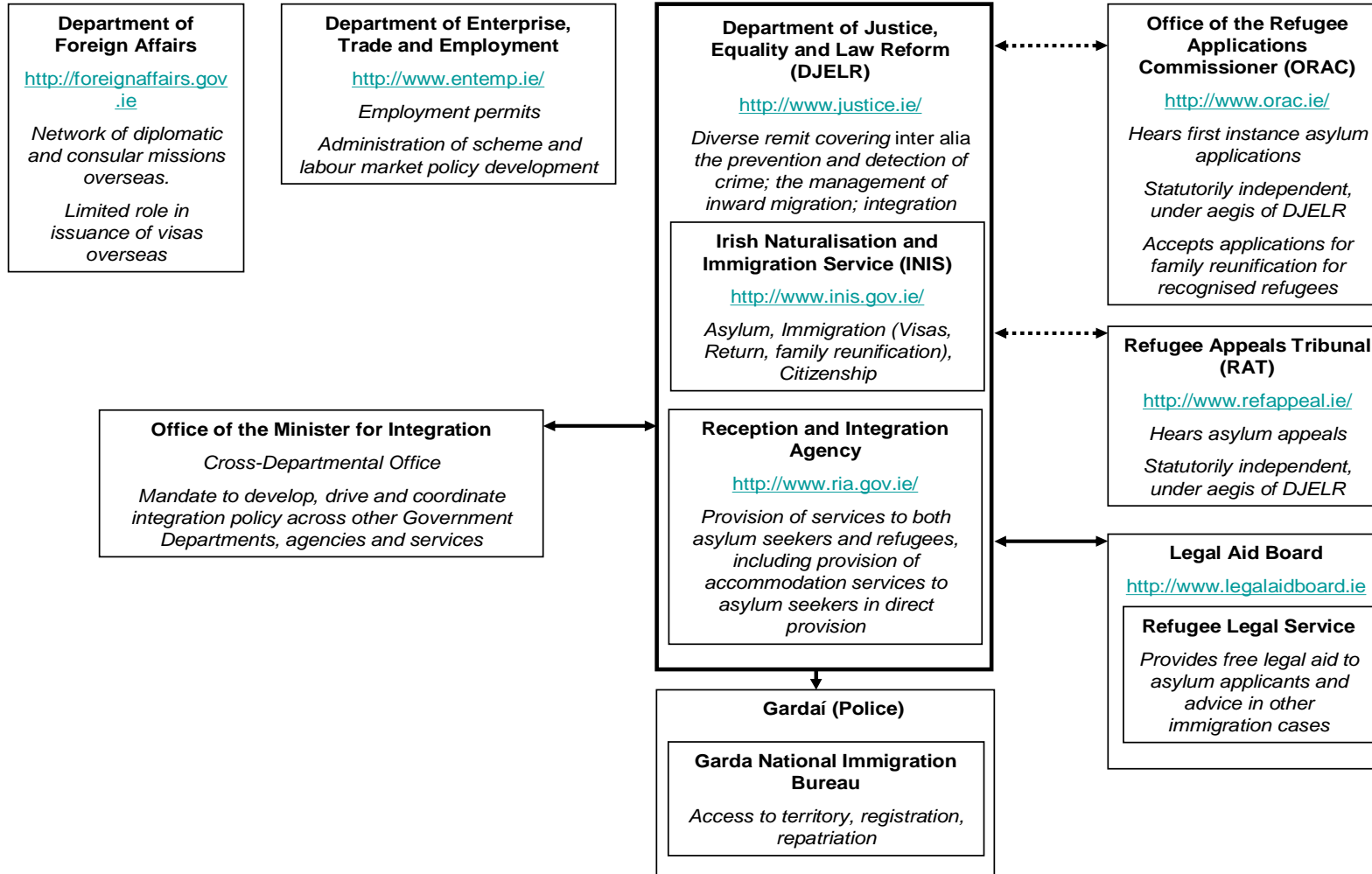
All definitions for technical terms or concepts used in the study are, insofar as possible, in cohesion with those used in the EMN Glossary.

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

- The *Refugee Act, 1996* set out, for the first time, a system for the processing of asylum applications in Ireland.
- The *Immigration Act, 1999* set out the principles, procedures and criteria, which govern the detention and removal of foreign nationals from the State, and made provision for the issuing of deportation and exclusion orders.
- The *Immigration Act, 2003* introduced carrier liability whereby a carrier can be held responsible and fined accordingly for bringing an undocumented immigrant to the State. Provision was also made for the return of persons refused leave to land, usually by the carrier responsible, to the point of embarkation.
- The *Immigration Act, 2004* included a wide range of provisions that would previously have been contained in the Orders made under the 1935 Act. It made provision for the appointment of immigration officers and established criteria for permission to land. The Act empowered the Minister to make orders regarding visas and approved ports for landing, and it imposed limits on the duration of a foreign national's stay. Certain obligations were imposed on carriers, and persons landing in the State were required to be in possession of a valid passport or identity document. It also outlined a requirement for foreign nationals to register with the 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 trans-national management transfers; a Work Permit scheme for a very restricted list of occupations up to €30,000 and where the shortage is one of labour rather than skills.
- The *Criminal Law (Human Trafficking) Act, 2008* created offences criminalising trafficking in persons for the purposes of sexual or labour exploitation, or for the removal of their organs, and criminalised the selling or purchasing of human beings.

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



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



# ANNEX IV - STATISTICAL DATA

The tables below contain further relevant statistics for the reference year of 2009.

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

## A.IV.1 Migration Flows

**Table A1: Gross and Net Migration Flows, 1987-2009<sup>1</sup>**

Year (ending April)	Outward	Inward (‘000)	Net
1987	40.2	17.2	-23.0
1988	61.1	19.2	-41.9
1989	70.6	26.7	-43.9
1990	56.3	33.3	-22.9
1991	35.3	33.3	-2.0
1992	33.4	40.7	7.4
1993	35.1	34.7	-0.4
1994	34.8	30.1	-4.7
1995	33.1	31.2	-1.9
1996	31.2	39.2	8.0
1997	25.3	44.5	19.2
1998	28.6	46.0	17.4
1999	31.5	48.9	17.3
2000	26.6	52.6	26.0
2001	26.2	59.0	32.8
2002	25.6	66.9	41.3
2003	29.3	60.0	30.7
2004	26.5	58.5	32.0
2005	29.4	84.6	55.1
2006	36.0	107.8	71.8
2007	42.2	109.5	67.3
2008	45.3	83.8	38.5
2009	65.1	57.3	-7.8

Source: CSO, *Population and Migration Estimates (various releases)*. Available at [www.cso.ie](http://www.cso.ie)

<sup>1</sup> Tables A1 and A2 (or part of) are referenced from O’Connell and Joyce (2009) ‘*International Migration in Ireland, 2009*’ working paper. Available at [www.esri.ie](http://www.esri.ie)

**Table A2: Population aged 15 years and over by Nationality**

	2004, Quarter 3		2007, Quarter 4		2009, Quarter 2	
	1,000s	%	1,000s	%	1,000s	%
Irish nationals	2,979.60	92.5	3,027.0	86.2	3,079.0	87.4
Non-Irish nationals	240.7	7.5	485.3	13.8	444.8	12.6
<i>of which:</i>						
<i>United Kingdom</i>	77.5	2.4	95.9	2.7	93.8	2.7
<i>EU15 excl. Irl. &amp; UK</i>	33.8	1	46.6	1.3	45.7	1.3
<i>New EU Member States EU16 - EU27</i>	31.3	1	210.9	6.0	182.6	5.2
<i>Other</i>	98.1	3	131.9	3.8	122.7	3.5
Total persons	3,220.3	100	3,512.3	100.0	3,523.8	100.0

Source: CSO, various years. *Quarterly National Household Survey*. Available at [www.cso.ie](http://www.cso.ie)

## A.IV.2 Asylum and Refugee Applications; Stamp Registrations

**Table A3: Asylum Applications 1994-2009**

Year	Applications
1994	362
1995	424
1996	1,179
1997	3,883
1998	4,626
1999	7,724
2000	10,938
2001	10,325
2002	11,634
2003	7,900
2004	4,766
2005	4,323
2006	4,314
2007	3,985
2008	3,866
2009	2,689
Total 1994-2009	82,938

Source: Office of the Refugee Applications Commissioner. Available at [www.orac.ie](http://www.orac.ie)

**Table A4: Applications for Asylum by Top Five Nationalities in 2009**

Country	No.	%
Nigeria	570	21.2
Pakistan	257	9.5
China	194	7.2
DR Congo	102	3.8
Zimbabwe	91	3.4
Georgia	88	3.3
Other	1,397	51.9
<i>Total</i>	<i>2,689</i>	<i>100.0</i>

Source: Office of the Refugee Applications Commissioner, Available at [www.orac.ie](http://www.orac.ie)

**Table A5: Total Registrations by Stamp 2002 – 2009\***

	2002	2003	2004	2005	2006	2007	2008	2009
Unrecorded	-	-	2,425	1,728	2,182	1,260	1,985	2,391
Stamp 1	-	-	47,400	30,199	29,872	31,472	32,040	23,417
Stamp 1A	-	-	-	-	-	-	66	887
Stamp 2	-	-	31,338	28,021	29,426	36,019	41,156	41,639
Stamp 2A	-	-	-	2,198	3,630	3,701	3,850	3,879
Stamp 3	-	-	13,641	12,663	16,004	17,220	17,480	17,554
Stamp 4	-	-	38,997	57,220	61,928	63,748	63,794	70,803
Stamp 4 EUFam	-	-	-	-	916	1,660	3,727	5,208
Stamp 5	-	-	28	88	117	149	218	548
Stamp 6	-	-	9	7	11	17	26	61
Stamp A	-	-	36	2	2	6	2	-
Stamp B	-	-	83	11	2	1	-	-
<b>Total Registrations</b>	<b>93,546</b>	<b>127,956</b>	<b>133,957</b>	<b>132,137</b>	<b>144,090</b>	<b>155,253</b>	<b>164,344</b>	<b>166,387</b>

Source: Department of Justice, Equality and Law Reform.

Note: Breakdown of registrations by stamp in 2002 and 2003 is not available.

### A.IV.3 Work Permits

**Table A6: Work Permits Issued and Renewed, 1998-2009**

<b>Employment Permits* Issued and Renewed, 1998-2009</b>				
Year	Permits Issued	Permits Renewed	Total	Percentage of Total
1998	3,830	1,886	5,716	42.0
1999	4,597	1,653	6,250	28.9
2000	15,735	2,271	18,006	36.3
2001	29,951	6,485	36,436	36.0
2002	23,759	16,562	40,321	45.5
2003	22,512	25,039	47,551	62.1
2004	10,821	23,246	34,067	48.9
2005	8,166	18,970	27,136	55.7
2006	8,254	16,600	24,854	61.2
2007	10,147	13,457	23,604	54.1
2008	8,481	5,086	13,567	21.5
2009	4,024	3,938	7,962	29.0

*Source: Department of Enterprise, Trade and Employment.*

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

*\* Includes work permits, spousal work permits, group permits, green cards and intra company transfer permits. These data do not include a large number of students permitted to work in Ireland while engaged in education.*

# ANNEX V - EUROPEAN UNION MEASURES IN RELATION TO ASYLUM AND MIGRATION PUBLISHED DURING 2009, IRELAND'S PARTICIPATION

## European Union Measures in Relation to Asylum and Migration, Ireland's Participation

	Ireland opt in? Y/N/Not Relevant How measure is transposed into national law
<b>ASYLUM</b>	
A. Legislative acts adopted after entry into force of the Amsterdam Treaty (1 <sup>st</sup> May 1999)	
None	
B. International Agreements	
None	
C. Other acts adopted before entry into force of the Amsterdam Treaty (1 <sup>st</sup> May 1999) <sup>1</sup>	
None	
<b>EXTERNAL BORDERS</b>	
A. Conventions to which accession is obligatory	

<sup>1</sup> Relevant insofar as the later legislation has not replaced them.

	Ireland opt in? Y/N/Not Relevant	How measure is transposed into national law
None		
<b>B. Joint Actions, Joint Positions (Maastricht Treaty); Common, Positions Framework Decisions and Decisions (Amsterdam Treaty) Instruments adopted under the TEC</b>		
Regulation (EC) No 444/2009 of the European Parliament and of the Council of 28 May 2009 amending Council Regulation (EC) No 2252/2004 on standards for security features and biometrics in passports and travel documents issued by Member States (OJ L 142 of 6 June 2009, p. 1)	Not relevant	
Regulation (EC) No 81/2009 of the European Parliament and of the Council of 14 January 2009 amending Regulation (EC) No 562/2006 as regards the use of the Visa Information System (VIS) under the Schengen Borders Code (OJ L 35 of 4 February 2009, p. 56)	Not relevant	
<b>C. Other European Union Instruments and documents</b>		
None		
<b>VISA</b>		
<b>A. Conventions to which accession is obligatory</b>		
None		
<b>B. Joint Actions, Joint Positions (Maastricht Treaty); Common Positions, Framework Decisions and Decisions (Amsterdam Treaty) Instruments adopted under the TEC</b>		
Council Decision (2009/171/EC) of 10 February 2009 amending Annex 2, Schedule A, to the Common Consular Instructions on the visa for the diplomatic missions and consular posts, in relation to visa requirements for holders of Indonesian diplomatic and service passports (OJ L 61 of 5 March 2009, p. 17)	Not relevant	
Regulation (EC) No 390/2009 of the European Parliament and of the Council of 23 April 2009 amending the Common Consular Instructions on visas for diplomatic missions and consular posts in relation to the introduction of biometric including provisions on the organisation of the reception and processing of visa applications (OJ L 131 of 28 May 2009, p. 1)	Not relevant	
Commission Decision of 5 May 2009 adopting implementing measures for the consultation mechanism and the other procedures referred to in article 16 of Regulation (EC) No 767/2008 of the European Parliament and of the Council concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 117 of 12 May 2009, p. 3)	Not relevant	
<b>C. Other European Union Instruments and documents</b>		
None		

	<b>Ireland opt in? Y/N/Not Relevant</b>	<b>How measure is transposed into national law</b>
<b>IMMIGRATION</b>		
A. Legislative acts adopted after entry into force of the Amsterdam Treaty (1 <sup>st</sup> May 1999)		
Commission Decision of 28 April 2009 on the request by Ireland to accept Council Decision 2008/381/EC establishing a European Migration Network (notified under document number C(2009) 2708) (OJ L 108 of 29 April 2009, p. 53)	Participating.	
Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (OJ L 155 of 18 June 2009, p. 17)	Ireland has not exercised option to participate	
B. Other acts adopted before entry into force of the Amsterdam Treaty (1 <sup>st</sup> May 1999)		
None		
<b>FIGHT AGAINST ILLEGAL MIGRATION AND RETURN</b>		
A. Legislative acts adopted after entry into force of the Amsterdam Treaty (1st May 1999)		
Council Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally-staying third country nationals (OJ L 168 of 30 June 2009, p. 24).	Ireland has not exercised option to participate	
B. International Agreement		
None		
C. Other acts adopted before entry into force of the Amsterdam Treaty (1 <sup>st</sup> May 1999)		
<b>SCHENGEN (HORIZONTAL ISSUES) / SIS ISSUES) / SIS</b>		
None		

*Source: Department of Justice and Law Reform.*



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