REPORT
on the Free Movement of Workers in Ireland in 2007

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Contents

Introduction

There have been a number of developments in Ireland in 2007 that should be singled out in this Introduction.

First, difficulties in relation to the implementation of the 2004 Residence Directive have surfaced in the Irish courts. A number of third-country national spouses of EU citizens exercising rights of free movement have been refused residence on the basis of the requirement in the 2006 implementing Regulations that the accompanying family member must be lawfully resident in another Member State prior to coming to Ireland. This requirement – based on the *Akrich* ruling – has been challenged in a number of cases before the Irish High Court.

Second, there have been significant developments in relation to the effective application of the principle of non-discrimination in terms and conditions of employment. Concerns about exploitation of workers coming from the 10 Accession Member States and of posted workers from third countries – precipitating fears about a "race to the bottom" – have resulted in the reinforcement of the employment rights regime. This includes the establishment of a National Employment Rights Authority, strengthening of the powers of the Labour Inspectorate and proposals for more severe sanctions for breach.

Third, with the accession of Bulgaria and Romania in January 2007, citizens of these two Member States have had the same rights of access to Ireland as citizens of the other EU Member States *with the exception of access to the labour market*. This represented a qualification of the generous approach taken towards the Member States that acceded in 2004. With certain exceptions, work permits are therefore required for Bulgarian and Romanian nationals for the two years following accession. The immigration of a number of Romanian nationals without visible means of support resulted in a number of deportation orders being made in July 2007 under 2006 Regulations implementing the 2004 Residence Directive apparently on the basis that they had become an unreasonable burden on the social welfare system of the State. This is the first instance of "multiple" deportation of EC citizens, contrasting with a hitherto liberal regime.

Fourth, increasing attention is being paid to the language issue, in order to ensure that individuals seeking to conduct their affairs through Irish are able to do so. As far as the first official language – Irish – is concerned, the policy is that public services – including legal services should be delivered in Irish, but that, save where use of Irish is essential to the function (such as in Irish-speaking areas), Irish will not be required of applicants for employment. Proposals for removing the Irish-language for legal professionals – and replacing this with an effective voluntary system and the creation of a public register of Irish-speaking lawyers – reflect this trend. In relation to English (which is the most commonly-used language in Ireland), it is increasingly recognised – in particular in the healthcare sector - that even though professional bodies may not be able to assess the linguistic competence of qualified nationals from other EU Member States without raising free movement concerns, such nationals must nonetheless undertake to acquire the necessary linguistic knowledge and that *employers* may have regard to essential linguistic competence in deciding whether or not to employ an individual.

This report covers developments in 2007.[1] There have been some significant developments in 2008, some of which materially affect the position set out in the text and these will be reported on in the forthcoming report for 2008.

As before, the background against which any developments are to be understood is outlined in the report and this has led to some duplication of material in earlier reports.

[1] Many of these developments were in fact reported in the 2006 Report which sought to reflect material developments in 2007.

Chapter I
Entry, Residence, Departure

BACKGROUND

The Aliens Act 1935 and Orders made pursuant to this Act regulate the entry and presence of nationals who are not citizens of Ireland. Nationals of the United Kingdom were removed from the scope of the Aliens Act by the Aliens (Exemption) Order 1999.[2]

In April 2006, the European Communities (Free Movement of Persons) Regulations 2006 came into force, providing for the entry, residence and removal of nationals of other EU Member States and their dependents in accordance with Directive 2004/38/EC. These Regulations were revoked and replaced by the European Communities (Free Movement of Persons) (No. 2) Regulations 2006[3] (described as the "2006 Regulations") with effect from 1 January 2007 to take account of the accession of Romania and Bulgaria.[4]

The 2006 Regulations replace the special regime set out in the European Communities (Aliens) Regulations 1977[5] and the European Communities (Right of Residence for Non-Economically Active Persons) Regulations 1997[6] (as amended) in so far as EU citizens and their dependents are concerned. Regulation 3 of these Regulations provides that the 1977 and 1997 Regulations will continue to apply with respect to the entry and residence of nationals of EEA countries which are not Member States of the EU.[7]

Workers, self-employed persons, service providers/recipients, students, retired persons and a residual class of non-economically active persons in addition to the qualifying dependents of such persons are thus covered by the 2006 Regulations in the case of nationals of EU Member States and by the 1977 and 1997 Regulations in the case of nationals of other EEA member States.

The 2006 Regulations widen the concept of who is considered a dependent family member and introduce two classes of dependents. *'Qualifying family members'* refer to the dependents defined in Article 2 (2) (a) and (c) of the Directive, i.e., the spouse of the EU national and dependent direct descendents under the age of 21. *'Permitted family members'* refer to the dependents defined in Article 2 (2) (b) and (d) including, i.e., any family member irrespective of nationality who is not a qualifying family member and is either dependent on the EU national, a member of the EU national's household, requires the personal care of the EU national on health grounds or is in an attested durable relationship with the EU national in the country of origin or country of habitual or country of previous residence of the EU national. Partners of either sex fall within this category of dependents.

The Regulations do not generally apply (save for the obligation to apply for a residence document for a third country national dependent) to UK nationals.

With regard to non-EEA nationals, the Immigration Act 2004 currently sets out the main elements of State control over the entry and presence of non-nationals in the State. Sec-

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2 S. I. No. 97 of 1999.
3 S.I. No. 656 of 2006. http://www.inis.gov.ie/en/INIS/SI656of2006.pdf/Files/SI656of2006.pdf.
4 The Report focuses on the 2006 Regulations, rather than the earlier Regulations made in 2006.
5 S. I. No. 393 of 1977.
6 S. I. No. 57 of 1997.
7 The European Communities (Amendment) Act 1993 extended the scope of the 1977 & 1997 Regulations to other EEA nationals and their dependents.

tion 2 of the Act expressly provides that nothing in the Act is to derogate from 'any of the obligations of the State under the Treaties governing the European Communities' and any act adopted by an institution of those Communities.

The Immigration Act 1999[8] sets out the principles and procedures regulating the removal of foreign nationals.

The Immigration, Residence and Protection Bill, introduced in April 2007, provided for the replacement of the existing immigration legislation by a single measure. The Bill was stated not to apply to persons covered by Directive 2004/38/EC and was to be subject to the provisions of the EU Treaties. The Bill fell into abeyance with the decision to call a General Election in May 2007 and no attempt was made to revive it during 2007.[9]

1. ENTRY

Background

UK Nationals & the Common Travel Area Arrangements

The Common Travel Area arrangements enable citizens of the UK and of Ireland to move between their respective jurisdictions without the requirement to carry a passport and to establish themselves and enter the labour market in either jurisdiction as if they were citizens. There is no formal agreement between Ireland and UK regarding the common travel area, although the Common Travel Area is provided for in the UK Immigration Act 1971. The passport-free travel arrangements also apply as between these jurisdictions and the Isle of Man and Channel Islands.

Under the Aliens (Amendment) (No. 3) Order 1997,[10] Immigration Officers are permitted to carry out checks on persons arriving in the State from Great Britain or Northern Ireland, in order to identify non-UK nationals who are not entitled to enter Ireland. In practice, persons coming from the UK through the main airports are expected to produce a passport at immigration control (though a driving licence or equivalent is accepted): this appears to reflect the fact that the airport gates servicing UK-originating flights are not currently separated from flights coming from elsewhere.

It seems increasingly likely that the introduction of new passport/identity card rules and biometric technology in the UK will result in Ireland requiring biometric passports/identity cards to cross the border with the UK.

The Amsterdam Protocol and the Retention of Border Controls

In a Protocol agreed in the context of the Amsterdam Treaty, Ireland (together with the UK) is able to retain internal border controls – notwithstanding Article 14 of the EC Treaty – as long as it retains the Common Travel Area. At least as far as Ireland is concerned, the stated reason for this is the need to protect the integrity of the Common Travel Area. Ireland has "reluctantly" gone this route and, in a Declaration to the Final Act of the Amsterdam Treaty, it has declared its readiness to participate in the EC regime to the maximum extent compati-

8 Act No. 22 of 1999.
9 See, however, the Immigration, Residence and Protection Bill introduced in January 2008.
10 S.I. No. 277 of 1997.

ble with the maintenance of the Common Travel Area. This situation will continue under the Treaty for the Functioning of the European Union, if it is ratified and enters into force.

Text(s) in Force

Directive 2004/38/EC & European Communities (Free Movement of Persons) Regulations (No. 2) 2006

The 2006 Regulations are used as the basis for the commentary below.

- Entry of EU nationals and qualifying family members

  Regulation 4 provides that a Union Citizen falling within the scope of the 2006 Regulations and a qualifying family member who produces a valid identity card or passport as evidence of nationality and identity may not be refused leave to land unless he/she suffers from a specified disease or his/her personal conduct has been such that it would be contrary to public policy or would endanger public security to grant him/her leave to land.

  An immigration officer may refuse permission to enter the State to a non-national qualifying family member where the person does not have a valid passport or, if required, the necessary visa so long as the person has been given every reasonable opportunity to obtain and present the relevant documents to the officer or to prove by other means their entitlement to enter the State under the Regulations.

- Entry of permitted family members of EU nationals

  A permitted family member who produces a valid identity card or passport as evidence of nationality and identity, together with the relevant certification proving that he or she is a dependent within the meaning of the 2006 Regulations, may not be refused leave to land unless the authorities are not satisfied that the person is a permitted family member following an examination of the circumstances or where he/she suffers from a specified disease or disability or his/her personal conduct has been such that it would be contrary to public policy or would endanger public security to grant him/her leave to land. Reasons must be given to the person concerned where entry is refused. Permission to enter may be refused by an immigration officer on the same terms as for qualifying family members.

- Entry of EEA nationals

  Persons falling within the scope of the 1977 and 1997 Regulations who produce a valid identity card or passport as evidence of nationality and identity may not be refused leave to land unless he/she suffers from a specified disease or disability or his/her personal conduct has been such that it would be contrary to public policy or would endanger public security to grant him/her leave to land.

  The Department of Justice has advised that it may take steps to extend the scope of the 2006 Regulations to cover other EEA nationals and their dependents as soon as the European Commission has concluded its analysis on how Directive 2004/38/EC should apply to the EEA States outside of the EU.

Refugee Act 1996

Section 9 of the Refugee Act 1996[11] (as amended) requires that where a person arriving claims asylum, he or she must be given leave to enter.

In response to asylum applications continuing to be made from Romanian nationals following Romanian accession,[12] in January 2007, the Department of Justice, Equality and Law Reform issued an information note advising that in the light of the *EU Treaty Protocol on Asylum for Nationals of Member States of the European Union*, the Office of the Refugee Applications Commissioner (which is the first instance decision making body in the Irish Asylum System) will not accept asylum applications from nationals of all EU Member States.

Immigration Act 2004 (Visas)(No. 2) Order 2006[13]

Section 17 of the Immigration Act 2004 provided a new statutory basis for the making of visa orders. The Immigration Act 2004 (Visas) (No. 2) Order 2006 specifies the classes of non-nationals who are not required to have a valid Irish visa when landing in the State and classes non-nationals required to have a valid Irish transit visa when landing in the State. The States whose citizens do not require a visa include all 27 EU Member States, the remaining EEA Member States and Switzerland. This Order was introduced in December 2006 and came into operation on 1 January 2007. It updated the Immigration Act 2004 (Visas) Order 2006[14] to take account of the accession of Romania and Bulgaria.

Draft legislation, circulars, etc.

Immigration, Residence & Protection Bill (discussed below in Chapter VII*).*

Judicial practice

A number of cases brought before the Irish courts relate to Regulation 3(2) of the 1996 Regulations and are discussed in Chapter V, below.

2. RESIDENCE

Background

The 1977 and 1997 Regulations contain provisions on applications for residence permits, the issue of a first residence permit and the validity of residence permits. However in practice, residence permits have been seen as optional and only a very small proportion of persons eligible to do so have in fact applied for a permit.[15]

The 2006 Regulations provide that an EU national coming within the scope of the Regulations does not require a residence permit. However all non-EEA national dependents

[11] Act No. 17 of 1996.
[12] The Irish Times, New EU citizens not able to claim refugee status, 19 January 2007.
[13] S. I. No. 657 of 2006.
[14] S. I. No. 227 of 2006.
[15] In practice, non-national residents will register for the PPS number, giving entitlement to social welfare allowances.

of the EU national are required to apply for a residence card when they have been resident in the State for more than 3 months of their arrival.

Text(s) in force

Directive 2004/38/EC and the European Communities (Free Movement of Persons) (No. 2) Regulations 2006

Regulations 6 to 11 of the 2006 Regulations implement the Directive's provisions on the right of residence (Articles 6 to 15), and Regulations 12 to 16 implement the provisions on the right of permanent residence (Articles 16 to 21).

In relation to the right of residence:

- Regulation 6(1), implementing Article 6 on the right of residence for *up to three months*, imposes the additional condition, not foreseen in the Directive, that the person concerned "does not become an unreasonable burden on the social welfare system of the State".
- Regulation 6(2)(c) covers cases of cessation of activity addressed in Article 7(3) of the Directive which will lead to the retention of the status of worker or self-employed person. In relation to Article 7(3)(d) (vocational training), Regulation 6 provides that the status is to be retained "except where he or she is involuntarily employed, he or she takes up vocational training relating to the previous employment": this is somewhat ambiguous wording, but it can be read to conform to the requirements of the Directive.
- The position as regards residence of job-seekers is not addressed in the 2006 Regulations. Recital 9 in the preamble to the Directive refers to the "more favourable treatment applicable to job-seekers as recognised by the case-law of the Court of Justice". Article 14(4) of the Directive addresses the special position of job-seekers in the context of *retention* of the right of residence by providing that job-seeking Union citizens and family members cannot be expelled for as long as the Union citizens "can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged": the 2006 Regulations contain no specific provision to this effect. Indeed, the only reference in he Regulations to the position of job-seekers is made in Regulation 18(2) which provides:

  "(2)(a) A person to whom these Regulations apply, other than a worker, self-employed person, or a person who retains such status and members of his or her family, shall not be entitled to receive assistance under the Social Welfare Acts-
  i. for three months following his or her entry into the State; or
  ii. where the person entered the State for the purposes of seeking employment, for such period exceeding 3 months, during which he or she is continuing to seek employment and has a genuine chance of being engaged."

  By implication, the job seeker enjoys the right of residence for more than six months recognised in *Antonissen*, but the position could have been made clearer.

In relation to the right of permanent residence:

- Regulation 13 provides for the entitlement to permanent residence in the State of Union citizens no longer working in the State and their family members (Article 17 of the Directive). The right is stated to be enjoyed by a qualifying person "whether or not he or she has been resident in the State for a continuous period of 5 years". This is somewhat broader than the derogation provided for in Article 17(1);

- In relation to workers or self-employed persons who work in another Member State whilst retaining their residence in the host Member State. Regulation 13(4) envisages return to the State "at least once a week" whereas Article 17(1)(c) of the Directive provides for the return to the place of residence to be "as a rule, each day or at least once a week". The words "as a rule" in the Directive suggest that there ought to be a certain flexibility in applying what is a general rule that the person returns once a week. The absence of such an expression in the implementing Regulations may deprive beneficiaries of such flexibility.

Regulations 19 to 23 implement the provisions of the Directive relating to restrictions on the right of entry and the right to residence on grounds of public policy, public security or public health.

Draft legislation, circulars, etc.

Immigration, Residence & Protection Bill (briefly discussed in Chapter VII).

Miscellaneous (administrative practices, etc.)

As noted above, under the European Communities (Free Movement of Persons) (No. 2) Regulations 2006, EU nationals are not required to register their presence in the State. Normally to be eligible for naturalisation, evidence of residence permits are required to prove the length of legal residence in the State. The Department of Justice, Equality and Law Reform has advised that other evidence can be used to prove length of residence in the State such as statement from an employer, evidence of mortgage or bank accounts and evidence of taxes paid.

3. DEPARTURE

Background

Until recently, there have been no reported cases of required departure of persons covered by the free movement rules. Indeed, there appears to have been only one case in the past few years known to the Department of Justice, and this did not involve formal deportation proceedings. This position changed in 2007 when a number of Romanian nationals without means of support were deported under the 2006 Regulations: see Chapter VIII, below).

Persons failing to qualify as free-movers will cease to be covered by the 1977, 1997 and 2006 Regulations. Those Regulations also provide for departure, and deportation, on grounds of public policy or public security (or, before the grant of a first permit, public health grounds).

With regard to Romanian and Bulgarian nationals now covered by the European Communities (Free Movement of Persons) (No. 2) Regulations 2006, the Department of Justice, Equality and Law Reform has confirmed that deportation orders previously issued remain in force. However, it has said that a person who is the subject of such an order may apply in writing to the Minister for Justice, Equality and Law Reform for the order to be revoked. When considering such applications the circumstances in which the order was made will be taken into account and it is anticipated that those deported for non-compliance with immigra-

tion rules may be reviewed more favourably by the Department in contrast to those who have committed a criminal offence.[16]

Text(s) in force

Directive 2004/38 and the European Communities (Free Movement of Persons) (No. 2) Regulations 2006

Regulations 19 to 23 of the European Communities (Free Movement of Persons) (No. 2) Regulations 2006[17] implement the provisions of the Directive relating to restrictions on the right of entry and the right to residence on grounds of public policy, public security or public health. A number of specific points may be made:

- There are very detailed provisions on removal from the State and on the making of exclusion orders;
- In implementing Article 28(1), Regulation 20(3)(a) limits the considerations to be taken into account before taking an expulsion decision to those examples listed in Article 28(1); and
- In relation to the expulsion of minors, Regulation 20(6)(c) implements Article 28(3)(b) in referring to expulsion as being necessary in the best interests of the child. However, no express reference is made to the 1989 UN Convention on the Rights of the Child.

Draft legislation, circulars, etc.

Immigration, Residence & Protection Bill (discussed at Chapter VII).

Miscellaneous

In light of the requirement of habitual residence, in effect since 1 May 2004, to access certain social welfare benefits, a person – whether a Community or third-country national – who is not eligible for benefit will not be left destitute, but will, if he or she is otherwise not entitled to stay in Ireland, be able to avail of voluntary return.

On foot of a Government Decision dated 2 March 2004, the Reception and Integration Agency was assigned responsibility for supporting the repatriation, on an agency basis for the Department of Social and Family Affairs, of nationals of the ten new EU Member States, and now of Bulgaria and Romania, who fail the habitual residency condition attaching to social assistance payments (the requirement of habitual residence is discussed further in Chapter X). In general, cases are referred to the Reception and Integration Agency by Community Welfare Officers (Health Service Executive) who have refused access to the Basic Supplementary Welfare Allowance because they failed to fulfil the habitual residence condition.[18] The Reception and Integration Agency makes contact with the person and books their flight home. The returnees must sign a form agreeing to avail of the service only once and a

[16] Department of Justice, Equality and Law Reform Press Release. http://www.justice.ie/80256E010039C5AF/vWeb/pcJUSQ6X5LL9-en.

[17] See note 4.

[18] Department of Social and Family Affairs, Internal Review of the Operation of the Habitual Residence Condition, July 2006. http://www.welfare.ie/publications/hrcreview06.pdf.

copy of their passport is taken. The Agency also books and pays for temporary accommodation in Dublin until the flight leaves.[19]

Figures from the Reception and Integration Agency indicate that 520 nationals from the EU-10 and the EU-2 countries were repatriated by it on a voluntary basis in 2007.[20] Of these, 171 were Poles, 141 were Romanians, 60 were Slovakians, 38 were Latvians and 31 were Lithuanians.

The overall figure had reduced from the 646 reported for 2006. This number increased from a total of 149 for 2004 and 318 in 2005. The majority of persons affected throughout were Polish nationals.

Recent legal literature

Quinn, E., *Return Migration: The Irish Case* (Research study completed by the Irish National Contact Point of the European Migration Network, published 26 February 2007).[21] This report describes the definitions of return and the systems of assisted voluntary return and forced return from Ireland including deportations, removals and Dublin II transfers. It deals largely with third-country nationals, but also addresses questions relating to the return of Accession Member State nationals.

4. REMEDIES

Regulation 21 of the European Communities (Free Movement of Persons) (No. 2) Regulations 2006[22] entitles a person to whom the Regulations apply to seek a review of any decision concerning his/her entitlement to be allowed to enter or reside in the State. The particulars to be contained in the request for review are set out in Schedule 11 to the Regulations.

The review is to be conducted by an official of the Department for Justice, Equality and Law Reform other than and of a senior grade than the person making the decision.

Where the person concerned is the subject of an exclusion order and has left the State, he/she may be allowed to re-enter in order to attend a review hearing, except where, in the Minister's opinion, his/her presence in the State would be contrary to public policy/public security or the review concerns a denial of entry to the State.

In addition to the possibility of administrative review, there is also the right to seek judicial review.

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19 Emma Quinn *Return Migration: The Irish Case* (Research study completed by the Irish National Contact Point of the European Migration Network, published 26 February 2007, p. 10. http://www.esri.ie/UserFiles/publications/20070726111026/BKMNEXT087.pdf

20 See The Irish Times, "520 Eastern Europeans Repatriated under Scheme to Aid Immigrants (31 December 2007).

21 See n. 18.

22 See note 4.

Chapter II
Access to Employment

1. EQUAL TREATMENT IN ACCESS TO EMPLOYMENT

Nationals of other Member States enjoy equal treatment in relation to access to employment as a matter of law. This has now been made clearer in Regulation 18(1)(a) of the European Communities (Free Movement of Persons) (No. 2) Regulations 2006,[23] which provides that nationals of other Member States and qualifying family members "shall be entitled … to seek and enter employment in the State in the like manner and to the like extent in all respects as Irish citizens".

This includes full access to the services provided by FÁS as the National Training and Employment Authority.[24] Through a regional network of 66 offices and 20 training centres, FÁS operates training and employment programmes, provides a recruitment service to jobseekers and employers, provides an advisory service for industry, and supports community-based enterprises.

2. LANGUAGE REQUIREMENT

General

As far as the private sector is concerned, there is no general legislative requirement that English and/or Irish be spoken. However, in practice, employers throughout Ireland are likely to require the linguistic competency that is necessary for the position to be filled and, in certain areas, notably the *Gaeltacht* (Irish-speaking localities) Irish is more likely to be required.

Legal Profession

The current position, dating back from 1929, differs for the two branches of the legal professions. A person, irrespective of nationality, wishing to be admitted as a *barrister* in Ireland must satisfy the Chief Justice that he/she possesses a competent knowledge of the Irish language.[25] Would-be *solicitors* must pass two Irish examinations, the first before entering into training and the second before admission as a solicitor.[26] These requirements apply to all persons irrespective of nationality who wish to become lawyers in Ireland. However, these requirements do not apply to lawyers from other Member States seeking to practise under Directive 89/48 and to lawyers covered by other reciprocal arrangements.

In reality, barristers and solicitors satisfying the Irish language requirements have not always been able to conduct legal business in Irish and it could be argued that the 1929 regime has not resulted in the policy aim that individuals should be able to have their legal affairs transacted in Irish. Furthermore, the current system has been seen as inimical to competition: in December 2006, the Competition Authority in a detailed report on competition in

[23] See n. 2, above.
[24] See, generally, www.fas.ie.
[25] Legal Practitioners (Qualification) Act 1929 (No. 16/1929), Section 3.
[26] Legal Practitioners (Qualification) Act 1929 (No. 16/1929), Section 4.

legal services recommended that the compulsory system be replaced by a voluntary system where practitioners wishing to do so would be able to attain, and be examined in, the necessary level of competency in Ireland. In November 2007, the Minister for Justice, Equality and Law Reform published the Legal Practitioners (Irish Language) Bill 2007.[27] If passed, the compulsory provisions contained in the 1929 legislation will be repealed. The King's Inns (for barristers) and the Law Society (for solicitors) will each be required to have regard to Government policy on bilingualism[28] and to take steps to ensure that an adequate number of practitioners are able to practice law through Irish. To this end, each body is to establish courses of study in Irish, with compulsory non-examinable courses of instruction in Irish legal terminology and the (basic) understanding of legal texts in Irish for would-be practitioners who do not elect to take an advanced course in Irish[29] as well as a voluntary advanced course subject to examination. The bodies would be required to provide publicly available registers showing details of practitioners who are able, after examination, to provide legal services through Irish.

The effect of such legislation will be to remove the current requirement that barristers and solicitors are competent in Irish and replace it by a voluntaristic system which should ensure that there is a sufficient pool of Irish-speakers in the professions to service those who wish to conduct their legal affairs through Irish. The Bill was still under consideration at the end of 2007.[30]

Doctors

In relation to doctors, there is no statutory requirement that English/Irish be spoken. There is no language requirement for EU nationals seeking recognition as Irish doctors. However, third-country nationals seeking temporary registration must demonstrate the requisite language proficiency, having passed either the Academic International English Language Testing System or the US Medical Licensing Examination.

Nurses

In relation to nurses, the Irish Nursing Board has issued Circular 02/07 on English language competence of nurses and midwives from EU Member States.[31] It is recognised that the Board is itself prohibited from assessing the English language competence of nurses or midwives from EU Member States meeting certain EU requirements. However, it is stated that employers may assess the English language competence of nurses or midwives from other Member States whom they are considering employing, and, indeed, that employers have a responsibility to patients/clients and their families to ensure that employees have the necessary English language competence to perform core nursing/midwifery tasks. (At the same

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27 Legal Practitioners (Irish Language) Bill 2007 [No. 50 of 2007].

28 This policy has not been formulated in specific terms for the legal profession. However, the broad policy of the Government is reflected in the Official Languages Act 2003, reviewed in Chapter IV. The general aim of this legislation is to ensure the availability and a higher standard of services through Irish.

29 The object of this course will be to enable participants to identify through Irish the legal service that is required and to facilitate referral to a competent practitioner.

30 The Legal Practitioners (Irish Language) Act was adopted in July 2008 and will be considered in the 2008 Report.

31 Circular 02/07 to Employers of Nurses and Midwives. See An Bord Altrainas *News* (Spring 2007) (http://www.nursingboard.ie/GetAttachment.aspx?id=7c3f74a3-db7f-4057-ad6f-cbabad282277).

time, the Board issued Circular 3/2007, introducing changes to its standards in relation to proof of English language competence of *non-EU* applicants for registration.)

Pharmacists

The Pharmacy Act 2007, enacted on 21 April 2007, contains new provisions on registration of pharmacists in the State.[32] Section 14 provides that the newly established Council of The Pharmaceutical Society of Ireland is to register a person in the pharmacists' register if the person concerned:

> "(g) not being a national of the State or another Member State, satisfies the Council that he or she has the linguistic competence necessary to be a registered pharmacist in the State,
> (h) being a national of the State or another Member State and lacking that competence, undertakes to acquire it."

Private Education

There is no statutory Irish language requirement for access to teaching posts in the private education sector (though, to the extent that the national curriculum is taught, there must be lessons in Irish). Save for posts requiring the use of Irish or another language (such as teaching modern Irish), there is no formal language requirement.

The question of language requirements for access to public employment is discussed in Chapter IV.

3. RECOGNITION OF DIPLOMAS (INCLUDING ACADEMIC DIPLOMAS), ANY INITIATIVES TO TRANSPOSE THE DIRECTIVE 2005/36/EC

In relation to professional qualifications, there are a number of sectoral directives covering architects, healthcare professionals and lawyers. These directives have been implemented by a number of national legislative provisions. The Department of Education and Science has recently published an updated list of contacts for these and other professions, with information on the designated competent authorities.[33] The above list also covers other regulated professional activities covered by the General System directives.

The Department of Education and Science is generally responsible for the coordination of actions under the General System. Under its aegis, the Teaching Council is responsible for the recognition of teachers' qualifications.[34]

In relation to unregulated professions, there is no need for professional recognition to work in Ireland. However, applicants and employers seeking to establish equivalence of diplomas and training have access to increasingly sophisticated mechanisms. The National Qualifications Authority of Ireland[35] (NQAI) is the designated Irish centre for the recognition of international qualifications and is the Irish representative of ENIC/NARIC. Its data-

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[32] No. 20 of 2007. The relevant provisions are contained in Part 4 of the Act, which is not yet in force. (http://www.oireachtas.ie/documents/bills28/acts/2007/a2007.pdf).

[33] See http://www.education.ie/home/home.jsp?maincat=17216&pcategory=17216&ecategory=28970&sectionpage=12251&language=EN&link=link001&page=1&doc=26573 .

[34] See http://www.education.ie/home/home.jsp?maincat=17216&pcategory=17216&ecategory= 28970&sectionpage =12251&language=EN&link=link001&page=1&doc=26574 .

[35] www.qualificationsrecognition.ie.

base contains information on foreign qualifications and education and training, listing the foreign qualifications processed to date and stating the advice that has been provided. It has established a National Framework of Qualifications which compares foreign qualifications to Irish qualifications, thereby facilitating the recognition process. In individual cases, an applicant may obtain a recognition application form and details regarding the documentation to be submitted. The service is provided free of charge to job applicants, prospective employers and those undertaking further study in Ireland (but does not include the translation of documents). A "rough guide" has been produced on comparing qualifications in the UK and Ireland. The NQAI is also responsible for the operation of the Europass system.[36]

The regime relating to European Community Certificates of Experience under Directive 99/42 is administered by the Legal Services Department of FÁS.

Directive 99/42 was transposed into Irish law in August 2003 by means of the European Communities (Recognition of Qualifications and Experience) Regulations 2003.[37] Individuals must apply to the designated "competent authority" for recognition of their qualifications. The experience requirements for different activities are set out in the Schedule to the Regulations and match the requirements of Articles 4, 6 and 7 of the 1999 Directive.

Directive 2001/19 was transposed into Irish law by way of the European Communities (General System for the Recognition of Higher Education Diplomas and Professional Education and Training and Second General System for the Recognition of Professional Education and Training) (Amendment) Regulations 2003.[38]

Directive 2005/36 consolidates a number of existing Directives and should be transposed by 20 October 2007 at the latest. The Department of Education has stated that it intends to publish Regulations by statutory instrument, which will consolidate the Irish general system of recognition and provide for the provision of temporary services. Work on these Regulations is ongoing.

[36] http://www.europass.ie.
[37] S.I. No. 372 of 2003.
[38] S. I. No. 36 of 2004.

Chapter III
Equality of Treatment on the Basis of Nationality

1. WORKING CONDITIONS, SOCIAL AND TAX ADVANTAGES (DIRECT, INDIRECT DISCRIMINATION)

Background

Equality Legislation

The statutory framework to combat discrimination in Ireland largely consists of three Equality Acts – the Employment Equality Act 1998,[39] the Equal Status Act 2000[40] and the Equality Act 2004.[41] In relation to employee protection, the Protection of Employees (Part-Time Work) Act is also of importance. In relation to persons covered by Directive 2004/38, the European Communities (Free Movement of Persons) (No. 2) Regulations 2006[42] contain provisions on entitlements implementing the equal treatment provisions in Article 24 of the Directive.

The Equality Act 2004 amends the Employment Equality Act 1998, the Pension Act 1990 and the Equal Status Act 2000 and gives effect to Directive 2000/43/EC and Directive 2000/78/EC (the Race and Employment Directives). In line with the Race and Employment Directives, the Equality Act 2004 amends the 1998 Act to permit positive measures to be taken to prevent or to compensate for disadvantages linked to grounds such as race (including nationality), supplementing the existing grounds of gender, disability, age and membership of the Travelling Community. The Social Welfare (Miscellaneous Provisions) Act 2004 has amended the Pensions Act 1990 to give effect to these Directives in so far as they relate to occupational pensions.

Conditions of Employment

Irish law endorses the principle of non-discrimination in relation to the treatment of all workers irrespective of origin.

Differential treatment exists in relation to entry for the purposes of employment, where a broad distinction may be drawn between privileged EU/EEA nationals, EU nationals where there are transitional measures in place, privileged third-country nationals (including Turkish workers) and a residual class of third-country nationals. Such differences have been maintained by the provisions of the Employment Permits Act 2006[43] briefly discussed in Chapter VII. (The question of equal access of nationals of EU Member States and family members to employment is addressed in Chapter II, above.)

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39 No. 21 of 1998 http://www.equality.ie/getFile.asp?FC_ID=6&docID=205.
40 No. 8 of 2000 http://www.equality.ie/getFile.asp?FC_ID=7&docID=207.
41 No. 24 of 2004 http://www.equality.ie/getFile.asp?FC_ID=175&docID=206.
42 See n. 2, above.
43 No. 16 of 2006 (commenced by Employment Permits Act 2006 (Commencement Order) 2006 (S.I. No. 682 of 2006)).

Such differential treatment in relation to access is not in itself antithetical to the idea that, once employed, there should be equality in treatment as regards pay and other conditions of employment.

There has been concern that, as a matter of practice, the equality principle was not being applied to third-country national workers and to workers from the Member States that acceded in 2004 (in particular, Poland and the Baltic States). Over 2006, there have been focused attempts by trade unions and others to improve awareness of employment rights among these more vulnerable categories of workers through the publication of handbooks in various languages and conferences. These initiatives are bolstered by the political commitments in the Social Partnership Agreement *Towards 2016*,[44] discussed below in Chapter VII.

Social Advantages

The application of the equality principle has also arisen in relation to the application of the "habitual residence" test introduced in 2004 for access to social welfare payments.

Until May 2004, EU citizens who were in Ireland and had little or no income were eligible for Unemployment Assistance or Supplementary Welfare Allowance if they satisfied the means test and, in the case of Unemployment Assistance, were genuinely looking for work.

The Social Welfare (Miscellaneous Provisions) Act 2004,[45] which entered into force on 1 May 2004, introduced a "habitual residence" condition for obtaining certain social assistance payments under the Social Welfare (Consolidation) Act 1993[46] (as amended). The relevant legislation was consolidated in the Social Welfare Consolidation Act 2005.[47] The purpose of the habitual residence condition is to restrict access to social assistance and child benefit payments for people from other countries who have little or no connection to Ireland. In effect this means that anyone who fails to meet the condition is not eligible for a social assistance payment. The habitual residence condition is in addition to the normal conditions of entitlement for each type of payment.

The relevant social assistance payments are:[48]

- Jobseeker's Allowance;
- State Pension (Non-Contributory);
- Blind Persons Pension;
- Widow's/Widower's Payment
- Guardians Payment
- Non-Contributory Pension;
- One Parent Family Allowance;
- Carer's Allowance;
- Disability Allowance;

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44 Towards 2016: Ten Year Framework Social Partnership Agreement 2006-2015 http://www.taoiseach.gov.ie/attached_files/Pdf%20files/Towards2016PartnershipAgreement.pdf.

45 No. 9 of 2004.

46 No. 27 of 1993.

47 No. 26 of 2005 (http://www.oireachtas.ie/documents/bills28/acts/2005/a2605.pdf).

48 S.I. No. 246 of 2006: Social Welfare and Law Reform and Pensions Act 2006 (Section 4(4), (4 (5), 31 and 33) Commencement Order Regulations 2006 provides for the renaming of the Orphans Payments to Guardians Payments; S.I. No. 334 of 2006 Social Welfare and Law Reform and Pensions Act 2006 (Sections 4, 9, 10, 20-25) (Commencement Order) 2006 commenced Section 4 of the Act which amends the names given to the various benefits so that the name is descriptive of the benefit itself. These changes took effect from July to October 2006.

- Supplementary Welfare Allowance, save for once-off exceptional and urgent needs payments;
- Child Benefits (with certain exceptions).

Certain other payments – pre-retirement allowance, deserted wife's allowance and prisoner's wife's allowance – have not been made subject to the habitual residence condition.

A published guideline on the Habitual Residence Condition[49] makes it clear that persons entitled to payments under EU law do not have to satisfy the habitual residence condition where this would conflict with EU rules. It is stated that a "Deciding Officer should have due regard to EU law when deciding such cases" and that "in general EU law takes precedence over National Law".

Child Benefit, One Parent Family Payment and Orphan's (Non-Contributory) Pension are considered "family benefits" under Regulations 1408/71 and 574/72: An employed or self-employed person subject to Irish PRSI claiming one of these payments does not have to show habitual residence. (This is particular the case for frontier workers.)

It is also made clear that a national of an EEA Member State who is employed or self-employed in Ireland and subject to the Irish PRSI system is entitled to payments classified as Family Benefits under EU law, even if his or her children are habitually resident in another EEA Member State. Such entitlement will continue even where the person concerned becomes unemployed and receives Irish Unemployment Benefit. The amount of Family Benefits payable will depend on whether there is entitlement in the other EEA Member State to Family Benefits.

In light of the ruling by the European Court of Justice that social benefits guaranteeing the minimum means of subsistence, such as the Irish Supplementary Welfare Allowance, fall within the meaning of "social advantage" in Article 7 (2) of Regulation 1612/68,[50] it is recognised that workers from other EEA Member States must be treated in the same way as national (Irish) workers in determining entitlement to Supplementary Welfare Allowance and entitlement should be determined on the basis of a person's employment status and not on the basis of residence. Thus regard must be had to the equality provisions of Regulation 1612/68 when dealing with Supplementary Welfare Allowance claims.

It is stated that this requirement does not apply to other social welfare payments such as Unemployment Assistance or Old Age Pension, since there are covered by Regulation 1408/71 which takes precedence over Regulation 1612/68.

Some guidance is given on the meaning of "worker" in EU law and the need to establish that the claimant is in effective and genuine employment, and is not in work "on such a small scale as to be marginal and ancillary".

The guidelines also make it clear that certain former workers have rights under Regulations 1612/68 and 1251/70. This covers:

- a person retiring after pension age (65) where he/she has continuously resided in the State for more than three years (or whose spouse is, or was before marriage, an Irish national) or was employed in Ireland for at least 12 months before retirement;
- a person who has ceased employment in Ireland as a result of permanent incapacity for work, where he/she has continuously resided in the State for more than two years (or

[49] In the Observatory for 2005, this guideline was only available through the freedom of information section of the Department of Social and Family Affairs website. The guidelines is now a separate publication and information on the habitual residence condition is more accessible. http://www.welfare.ie/foi/habres.html.

[50] This appears to refer to Case 249/83 *Hoeckx* [1985] ECR 973.

whose spouse is, or was before marriage, an Irish national) and is entitled to disablement benefit because the incapacity was due to an occupational accident or disease;
- a person who has been temporarily laid off work and who is seeking reinstatement or re-employment with the same employer;
- a person who has voluntary given up work to take up vocational training linked to the previous job;
- a person who has become involuntarily unemployed and must take up vocational training because of the state of the labour market.

The guideline states that people who move in search of employment, benefit from equal treatment under Regulation 1612/68 only as regards access to employment. First-time job seekers do not qualify for equal treatment with regard to social and tax advantages within the meaning of Article 7(2) of that Regulation.

Text(s) in force

Employment Equality Acts 1998-2007

The Employment Equality Acts 1998-2007 cover employees in both the public and private sectors including people employed through employment agencies and applicants for employment and training. It outlaws discrimination in all areas relevant to employment, on a number of specified grounds including race, colour, nationality or ethnic or national origins (together described as the "race" ground).

It should be noted that Section 36 of the 1998 Act effectively provides for exemptions from the application of the non-discrimination principle in relation to employment in the public service, linguistic requirements for teachers in primary and post-primary schools and requirements to hold particular educational, technical or professional qualifications. Section 31 sets out a number of grounds where a prima facie finding of indirect discrimination will not in fact constitute discrimination – this includes the case where it can be "justified as reasonable in all of the circumstances of the case.

Protection of Employees (Part-Time Work Act) 2001

A key provision on equality, introduced "for the avoidance of doubt", is contained in Section 20 of the Protection of Employees (Part-Time Work) Act 2001 which provides that a series of enactments conferring rights on an employee applies, and shall be deemed always to have applied to, a posted worker (within the meaning of Directive 96/71) and

> "a person, irrespective of his nationality or his place of residence, who
> i. has entered into a contract of employment that provides for his or her being employed in the State;
> ii. works in the State under a contract of employment; or
> iii where the contract has ceased, entered into the contract of employment or worked in the State under a contract of employment,
> *in the same manner, and subject to the like exceptions not inconsistent with this subsection, as it applies and applied to any other type of employee*" (emphasis added).

The full range of employee protection legislation thus formally applies to foreign workers, posted or otherwise, and irrespective of origin.

Directive 2004/38 and the European Communities (Free Movement of Persons) (No. 2) Regulations 2006

Regulation 18 of the 2006 Regulations contains provisions on entitlements implementing the equal treatment provisions in Article 24 of the Directive:

- Equal treatment with Irish citizens is assured in relation to rights of travel in or to or from the State, self-employment and the receipt and provision of services, access to education and training, the receipt of medical care and services and "other entitlements" (a "catch-all" category);
- Reflecting Article 24(2) of the Directive, entitlement to social welfare benefits is not available for three months after entry (or a longer period in the case of a job-seeker). However, this limitation does not apply to workers, self-employed persons, or persons who retain such a status and their family members;
- Regulation 18 also implements Article 24(2) of the Directive in relation to maintenance grants for students;
- Regulation 18(3) makes it clear that persons covered may be asked to provide the relevant residence document or evidence of application in order to exercise an entitlement, but that failure to do so may not of itself be used as a reason to refuse an entitlement to a person. This appears to comply with Article 25(1) of the Directive, but unfortunately does not state in terms that "entitlement to rights may be attested by other means of proof"; and
- With regard to access to employment, Regulation 18 provides that access to the labour market is subject to the restrictions contained in the Employment Permits Acts 2003-2006. This is ostensibly to make the access of Romanian and Bulgarian nationals subject to the requirement of obtaining an employment permit (discussed in Chapter VIII below).

Judicial Practice

The Equality Tribunal is an impartial, independent, quasi-judicial body charged with hearing or mediating claims of alleged discrimination under the Employment Equality Acts 1998 and 2007, the Pensions Acts 1990 to 2004 and the Equal Status Acts 2000 and 2004.

In a number of cases during the period discrimination on grounds of race has been alleged by nationals of other EU Member States. In a number of these, the complainant was unable to establish discrimination.

Two cases should be mentioned in particular.

In *Paskausnas v. The Sofa Factory/Opus Design Limited*,[51] a Lithuanian worker established that he had been subject to harassment on grounds of race, and that the employer had some limited knowledge of the harassment but had failed to take any action as a result. The employer was required to pay €7,000 by way of compensation for the resulting stress, to adopt a policy on harassment and to provide training to staff.

In *McBrierty v. National University of Ireland – Galway*,[52] a Welsh lady argued that the requirement that applicants for temporary full-time posts which had the possibility of permanence in the future should have Leaving Certificate Irish constituted indirect discrimination

[51] DEC-E2007-062, 5 November 2007. http://www.equalitytribunal.ie/index.asp?locID=120&docID=1654.
[52] DEC-E2007-070, 3 December 2007. http://www.equalitytribunal.ie/index.asp?locID=120&docID=1663.

on grounds of race. The Equality Officer accepted that the requirement impacted more significantly on persons whose nationality was not Irish and that the complainant had therefore established a prima facie case of indirect discrimination.

At the material time, Section 3 of the University College Galway Act 1929 required the College to appoint candidates competent in the Irish language. In view of this then mandatory requirement, the Equality Officer held that the requirement was reasonable given this obligation and the fact that a central element of the College's strategic direction and objectives was to support the sustainable development of Irish as a living language. The College could therefore rely on the defence under Section 31(1)(d) of the Employment Equality Act 1998. (Section 3 of the 1929 Act has now been replaced (see Chapter IV) and this analysis may no longer obtain.)

2. OTHER OBSTACLES TO FREE MOVEMENT OF WORKERS?

Nothing to report.

3. SPECIFIC ISSUES: FRONTIER WORKERS (OTHER THAN SOCIAL SECURITY ISSUES), SPORTSMEN/SPORTSWOMEN, MARITIME SECTOR, RESEARCHERS AND ARTISTS

Frontier workers

The relevant frontier here is that between Ireland and Northern Ireland. A study on obstacles to mobility, under the aegis of the North/South Ministerial Council, was published in November 2001.[53] The study identified obstacles in relation to taxation, social security, pensions, healthcare, childcare, housing, recognition of qualifications and employment. This study did not specifically focus on obstacles to the free movement of workers under Community law and, so far as the reporter is aware, a comprehensive study in this regard has not been undertaken.[54]

Those moving between North and South have clearly encountered difficulties in relation to matters such as employment, enjoyment of social insurance right, access to social welfare, and healthcare. The Cross Border Mobility Project has been launched by the North/South Ministerial Council and its website is designed to act as a "one-stop" shop for all who move across the border (including frontier workers) in detailing their position in the two Member States.[55] It also acts as an "advice centre" for people with specific mobility-related issues.

In May 2004, a "habitual residence" condition was introduced for obtaining certain social assistance payments. Although the relevant legislation does not specifically exclude those benefiting from the EU free movement rules from having to satisfy this condition, it is recognised that persons now entitled to these payments under EU free movement rules do not have to satisfy this condition.

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[53] ` North/South Ministerial Council *Study of Obstacles to Mobility (*November 2001) (PriceWaterhouseCoopers & Indecon Economic Consultants).

[54] In the light of remarks in the 2006 Report for the UK indicating that many of the obstacles identified in 2001 had not been addressed, there may be scope for an up to date study to revisit the issue.

[55] http://www.borderpeople.info.

The general rule for frontier workers is set out in guidelines and other documents issued by the Department of Social and Family Affairs.[56] The general rule appears to relate to frontier workers having the nationality of another EU Member State and having a third-country nationality alike. This means that, *subject to any exceptions arising by virtue of EU migrant worker status*, a frontier worker who lives (say) in Northern Ireland but works in Ireland and who has his/her main centre of interest abroad will generally not be regarded as habitually resident in Ireland. However, it is clear that EC law takes precedence over national law and that EEA frontier workers working in Ireland are entitled to family benefits without needing to satisfy the habitual residence condition. It appears that the guidelines in this regard were updated in June 2008 to take account of concerns expressed by the Social Welfare Appeals Office that the relevant EU provisions were not adequately covered.[57]

Sportsmen /Sportswomen

There is no rule of the Football Association of Ireland (FAI) which limits the extent to which non-national players may take part in official matches. The *Bosman*, *Kolpak* and *Simutenkov* rulings as they relate to national quotas thus appear to be followed in Ireland.

It should be noted that the FAI endorses an all embracing anti-discrimination policy. Rules 74(c) states that:

> "Equality of opportunity at the FAI means that in all our activities we shall not discriminate or in any way treat anyone less favourably, on grounds of gender, sexual orientation, race, nationality, ethnic origin, colour, religion or disability".

This is specifically to include "selection for representative teams".

I am not aware of any difficulties relating to the application of the *Bosman* line of jurisprudence to other areas of sporting activity. It should perhaps be noted that, in the area of Gaelic sports, the question does not arise since these activities are reserved to amateurs: however, even here, there is no rule formally limiting access by non-national players.

The Maritime sector

Seafarers on Irish-flagged ships are entitled to equal treatment in terms of pay and other terms and conditions of employment irrespective of nationality.

Concerns about the application of this basic principle surfaced in 2004/2005 in relation to Irish Ferries. At that stage, flagged in Ireland, Irish Ferries sought to reduce its operating costs by replacing its Irish crew by seafarers from the Baltic States. It also appears to have paid individual workers on board its vessels – such as hairdressers – very low hourly rates of pay. It unilaterally terminated its arrangements with the trade union, SIPTU and, after considerable industrial unrest made its Irish workers redundant and outsourced its crewing requirements

[56] See 2006 Guidelines for determining habitual residence for the purposes of Supplementary Welfare Allowance (http://www.welfare.ie/foi/swa_habres.html) and 2008 Guidelines for Deciding Officers on the determination of habitual residence (http://www.welfare.ie/foi/habres.html).

[57] See Social Welfare Appeals Office, Annual Report 2007 (http://www.socialwelfareappeals.ie/pubs/report2007.html).

Subsequently, Irish Ferries decided to reflag its vessels. A number of vessels are currently flagged in Cyprus and its most recently acquired vessel is flagged in the Bahamas. The Irish Government has made it clear[58] that "it is as a matter of international law clear (as reflected in United Nations Convention on the Law of the Sea – UNCLOS) that the terms and conditions of the employed seafarers on such vessels is to be decided exclusively by the flag State". It was also clear that Ireland could not prevent a re-flagging that occurred as an integral part of exercising a right of establishment in another Member State.

Researchers/artists

In general, it appears that nationals of other EU Member States working as researchers and artists are treated equally to host nationals.

Income earned by artists, writers, composers and sculptors from the sale of their works is in certain cases exempt from tax in Ireland.[59] Claimants for this exemption must be resident, or ordinarily resident and domiciled, in the State and not resident elsewhere. The Revenue Commissioners have stated that they are prepared to give advance opinions in relation to the exemption to claimants resident abroad. Where claimants receive a favorable advance opinion, they are given a formal determination in respect of the exemption

4. RELATIONSHIP BETWEEN REGULATION 1408/71 AND ARTICLE 39 AND REGULATION 1612/68

It has not been possible to identify any concrete cases where the relationship between Regulation 1408/71 and the equality rules in Regulation 1612/68 has been in issue. This question was raised in discussions with the Department of Social and Family Affairs in relation to the application of the *Hartmann* and other rulings (see Chapter VI, below). There have clearly been concerns about the application of the "habitual residence" condition to social security and social assistance payments, which may now be of largely historical importance. The Department makes a clear distinction between payments caught by the Regulation 1408 regime, which (with certain exceptions) are payable by the Member State of employment and social welfare payments which are caught by Regulation 1612, so that the habitual residence condition cannot apply to frontier workers and others benefiting from the free movement provisions.

[58] See Statement by Minister Martin to Dáil Eireann Re Irish Ferries, 20 November 2005. http://www.entemp.ie/press/2005/20051129a.htm.

[59] http://www.revenue.ie/index.htm?/leaflets/artinfo.htm.

Chapter IV
Employment in the Public Sector

1. ACCESS TO PUBLIC SECTOR

General

This section provides an overview of the current situation in relation to the nationality condition for access to public employment. In doing so, information is provided in relation to specific Irish nationality requirements as well as Irish language requirements, which could in the Irish context be tantamount to a nationality requirement.

In relation to language, The Official Languages Act 2003[60] aims to ensure the availability and a higher standard of services through Irish and provides a statutory framework for the delivery of public services through the Irish Language. Section 11 of the Act provides for the preparation by public bodies of a statutory scheme detailing the services they will provide (i) through the medium of Irish, (ii) through the medium of English, and (iii) through the medium of Irish and English, and the measures to be adopted to ensure that any service not provided by the body through the medium of the Irish language will be so provided within an agreed timeframe. Generally speaking, the obligations for public bodies under the Official Languages Act 2003 will necessitate greater recruitment of persons with Irish language skills.

In relation to the application of the non-discrimination principle, it should be noted that Section 35 of the Employment Equality Act 1998[61] effectively exempts from the application of the equality regime provisions (relating to residence, citizenship and proficiency in the Irish language) with respect to:

a. holding office under, or in the service of, the State (including the Garda Síochána and the Defence Forces) or otherwise as a civil servant, within the meaning of the Civil Service Regulation Act, 1956; or
b. officers or servants of a local authority, for the purposes of the Local Government Act, 1941, a harbour authority, a health board or a vocational educational committee.

The position with regard to nationality and language is considered below with regard to the Civil Service, the Health Service, the Defence Forces, the Education Sector, the Marine Sector and An Garda Síochána (the Police).

1.1. Nationality condition for access to positions in the public sector

The Civil Service

There is no specific legislative provision requiring the possession of Irish nationality for access to posts in the Civil Service.

Section 17 of the Civil Service Regulation Act 1956 provides that the Minister for Finance shall be responsible for the regulation and control of the Civil Service as well as the

[60] Act No. 32 of 2003 http://www.oireachtas.ie/documents/bills28/acts/2003/a3203.pdf.
[61] See n. 39, above.

fixing of the terms and conditions of service of civil servants and the conditions governing their promotion. The Minister may, for this purpose, make such arrangements as he thinks fit and may cancel or vary such arrangements.

The Public Service Management (Recruitment and Appointments) Act 2004, which confers responsibility for running competitions on the Public Appointments Service. Section 58 makes it plain that the Minister for Finance is responsible for all matters relating to recruitment in the Civil Service, including "eligibility criteria".

Recruitment to *professional* posts (for example, engineers, accountants and lawyers) is fully open to nationals of the other EU Member States.

Recruitment to *administrative* posts is in principle open to nationals of the other EU and EEA Member States. However, there are certain posts in areas considered to be essential to the national interest (such as the diplomatic service and security posts) which are restricted to Irish nationals. There is no published list of such posts. However, when these jobs are advertised, it is specified that they are only open to Irish nationals. In relation to the Department of Foreign Affairs, all posts in the Irish Diplomatic Service (Third Secretary, Counsellor and Ambassador) which require the holding of a diplomatic passport are reserved for Irish citizens.[62] Other reserved posts have included posts in the Department of An Taoiseach (Prime Minister), the Office of the Revenue Commissioners, the Department of Defence and the Department of Justice, Equality and Law Reform and the Department of Foreign Affairs.

The Health Service

There are no nationality requirements for access to employment in the Health Service.

The Defence Forces

Nationality. Irish citizenship, or specific approval of the Minister for Defence, is required for recruitment to the commissioned officer ranks in the Irish Defence Forces.[63] Competitions to recruit commissioned officers having particular qualifications are generally open to applicants of any nationality. For example, where the Irish Defence forces seek to recruit qualified medical practitioners, candidates from overseas will be eligible so long as the candidate has the necessary qualifications specified in the competition guidelines and the candidate is registered with the applicable professional body in Ireland.[64]

In order to enter the Defence Forces below the level of commissioned officer, a candidate for a cadetship must be either a citizen of Ireland, a convention refugee, an EEA national or be lawfully present in Ireland and have five years lawful residence in the State.[65] The requirement to have five years of lawful residence will be fulfilled if it can be shown that the candidate has been continually resident for at least one year prior to the closing date for applications and that during the eight years immediately preceding that period, have had a total period of residence in the State amounting to four years.

The Minister must be satisfied as to character for all appointments.

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62 See "Ireland" in Cross-Border Mobility of Public Sector Workers.

63 Section 41 of the Defence Act 1954.

64 A South African doctor was recently commissioned as Captain in the Irish army on this basis (see The Irish Times " Military History: from Soweto to the Army", 8 March 2007).

65 Cadetship Competitions: Information and Rules Cadetships in the Defence Forces 2007 for school leavers, graduates and service personnel. http://www.military.ie/Cadetship2007.pdf.

Education Sector

Nationality. There are no nationality requirements for recruitment in any part of the education sector.

The Marine Sector

There are no Irish nationality conditions for access to the posts of captain and first officer of an Irish-flagged ship.

Police (An Garda Síochána)

There is no formal nationality or residence requirement for entry to An Garda Síochána, the Irish police service. However, the requirement to hold a qualification in both Irish and English at Leaving Certificate level, or equivalent, had effectively limited entry to Irish citizens.

The position changed radically as a result of the Garda Síochána (Admissions and Appointments) (Amendment) Regulations 2005[66] made in September 2005. The language requirement has been replaced with a requirement to hold a qualification in two languages, at least one of which is to be Irish or English.

A new nationality and residence condition has also been introduced. Entry will now be open to:

i. nationals of an EU Member State, other EEA State or the Swiss Confederation; and
ii. nationals of any other state who are lawfully present in Ireland and have five years lawful residence there.

According to the Minister for Justice, Equality and Law Reform, the new changes will "open up entry to An Garda Síochána to persons in Ireland from all parts of the community and from all ethnic backgrounds. This is a hugely significant step which will help ensure that future intakes of recruits to An Garda Síochána reflect the composition of Irish society, to the benefit of the Force and the people it serves".

The Garda Síochána Act 2005 is the legal basis for the appointment of *reserve* members by the Garda Commissioner. The Garda Síochána (Reserve Members) Regulations 2006[67] which came into force on 1 August 2006 provides for appointment of reserve members by the Garda Commissioner. A reserve member of the police force is not remunerated though he/she will be reimbursed for expenses incurred. The eligibility requirements set out in Section 4 of the Regulations provide for both nationals and non-nationals who are legal residents of Ireland to be recruited on the basis of fulfilling the same conditions.

One pre-condition for eligibility relates to standards attained in second-level assessments and provides that the Minister shall determine whether *in his opinion* the assessment can be deemed commensurate with the Irish Leaving Certificate.

66 S.I No. 560 of 2005.
67 S.I. No. 413 of 2006

1.2. Language requirement

The Civil Service

Section 58 of the Public Service Management (Recruitment and Appointments) Act 2004 makes it clear that the Minister is responsible for all matters relating to recruitment in the Civil Service, including "the use or knowledge of the Irish language in the Civil Service or any part of it". Since all citizens have the right to conduct their business with Government through Irish or English, there have to be sufficient staff available in the Civil Service to provide a service to Irish speakers. In most open competitions, applicants invited to interview may, take an optional language test. Candidates who satisfy the Public Appointments Service that they are proficient in both Irish and English will be awarded extra marks which could result in a higher ranking for a competition.

In some cases, the terms of the competition may require a certain proficiency in the Irish language. For example, in a recent competition for the post of Principal Officer, the department circular provides that, "It is recognised that the performance of duties in certain posts in the Department of Community, Rural and Gaeltacht Affairs, the Department of Education and Science and the Public Appointments Service requires a competency in Irish. Those Departments/Offices may, therefore, as an exceptional arrangement, satisfy themselves as to the competence of any candidate due to be assigned to them to undertake such duties through the medium of Irish. If further appraisal of a candidate's competence in that respect is sought, it will be addressed by the Public Appointments Service on the basis of a test held specifically for this purpose".[68]

Similarly Section 13 (2) (e) of the Official Languages Act 2003 provides for the Irish language to become the working language in offices situated in the Gaeltacht areas within a certain timeframe to be agreed between the relevant public body and the Minister.

The Health Service

There is no general requirement that applicants for jobs in the Health Services speak Irish. However, all citizens have the right to conduct their business through Irish and, in order to ensure that there is sufficient staff available to provide a service to Irish-speakers, applicants invited to a competitive interview may have an assessment made of their ability to communicate in English and in Irish.

The Defence Forces

There is no statutory requirement for those seeking access to commissioned officer or other ranks to have Irish language qualifications. All members of the Defence Forces are to be instructed in giving and receiving, in the Irish language, such commands and directions as are necessitated by the routine tasks of their ranks and appointments.

Education Sector

Teachers trained in Ireland will possess Irish language qualifications, as this is a compulsory part of the training curriculum. In relation to teachers trained in another EU Member State, a

[68] Circular 11/2007 Department of Finance http://www.finance.gov.ie/documents/circulars/circ11.2007.pdf

distinction is drawn between those seeking appointment as teacher in mainstream national schools and those seeking appointment in second level schools.

The position for mainstream national schools, second level schools and universities is outlined below.

Mainstream national schools[69]

Teachers trained in another EU Member State, whose qualifications have been assessed and accepted by the Department of Education and Science, but who do not possess an appropriate Irish language qualification will be granted a five-year period of *provisional recognition* to teach in national schools. During this period these teachers will be required to work towards meeting the Department's Irish language requirements and must, where necessary, attend training courses to prepare for the Irish language examination, *Scrúdú Cáilíochta sa Ghaeilge* ("SCG").

To satisfy the Irish language requirements, applicants must pass the SCG and provide certification that they have resided in the *Gaeltacht* (an Irish-speaking area) while attending an approved three-week course or its aggregated equivalent.

The Teaching Council[70] has advised that, in recent months, it has began offering candidates an alternative means to acquire the required language skills for full recognition because it believed the provisions of a variety of means may be required to comply with the State's obligations under EU law. Candidates are being offered a choice between undertaking the SCG aptitude test or an 'adaptation period' of between 3-5 years where the candidate gains the requisite skills through a combination of on the job training, observation and Gaeltacht placements.

The Teaching Council has not formalised the requirements under the 'adaptation period'. It has, however, stressed that the adaptation period requirements must lead to a similar outcome as the SCG and is not a soft option for recognition.

Although teachers with provisional recognition may be appointed as permanent, temporary or substitute teachers, the period of employment may not exceed the period granted for provisional recognition. The basis for the requirement is that teachers in national schools should be qualified to teach the range of primary school subject through Irish. Where a teacher with provisional recognition is employed, the school must show that appropriate arrangements have been made to teach the Irish curriculum to the teacher's class: the Department of Education and Science has made it clear that "under no circumstances should such a class be deprived of competent Irish language tuition".

In September 2004, all current and past candidates for the SCG were granted a two-year extension to the normal five-year period and new applicants may request such an extension where they have failed to pass all the SCG modules within the five-year period. This was a once-off extension and since September 2006 only a normal five-year period is applicable.

Full recognition is granted to those teachers who have already satisfied the language and all other requirements. This currently applies to teachers who have successfully completed certain courses with Irish-language content in St. Mary's College, Belfast. Failure to satisfy

69 See Department of Education and Science, Circular letter 25/00.

70 In accordance with the provisions of the Teaching Council Act, the Registration Council was dissolved with effect from 28 March 2006, the date on which the Teaching Council was established. The Teaching Council has taken over the role of teacher registration and the recognition of qualifications for the purposes of post-primary teaching.

the language requirements within the five-year period will lead to the person losing their provisional recognition status. The school is notified accordingly by the Department of Education and Science and should seek to replace that teacher with a qualified person. In an interim where the person continues to be employed they will be paid an unqualified teacher's rate of pay. The person is however permitted at any time to sit the SCG and achieve full recognition.

The above rules apply to "mainstream" national schools. A scheme of "restricted recognition" – designed to ensure that the teacher qualified under another jurisdiction cannot teach in a mainstream class – applies to certain categories of special schools and classes

Second Level Schools

The requirement that all second level teachers should have passed the oral component of the *Ceard Teastas Gaeilge* – with teachers coming from other Member States allowed a period of three years after appointment to achieve this – was removed for most second level teachers in June 1999.[71] Teachers of Irish and those employed in schools in the Gaeltacht and where Irish is the medium of instruction continue to be required to be fully proficient in Irish. This change was seen as facilitating the mobility of teachers between the Republic and Northern Ireland, to the benefit of teachers and pupils and to the education systems in both jurisdictions.

Universities

A former Irish language requirement for posts in the National University of Ireland, Galway (formerly, University College Galway) has now been removed. The University College Galway (Amendment) Act 2006[72] which came into force on 22 February 2006, inserted a new Section 3 into the University College Galway Act 1929. Section 3 removes the requirement to appoint candidates competent in the Irish language and replaces it with an obligation to ensure that strategic development plans of the University contain a provision for the delivery of education through the medium of Irish. The President and governing authority of the University are obliged to ensure that this aim is implemented.

The Marine Sector

There are no Irish language conditions for access to the posts of captain and first officer of an Irish-flagged ship.

Police (An Garda Síochána)

In order to ensure that An Garda Síochána can deliver on its very strong commitment to delivering a service in Irish, all Garda recruits will be required to achieve an appropriate standard in Irish before becoming full members of the force and recruits who do not have an Irish-language qualification will undergo basic training in that language.

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[71] See Minister's Press Release of 24 June 1999, reprinted in Department of Education and Science "Registration Council: Application for Recognition of Qualifications for the Purposes of registration as a Secondary Teacher".

[72] Act No. 1 of 2006.

1.3. Recruitment procedures

In general, the public recruitment procedures in Ireland do not disfavour nationals of other Member States (subject, of course, to any applicable Irish nationality requirements).

There is no generally applicable statement of recruitment procedures applying across the public service. Appointment processes are established by the Public Appointments Service and others in respect of individual competitions. However, these processes are subject to Codes of Practice published by the Commission for Public Service Appointments under the Public Service Management (Recruitment and Appointments) Act 2004. Codes of Practice issued (or reissued) in 2007 cover appointment to positions in the civil servant and the public service, emergency short-term appointments to positions in the Health Service Executive, appointment of persons with disability, atypical appointments to positions in the Civil Service and appointment to the position of Garda Trainee in An Garda Síochána. The Codes centre on the principles of: (a) probity; (b) merit-based appointments; (c) processes in line with best practice; (d) fair and consistent processes; and (e) the making of appointments in an open, accountable and transparent manner. Although these Codes are conducive to an open and unbiased system of recruitment compliant with Community rules on free movement, no specific reference is made to EU rules in the Codes of Practice.

There is no regime in Ireland equivalent to that applying in France in the *Burbaud* case, so the particular barrier to mobility identified by the Court there does not exist.

However, as mentioned in previous reports, there would seem to be a difficulty for auditors trained outside Ireland to access employment as an Auditor in the office of the Comptroller and State service, since these posts appear to be reserved in practice for persons who have been recruited as Trainee Auditors.

1.4. Recognition of diplomas

The Public Appointments Service (formerly the Office of the Civil Service and Local Appointments Commissioners) operates a non-published procedure for the recognition of diplomas. When a copy of the diploma itself is provided, contact will be made with appropriate professional bodies and colleges and a decision will be taken after taking all factors into account. It appears that some attempt is made to ensure uniformity of treatment. In case of rejection, there is the possibility of an ex gratia administrative appeal.

There does not appear to have been any recourse to the courts in relation to a refusal to grant recognition. The lack of transparency and predictability may cause concern.

1.5. Recognition of professional experience for access to the public sector

General

The position in Ireland has been set out in the Irish section of the 2006 Commission Report on the cross-border mobility of public sector worker and this appears to set out the position as it continued to apply in 2007.

In relation to access to public sector employment, previous professional experience may be taken into account where such experience is specified as being relevant to a particular post. Credit will then be given for such experience. This will be the case for competitions for certain technical and professional posts.

It should be noted that incremental credit for previous experience in the public service does not play a part in establishing an order of merit in the selection process, but may be relevant for salary purposes (see 2.1, below).

Recruitment to An Garda Síochána (Police force)

Section 52 of the Garda Síochána Act 2005[73] provides for the appointment of members of the Police Service of Northern Ireland (PSNI) to ranks in the Garda Síochána not below the rank of superintendent. Candidates are to compete in a merit-based selection procedure with other applicants for appointment to the rank concerned. It is provided that, in determining the eligibility of a member of the PSNI to apply for appointment, appropriate recognition shall be given to the rank, experience and qualifications that would be required for appointment to an equivalent rank in the PSNI.

2. EQUALITY OF TREATMENT

2.1. Recognition of professional experience for the purpose of determining the professional advantages (e.g. salary; grade)

Incremental credit for previous public sector service is given at entry level for Officers in the Clerical and Executive Officer grades and will apply to the salary point awarded on recruitment: it will have no bearing on the order of merit established under the selection process. The officer concerned must apply for credit and provide proof of relevant previous service.

The question of incremental credit for previous service has been addressed in agreements between the Minister for Finance and trade unions. For example, in April 2006, the Minister of Finance agreed to provide for the granting of incremental credit for previous service for entry levels at Tax Officer and Higher Tax Officer grades represented by the Irish Municipal Public and Civil Trade Union (IMPACT).[74] This Agreement is effective from 1 October 2002. Staff with prior qualifying service promoted between 1 May 2000 and 30 September 2002 inclusive may have their notional starting pay on promotion recalculated to take account of credit: however, actual pay should only be revised with effect from 1 October 2002. This measure, which applies only to adjust pay and does not affect seniority, applies to all Tax Officers, employed in a "public service body" as defined in Section 1 of the Public Service Superannuation (Miscellaneous Provisions) Act 2004 (and a number of other specified public bodies) or "in an equivalent body in the EU Member States".[75] It is stated that experience in the Public Service in Ireland or in the EU Member States will have to be relevant to the work of the grade. The Government Department concerned will check with the previous employer in Ireland or another EU Member State whether previous service is relevant and the Department of Finance is to make the final decision on new cases. There are a number of other Agreements to the same effect relating to other posts in the Civil Service.

In December 2007, the Minister of Finance agreed to provide for the granting of incremental credit for previous service for certain other entry level grades – at clerical and executive officer levels – and this is stated to apply to those who have been previously employed

[73] No. 20 of 2005. (http://www.oireachtas.ie/documents/bills28/acts/2005/2005.pdf .

[74] http://www.finance.gov.ie/viewdoc.asp?DocID=3882&CatID=28&StartDate=01+January+2006&m.

[75] It is stated that employment in the public service in EFTA countries and the EU Commission will be considered as relevant in this regard.

in the public service in Ireland (within the meaning of Section 1 of the 2004 Act) or an equivalent body in the EU Member States.[76]

In general, recognition is not given for experience in the private sector.

[76] http://www.personnelcode.gov.ie/percode.nsf/720bbc13762fccef80256aaa0053461d/7234bd06c5c91e87802573d20042f5d7?OpenDocument

Chapter V
Members of the Family

RESIDENCE RIGHTS

Information on the transposition of Directive 2004/38

Directive 2004/38/EC was initially implemented by the European Communities (Free Movement of Persons) Regulations 2006, made in April 2006. The European Communities (Free Movement of Workers) (No. 2) Regulations 2006 (the 2006 Regulations) were brought into force to update the earlier Regulations in order to provide for the free movement rights of Bulgarian and Romanian citizens upon accession.

A number of specific points may be made here:

- Regulation 3(2) provides that only family members lawfully resident in another Member State come within the scope of the Regulations. This restriction is not contained in Article 3 of the Directive but the Minister for Justice, Equality and Law Reform has stated that it[77] was inserted to take account of the ECJ ruling in the *Akrich* case (see the discussion on the application of the *Akrich* judgment below);
- The Regulations refer to family members defined in Article 2(2) of the Directive as "qualifying family members" and to those covered in Article 3(2) of the Directive as "permitted family members";
- Regulation 7(1), which implements Article 9 of the Directive (administrative formalities for family members who are not nationals of a Member State), provides that such a family member "who has been resident in the State for not less than 3 months shall apply to the Minister for a residence card". This provision satisfies the requirements of Article 9(2). However, it also gives the impression that a residence card cannot be applied for earlier: Article 9(1) of the Directive, in referring to a "planned period" of residence of more than three months, seems to imply that an application may be made earlier;
- Under Regulation 7(2), the issue of the residence card is subject to the Minister being "satisfied that it is appropriate to do so". This suggests an element of subjective appraisal in the process which is not foreseen in the Directive; and
- There is no provision that the possession of residence cards issued by other Member States exempts family members from the visa requirement (Regulations 4(3)(a) and 5(3) require the family member to be in possession of a valid Irish visa as a condition to being granted permission to enter the State.

Schedule 2 to Regulation 7(1)(b) sets out the particulars to be contained in an application for a residence card by a family member of an EU national who is not a national of a Member State.

In relation to the Certificate of Residence, in May 2006 the Minister for Justice, Equality and Law Reform introduced a fee for the issue of Certificates of Registration or registration cards to non-EEA nationals. The Immigration Act 2004 (Registration Certificate Fee) Regulations 2006[78] provide for exemptions from payment of the fee. There are six categories

[77] Dáil Debates 13 June 2006 p. 970.
[78] S.I. No. 253 of 2006.

of persons who are exempt from payment of the fee including family members/dependants of EU nationals who apply for a residence permit under the 2006 Regulations.

Practice of Member State when issuing visas to third-country family members

In November 2005, the Department of Justice, Equality and Law Reform issued lengthy guidelines on documentation required for applying for a visa.[79] These guidelines set out the minimum documentation required with all visa applications and specify additional requirements for particular categories of visas.

In relation to visa applications generally, it is provided, amongst other matters, that:

- the fully completed form must be signed by the applicant, save where he/she is under 18 where the parent's may sign on the applicant's behalf;
- all documents submitted must be in English, or where in another language, a notarised translation must accompany the original document;
- at the time of the application, the passport must be valid for 6 months after the date on which it is proposed to leave Ireland. For long-term stays, it is advised that the passport be valid for at least 12 months;
- all visa applicants must be able to show evidence that they can support themselves during their stay in Ireland without recourse to public funds or resources. A detailed bank statement showing sufficient funds – and covering the immediate 6-month period prior to submitting the application should be submitted. Lump-sum lodgements made in the run-up to the application are not taken into account; and
- details should be included of any other family members presently in Ireland, or any other EU State.

In relation to the "Spouse of Irish/EU Visa", which covers spouses of Irish nationals and nationals of other EU Member States, the additional requirements are as follows:

- a fully completed and signed application form;
- a passport valid for at least 12 months;
- a clear copy of the other spouse's passport;
- a marriage certificate;
- for recent marriages, and marriages where the couple have not yet resided together, the applicant is asked to give a full account of the relationship history – when and where the couple met and evidence of this such a visas, entry/exit stamps on passport of Irish/EU national;
- evidence of Irish/EU national's employment in Ireland (P60 form, payslips);
- if other spouse is not in employment, details of how the applicant intends to support himself /herself; and
- accommodation details.

The guidelines also contain further information relating to visa decisions, rights of appeal and arrival in the State.

[79] http://www.justice.ie/80256E01003A21A5/vWeb/flJUSQ678E4G-en/$File/VisaAppDocs.pdf.

Application of Akrich Judgment

In the *Akrich* case (C-109/01), the European Court of Justice ruled, amongst other matters, that in order to be able to benefit from the rights provided for in Article 10 of Regulation (EEC) No. 1612/68 on freedom of workers within the Community, a national of a non-Member State married to a citizen of the Union must be lawfully resident in a Member State when he/she moves to another Member State to which the Union citizen is migrating or has migrated.

The 2006 Regulations take account of this decision by providing in Regulation 3 (2) that "these Regulations shall not apply to a family member unless the family member is lawfully resident in another Member State".

It is clear that the January 2007 ruling of the European Court of Justice in the *Jia* Case (Case C-1/05) limiting the scope of the *Akrich* ruling means that Regulation 3(2) will need to be reviewed and, if necessary, deleted/amended.

However, in the *S.K.* case decided by the High Court in May 2007,[80] it was held that the 2006 Regulations correctly implemented the 2004 Directive, so that a third-country national who had lived unlawfully in the UK prior to coming to Ireland and getting married to an Estonian national in Ireland could be refused a residence card under Regulation 3(2). The Judge considered that *Jia* case was not intended to disturb the approach of the Court of Justice in *Akrich*, since in the former case the person concerned was lawfully present in Sweden and was not seeking to avoid immigration laws. He considered that the *Akrich* approach could be followed in this case, taking the view that "the 2006 Regulations amount to an administrative implementation of the policies and principles of the 2004 Directive and take account of the scope and latitude afforded to individual Member States to enact and maintain the integrity of their respective immigration laws".

In a number of other cases, non-national spouses of Union citizens denied residence on the basis of the *Akrich* ruling brought court proceedings in the course of 2007. These included the following:

- *Proceeding [2007] No. 1324 J.R. – Metock.* A Cameroon national who had applied for asylum in Ireland in June 2006 married a UK citizen in October 2006 (the latter had formerly been a Cameroon national and the couple had been in a relationship for 13 years). In November 2006, the Cameroon national made an application for residence as the spouse of a Union citizen working and residing in Ireland, which was considered under the 2006 Regulations. He was denied asylum status in February 2007. In June 2007, he was refused residence under Regulation 3(2) on the sole ground that he had not produced evidence showing lawful residence in another EU Member State prior to his arrival in Ireland (it should be noted that his immigration history – as a failed asylum seeker – was not thought to be relevant). He obtained leave to apply to quash the decision in October 2007. The case was ongoing at the end of 2007.
- *Proceeding [2007] No. 622 J.R. – Chinedu.* A Nigerian national who had applied for asylum in Ireland in December 2005 married a German citizen lawfully residing in Ireland in July 2006. In August 2006, the Nigerian national made an application for residence as the spouse of a Union citizen working and residing in Ireland. A week later, he was refused asylum. In April 2007, he was refused residence under Regulation 3(2) on

[80] *S.K. and Anor. v The Minister for Justice, Equality and Law Reform and Ors.* [2007] I.E.H.C. 216: http://www.courts.ie/Judgments.nsf/597645521f07ac9a80256ef30048ca52/dd1ae6557356111180257340005 2505f?OpenDocument.

the sole ground that he had not produced evidence showing lawful residence in another EU Member State prior to his arrival in Ireland (it should be noted that his immigration history – as a failed asylum seeker – was not thought to be relevant). In May 2007, he obtained leave to apply to quash the decision and to require the Minister to reconsider the application. The case was ongoing at the end of 2007.

- *Proceeding [2007] No. 106 J.R. – Ikogho.* A third-country national who had applied for asylum in Ireland in November 2004 was refused a declaration of refugee status in September 2005 and was the subject of a deportation order (which, despite an unsuccessful challenge in 2007, was not carried out). In June 2006, he married a UK citizen lawfully residing and working in Ireland. In July 2006, he made an application for residence as the spouse of a Union citizen working and residing in Ireland. In January 2007, he was refused residence under Regulation 3(2) on the ground that he was illegally resident in Ireland by reason of the deportation order. In February 2007, he obtained leave to apply to quash the decision and to require the Minister to reconsider the application. The case was ongoing at the end of 2007.
- *Proceeding [2007] No. 1620 J.R. – Igbonanusi.* A Nigerian national who had applied for asylum in Ireland in April 2004 was refused a declaration of refugee status in May 2005 and was the subject of a deportation order (which was not carried out). In June 2006, he married a UK citizen lawfully residing and working in Ireland. His future spouse, a Polish national came to Ireland on holiday in February 2006 and met him: they remained in contact and she returned to Ireland to work there in April 2006. They married in November 2006 and in February 2007, he made an application for residence as the spouse of a Union citizen working and residing in Ireland. In August 2007, he was refused residence under Regulation 3(2) on the sole ground that he had not produced evidence showing lawful residence in another EU Member State prior to his arrival in Ireland (it should be noted that his immigration history – as a failed asylum seeker and the subject of a deportation order – was not thought to be relevant in this context). In November 2007, he was arrested and put in prison with a view to deportation: the Minister refused to revoke the deportation order. In December 2007, he obtained leave to apply to quash the decision and to require the Minister to reconsider the application. However, on the same day, the High Court refused to grant an interlocutory injunction preventing the Minister from deporting him pending the outcome of the proceedings relating to Regulation 3(2) and he was deported to Nigeria in December 2007. The case was ongoing at the end of 2007.

(It should be noted that these four proceedings have been the subject of a referral to the European Court of Justice in early 2008 and that the Court has in the *Metock* ruling of 25 July 2008 repudiated its approach in the *Akrich* case: the implications of this for Ireland will be addressed in the 2008 Report.)

2. ACCESS TO WORK

Regulation 18(1)(b) of the European Communities (Free Movement of Workers) (No. 2) Regulations provides that "subject to the other provisions of these Regulations, a person to whom these Regulations apply shall be entitled … without prejudice to any restriction on that entitlement contained in the Employment Permits Acts 2003 and 2006, to seek and enter

employment in the State in the like manner and to the like extent in all respects as Irish citizens".

Regulation 18(1)(c) provides that a person to whom the Regulations apply shall, subject to the other provisions of these Regulations, be entitled "to carry on any business, trade or profession … in the like manner and to the like extent in all respects as Irish citizens".

In relation to employment, non-EEA nationals are, as a rule, required to seek employment permits (See Chapter VII, below).

The position of third-country national "family members" within the meaning of Article 2(2) of the 2004 Directive remains rather unclear. As far as a non-EEA national married to an EU national is concerned, the Department of Enterprise, Trade and Employment has expressly stated that a work permit will not be required once he/she has received a residence card. In the intervening period, which can be as long as 18 months, a work permit will be required, though the fee for such permit will be waived. Other non-EEA national family members do not need a permit once they have received a residence card under the 2006 Regulations, though there has been no express recognition of this. In the meantime, they must apply for a dependant work permit. According to information given by officials in the Department, a dependant child will only be recognised as such if he/she enters the State before his/her 18th birthday. If entry is after that age, the child will not be regarded as "dependant" and will thus have to apply for an independent work permit.

3. ACCESS TO EDUCATION AND STUDY GRANTS

Regulation 18(1)(c) of the European Communities (Free Movement of Workers) (No. 2) Regulations entitles persons covered by the Regulations to access to education and training in the State in the like manner and the like extent as Irish citizens. In 2005, there were 9,000 international students from the EU registered in higher education institutes.[81]

EU Status

Third-level institutions will assess fees due on the basis of EU or non-EU status.

EU fees, which are usually at a substantially lower level than non-EU fees, are payable by those who meet certain conditions. The precise wording of these conditions varies as between third-level institutions. For the largest third-level institution in the State, University College Dublin, EU rates will apply:

- For students who are aged under 23 on 1 September of the year of entry into the institution concerned, where the student has been ordinarily resident in a EU Member State for three of the five years prior to entry *and* his/her parent(s) have been ordinarily resident (that is, principally resident for the purposes of taxation) in a EU Member State for three of the five years prior to the student's entry.
- For students who are aged 23 or more on 1 September of the year of entry (and hence treated as mature students, where the student has been ordinarily resident (that is, principally resident for the purposes of taxation) in a EU Member State for three of the five years prior to the student's entry.

Undergraduate students born in Ireland who do not meet the normal residency requirements but who received all their primary and secondary education in Ireland and have no previous

[81] NESC, Migration Policy, September 2006.

third-level attendance will also pay EU fees, as will graduate students born in Ireland who have also received all of their third-level education in Ireland.

Dublin City University defines the conditions for the status rather differently, stating that a candidate will qualify where they meet *one* of the following three criteria:

1. they are a national of an EU member state and will be ordinarily resident in an EU member state for three of the five years prior to the commencement of the programme.
2. they are a national of an EU member state and have received all their post-primary education within an EU member state.

3.1 where *over the age of 23*, they have been in full-time employment in an EU member state for three of the five years prior to the commencement of the first year of the course.

3.2 where *under the age of 23*, they have been ordinarily resident in an EU member state for three of the five years prior to the commencement of the programme and their parents have been in full-time employment in an EU member state for three of the five years prior to the commencement of the programme.

Financial Support

The Free Fees Scheme, under which the Exchequer meets the tuition fees of students attending approved third-level courses, applies to first-time graduates who hold EU nationality or have official refugee status and who have been ordinarily resident in a EU Member State for at least three of the five years preceding their entry to the course.

There are four student maintenance grant schemes which are funded by the Irish Government under the National Development Plan 2007-2013:

- The Higher Education Grants Scheme (HEG);
- The Vocational Education Committee' Scholarship Scheme (VEC);
- The Third Level Maintenance Grants Scheme for Trainees (TLT); and
- The Maintenance Grants Scheme for Students attending Post Leaving Certificate Courses.

The HEG, which generally applies in the University sector, is administered by the Local Authorities. The other three schemes are administered by the Vocational Education Committees.

The applicant for any of these schemes must satisfy one of a number of "nationality" conditions. He or she must:

- hold EU nationality; or
- have official refugee status; or
  - been granted humanitarian leave to remain (prior to the Immigration Act 1999);
  - be a person in respect of whom the Minister for Justice, Equality and Law Reform has granted permission to remain following a determination not to make a deportation order under Section 3 of the Immigration Act 1999;
  - have permission to remain by virtue of marriage to a resident Irish national (or be a child of such a person, not having EU nationality); or
- have permission to remain in the State by virtue of marriage to a national of another EU Member State who is residing in the State and who is/has been employed or self-employed, or be the child of such a person, not having EU nationality; or
- be a national of a member country of the EEA or Switzerland.

In addition, the parents/guardians of the applicant (or the applicant himself/herself in the case of an "independent mature candidate") must be ordinarily residence in the administrative area of the Local Authority/VEC from 1 October in the preceding year, though this requirement may be waived in exceptional circumstances. There are also requirements in relation to age and income levels.

Chapter VI
Relevance/Influence/Follow-up of Recent Court of Justice Judgments

C-212/05 Hartmann, C-213/05 Geven

The *Hartmann* and *Geven* cases are each generally concerned with the entitlement of frontier workers to receive child-raising allowance in the State of employment, rather than that of residence as a social advantage under Article 7(2) of Regulation 1612/68 in circumstances where the regime under Regulation 1408/71 does not apply (in the first case because the claimant did not work and her husband – a civil servant – fell outside the scope of Regulation 1408/71, in the second case, because the claimant was in only minor employment).

There has been no explicit recognition in Irish practice that a frontier worker who does not fall within the regime of Regulation 1408/71 is able to claim the benefits of Article 7(2) of Regulation 1612/68 in the circumstances that obtained in the *Hartmann* case.

There is a general recognition in relation to Supplementary Welfare Allowance, which is affected by Article 7(2) of Regulation 1612/68, that workers within the meaning of Article 39 EC do not have to establish habitual residence. This approach should extend to cover the *Hartmann* and *Geven* scenarios. However, in discussions with an official in the Department of Social and Family Affairs, it appears that the issues in *Hartmann* and *Geven* have not arisen in the Irish context, but that if they did, those cases would be applied in deciding whether to dispense with any residence condition.

C-287/05 Hendrix

There is no benefit in Ireland which is strictly analogous to the Wajong benefit in the *Hendrix* case and the situation in that case has not apparently arisen in the Irish context.

C-291/05 Eind

The *Eind* case was concerned with the application of Article 10 of Regulation 1612/68, which was a directly applicable provision. This Article was repealed with effect from 30 April 2006 and the position is now covered by the 2004 Residence Directive.

The situation considered in *Eind* does not appear to have been considered in Ireland in respect of the period prior to 30 April 2006.

In relation to the period since 30 April 2006, to which the principles in *Eind* would appear to apply, it should be noted that the 2006 Regulations implementing the 2004 Residence Directive do not apply to Union citizens who are Irish nationals. This appears to exclude even free-moving Irish citizens, which appears to be contrary to what is envisaged in the Directive. At present, the right of a free-moving Irish citizen to be joined by third-country national family members on the former's return to Ireland appears to be dealt with by the Minister as part of his executive functions. It is not clear what any account would be taken of the position under *Eind* if the same factual circumstances arose here.

C-208/05 ITC

There does not appear to be any legislation or other measure in Ireland corresponding to the German legislation considered in the *ITC* Case.

C-1/05 Jia

See the discussion in Chapter V.1, above, of the approach of the High Court to the *Jia* case and challenges to the Irish endorsement of the *Akrich* ruling. The matter has been clarified by the European Court of Justice in the July 2008 *Metock* ruling (to be addressed in the 2008 Report).

C-97/05 Gattoussi

The reporter does not believe that Article 64(1) of the Euro-Mediterranean Agreement has been considered in the Irish context.

So far as the reporter can establish, there are no other reported cases in 2007 that concern ECJ case law other than those above.

Chapter VII
Policies, Texts and/or Practices of a General Nature with Repercussions on Free Movement of Workers

1. IMMIGRATION, RESIDENCE AND PROTECTION BILL 2008

The Immigration, Residence and Protection Bill, introduced in April 2007, provided for the replacement of the existing immigration legislation by a single measure. The Bill fell into abeyance with the decision to call a General Election in May 2007 and no attempt was made to revive it during 2007.[82]

The Bill was intended to replace a body of legislation on immigration, some dating back to 1935. It covered non-EEA citizens and there was be a specific "saver" clause making it clear that the new legislation would not affect the EU Treaty obligations of the State or specific measures implementing Community Directives.

The Bill was based on the fundamental judicially endorsed principle that the State has the power to control the entry, residency and departure of foreign nationals, which in Ireland is exercised by the Minister for Justice, Equality and Law Reform. Some of the main elements of the Bill are outlined below.

- A statutory distinction would be drawn between foreign nationals lawfully and unlawfully present in the State. Lawful residence would depend on possession of a valid residence permit or other permission to be in the State. Persons unlawfully present in the State would not have access to employment and would be denied access to most State services.
- There would be a new statutory basis for making and determining visa applications.
- There would be provisions on the formalities on entry and the rules of carriers' obligations would be given a new statutory basis.
- The Bill set out the framework for the granting of entry and residence permits as the basis for lawful residence in the State. Ministerial regulations would define the various categories of resident status, together with the conditions, and rights and benefits, attaching to each. The residence permit would evidence the immigration status of the person concerned.
- It was intended to introduce a statutory long-term resident status designed to give a person with at least five years' appropriate residence in the State rights and benefits generally on a par with Irish citizens.
- There were provisions on removal of persons unlawfully in the State. Where a person did not depart voluntarily, he or she could be arrested and detained for this purpose, or made subject to a residence and reporting requirement.
- The Bill sought to implement the 2005 Asylum Procedures Directive. At the same time, it introduced a single procedure to replace the current multi-stage process.
- There were provisions dealing with the provision of biometric data by foreign nationals.
- Existing provisions in judicial review – designed to prevent the misuse of the judicial process by a foreign national in order to frustrate removal –were to be strengthened.

[82] See, however, the Immigration, Residence and Protection Bill introduced in January 2008, which will be addressed in the 2008 Report..

- Measures to counteract marriages of convenience would be reinforced. Foreign nationals seeking to marry in the State will need to be lawfully resident and must notify the Minister.

The Bill was subject to considerable criticism from immigrant representative bodies and human rights groups.[83] It was argued that the proposed regime lacked transparency and predictability and raised human rights concerns (for example, in relation to detention and rights of family reunion).

THE WORK PERMIT REGIME

Government Policy

The approach of the Irish Government to economic migration was addressed by the Minister for Enterprise, Trade and Employment upon the launch of the new employment permit arrangements in January 2007. While economic immigration is not a substitute for up-skilling and training the resident population, migrant workers are an essential component in moving the economy to a position where it is both knowledge-based and innovation-driven.

The policy of the Government is that the potential for EEA nationals to fill jobs in sectors where skills shortages have been identified must be maximised and the new employment permits regime will be used for attracting those high level skills which are strategically vital to the development of the economy, and cannot be sourced from within the EEA. "The fact that our employment permits arrangements will be based on job offers in skill shortage areas, rather than on unwieldy quota or points systems, will mean that they will be both responsive and efficient in responding to strategic high skill shortages as they emerge."[84]

The Employment Permits Acts 2003-2006

On 1 February 2007, the Employment Permits Act 2006,[85] which amended and supplemented the Employment Permits Act 2003,[86] entered into force. This Act codifies into law previous administrative practices and visa schemes, which supported the work permit system. The terms 'employment permit' covers what were formerly called work permits, working visas and visa authorisations.

The 2006 Act provides for a new employment permits system involving the establishment of a Green Card system for occupations where there are skills shortages, a re-established Intra-Company Transfer Scheme for temporary trans-national management transfers and a Work Permit Scheme.

The Act also contains a number of important new protections for migrant employees. Employment permits will be granted to the employee rather than to the employer, and the employee may now apply for a permit directly. The permit will contain a statement of rights and entitlements of the migrant worker, including the right to change employment by obtain-

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83 See, for example, Immigrant Council of Ireland *The Immigrant Council of Ireland responds to the Government's Legislation on Immigration, raising concerns about its content and timing* (Press Release, 27 April 2007) and its earlier analysis of the 2005 Scheme of the Bill.

84 Address by Minister for Enterprise, Trade and Employment Mr. Micheál Martin, T.D. at the launch of the New Employment Permits Arrangements including the Green Card Scheme 24 January 2007: http://www.entemp.ie/press/2007/20070124a.htm

85 Act No. 16 of 2006 (http://www.oireachtas.ie/documents/bills28/acts/2006/A1606.pdf).

86 Act No. 7 of 2003 (http://www.oireachtas.ie/documents/bills28/acts/2003/a703.pdf).

ing a permit for another employer. Employers will be prohibited from deducting expenses associated with recruitment from pay and from retaining personal documents belonging to the employee. Breaches of the new legislation will attract significant fines and, in the case of individuals, prison sentences.

The Act also contains specific provisions to guarantee that non-EEA workers are informed of their employment rights.

The employment permit system will be administered by the Department of Enterprise, Trade and Employment.

With regard to the right to work of family members who come to Ireland on the basis of family reunification, since January 2007 the Spousal Work Permits Scheme introduced in February 2004 has been extended to enable the spouse and dependents (under the age of 18) of all categories of employment permit holders to obtain a work permit under its less onerous terms.

Provisions ensuring preference for EEA workers

The Employment Permits Act 2006 also contains a number of provisions designed to ensure that companies seek to recruit from within the EU before considering third-country applicants.

Section 10 of the 2006 Act provides that where an employer submits an application for an employment permit, the job vacancy must be advertised with the FÁS/EURES employment network and in local and national newspapers for three days to ensure that an Irish, EEA or Swiss national cannot be found to fill the vacancy. Evidence of this so-called labour market test must be submitted with the application to the Department of Enterprise, Trade and Employment.

Similarly, the application must confirm that at the time of the application, more than 50% of the employees of the company are Irish, EU/EEA or Swiss nationals. This provision both complies with the EU obligation to give preference to EU/EEA nationals, as well as ensuring that third country workers do not displace jobs that could be filled by Irish and other EEA workers and their families.

With regard to Romanian and Bulgarian nationals, though transitional measures require them to obtain an employment permit to work in Ireland, under Section 2(11) of the 2003-2006 Acts, the Minister of Enterprise, Trade and Employment is to give preference to applications for employment permits for Romanian and Bulgarian nationals over third-country nationals when determining which applications for employment permits should be granted.

3. PROTECTION OF EMPLOYEE RIGHTS

Irish law endorses the principle of non-discrimination in relation to the *treatment* of workers, whether they come from Ireland, the old 15 EU Member States, the 12 new Member States, the other EEA Member States or from third countries. Although differential treatment exists in relation to access, once a person is employed in the State, there should be equality in treatment as regards pay and other conditions of employment. Reference should be made to Section 20 of the Protection of Employees (Part-Time Work) Act 2001 which makes it clear that the full range of employee protection legislation thus formally applies to foreign workers, posted or otherwise, and irrespective of origin.

In recent times, there have been a number of highly publicised cases of alleged exploitation of non-national workers (both third-country nationals and those from the Accession States and there is continuing concern that there is a "race to the bottom" in relation to employee protection rights and consequent job displacement.

Employment protection and job displacement were key issues throughout the course of 2006 negotiations for the new Social Partnership Agreement – Towards 2016. The Government committed to establish a new employment rights body in order to secure compliance with employment rights legislation, including the principle of non-discrimination, and to foster a culture of compliance in Ireland. The National Employment Rights Authority (NERA) was set up on an interim basis in February 2007, with functions of information, inspection, enforcement, prosecution and protection of young persons.[87] Work continued during 2007 on the design of a new legislative framework for employment rights but no legislative proposals had appeared before the end of the year.

[87] See http://www.employmentrights.ie.

Chapter VIII
EU Enlargement

1. INFORMATION ON TRANSITIONAL ARRANGEMENTS REGARDING MEMBER STATES WHO JOINED THE EU IN 2004

In 2003, Ireland decided to allow the nationals of all eight of the acceding Member States subject to the transitional regime[88] access to the labour market from the date of their accession in May 2004. The Employment Permits Act 2003,[89] which was designed to tighten-up the rules on access to employment for non-nationals, provides that the requirements for employment permits will not apply to nationals of the acceding Member States after enlargement.

The Employment Permits Act 2003 contains a mechanism in Section 3 (3) to enable the Minister for Enterprise, Trade and Employment to reintroduce, by way of Statutory Order, the requirement of an employment permit for nationals of these Member States, should the labour market experience a disturbance. This action can only be taken over the duration of the transitional period set out in the Accession Treaty, which expires at the very latest in 2011.

The large number of migrants from the eight Member States and widespread reports of low wages, exploitation and job displacement, led to calls in 2005/2006 for the work permit system to be reintroduced. An Irish Times/TNS MRBI poll in January 2006[90] showed a significant majority of those polled in favour of introducing work permits for nationals of the new Member States. This has been firmly resisted by the Irish Government who have repeatedly praised the contribution such persons have made to the social and economic fabric of Ireland.[91] Similarly the European Commission, in its report on impact of the transitional arrangements, pointed to the liberalised Irish regime as a model to be followed by the Member States that have hitherto imposed restrictions.[92]

2. INFORMATION ON TRANSITIONAL ARRANGEMENTS REGARDING MEMBER STATES WHO JOINED THE EU IN 2007

Directive 2004/38/EC and the European Communities (Free Movement of Persons) (No. 2) Regulations 2006

In preparation for the accession of Romania and Bulgaria, the European Communities (Free Movement of Persons) (No. 2) Regulations 2006, were signed on 18 December 2006 and came into force on 1 January 2007. Under these Regulations, Romanian and Bulgarian nationals have the same rights of access to Ireland as a citizen of an existing EU Member State *with the exception of access to the labour market*.

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88 That is, the acceding Member States save for Malta and Cyprus.
89 Act No. 7 of 2003.
90 The Irish Times, 78% want permit system for EU migrants, 23 January 2006.
91 Dail Statement.
92 http://ec.europa.eu/employment_social/news/2006/feb/report_en.pdf .

Following lengthy debate in the earlier months of 2006, in October the Government decided to put transitional measures in place for Romanian and Bulgarian nationals following accession (subject to exceptions discussed below).[93] The Minister for Enterprise, Trade and Employment justified the decision on the basis of the unprecedented level of migration since the last round of Accession which had created pressures in education, housing, traffic and health services and that breathing time was needed to take effective steps toward integration.[94] The view of unions, such as the Irish Business and Employers Confederation (IBEC) and the Irish Congress of Trade Unions as well as the position of other Member States, were taken into account.[95]

In the lead up to the May 2004 round of accession, IBEC was fully supportive of the Government decision to permit full access to the labour market from the date of accession. However in the run up to the accession of Romania and Bulgaria it moved from this position and proposed the introduction of transitional measures. However, it recommended a more liberal work permit scheme for these nationals (compared to that in force for third country nationals) where Bulgarian and Romanian citizens would be granted work permits on foot of a job offer, without having to undergo a labour market test.

The Government decision to adopt transitional measures also reflected the reality of sharing a common travel area with Britain, which had shortly before announced similar transitional measures. Similarly, it is also certain that the need to ensure better regulation and protection against displacement and exploitation was a factor in the light of the upcoming General Election in May 2007. The Economic and Social Research Institute has said that the ongoing requirement for 50,000 new workers each year in order to fuel growth could be met by migrants from the current Member States.

Transitional Measures

For the initial two years following accession (subject to review before the end of that time) Bulgarian and Romanian citizens will continue to require employment permits as they did prior to accession. Such employment permits are granted under the Employment Permits Acts 2003-2006.

However, the requirement for an employment permit will not apply in the case of a Romanian/Bulgarian national who:

a. has been resident in the State as a holder of an employment permit, expiring on or after 31 December 2006, for an uninterrupted period of 12 months or more;
b. was resident in the State prior to 1 January 2007 who is the spouse of an EU national (including Bulgarian and Romanian nationals) who does not need an employment permit;
c. who entered the State on or after 1 January 2007 and is the spouse/dependant of an EU national, other than a Bulgarian or Romanian national;
d. is resident in the State and is self-employed;
e. is registered as a student, and working less than 20 hours a week;
f. has obtained prior explicit permission from the Department of Justice, Equality and Law Reform to remain resident and employed in the State without an employment permit.

[93] Department of Enterprise, Trade and Employment Press Release, "Government decides to continue the existing work permits regime for Romania and Bulgaria from 1st January 2007", 24 October 2006.
[94] The Irish Times, "Martin says worker ban on new EU states is justified", 25 October 2006.
[95] Department of Enterprise, Trade and Employment Press Release, "Government decides to continue the existing work permits regime for Romania and Bulgaria from 1 January 2007" - 24 October 2006.

Furthermore, though all other Romanian and Bulgarian nationals will be required to obtain an employment permit to work in Ireland, under Section 2(11) of the 2003-2006 Acts, the Minister of Enterprise, Trade and Employment shall give preference to applications for employment permits for Romanian and Bulgarian nationals when determining which applications for employment permits should be granted.

It is unclear how long Ireland will retain these transitional measures for Romanian and Bulgarian nationals. The Minister for Enterprise Trade and Employment has said that the transitional measures will be reviewed in 2008.[96] All Member States can apply complete restrictions for two years and for a further three years once notice is given to the Commission. Restrictions for a further two years can only be imposed if serious disruption to the labour market would otherwise occur.

The introduction of restrictions to accessing the labour force has led to concern that Romanian and Bulgarian nationals who exercise the right of residence in Ireland will be vulnerable to exploitation because they will be forced to work in the black economy. The Government believes that the commitment to treble the number of Labour Inspectors from 31 to 90 over the course of 2007 will minimise the potential for such exploitation.

Self-employment

Regulation 18 of the European Communities (Free Movement of Persons) (No. 2) Regulations entitles Romanian and Bulgarian nationals "to carry on a business, trade or profession…" on the same basis as all EU nationals.

Since the accession of Romania and Bulgaria on 1 January 2007, there have been mixed press reports about Romanian and Bulgarian workers being classified as self-employed persons, as a vehicle for entry into the labour market while avoiding the need for an employment permit. On the one hand, newspapers have pointed to the fact that in January and February 2007, 5,291 PPS numbers have been issued to Romanians while only 18 work permits have been issued. This leads to suggestions that such Bulgarian nationals have been wrongly classified as self-employed to circumvent the requirement to obtain an employment permit.[97] On the other hand, the Romanian Ambassador has said that many Romanians who have been living in Ireland are now merely taking steps to legalise their presence in the State by registering for a PPS number.[98] It is also important to note that an application for a PPS number does not necessarily mean a person is working in the country. The demographic results from Census 2006 reveal that in 2006 there were 7,696 Romanian nationals living in the State.

In the absence of concrete evidence it is too early to surmise whether such reports of "bogus" self-employment are accurate. It is necessary to examine each individual case to establish whether an asserted self-employed status is in fact a "cover" for a contract of employment and all this takes time. The Government has said that it will introduce legislation to enable the Labour Inspectorate to work together with the Department of Social and Family Affairs and the Revenue Commissioners in joint investigative units to target such bogus self-employment.

96 The Irish Times, Migrant workers, 25 October 2006.
97 The Irish Times, Move to target bogus self-employment, 6 March 2007.
98 The Irish Times, Romanian ambassador disputes influx of illegal workers to State, 14 March 2007.

Visas

From 1 January 2007 Bulgarian and Romanian citizens do not require visas to enter Ireland. Bulgarian and Romanian citizens, like those of other EU Member States (except the UK in accordance with the Common Travel Arrangements), will simply have to produce their passport or national identity card at the border.

Persons Currently Subject to Deportation Orders

The Department of Justice, Equality and Law Reform has confirmed that deportation orders previously issued remain in force. However, it has said that a person the subject of such an order may apply in writing to the Minister for Justice, Equality and Law Reform for the order to be revoked. In consideration of such applications the circumstances in which the order was made will be taken into account. There is a distinction in this regard between those deported for non-compliance with the immigration rules and those who have committed a criminal offence.

Asylum

In January 2007, the Department of Justice, Equality and Law Reform issued an information note[99] advising that in the light of the *EU Treaty Protocol on Asylum for Nationals of Member States of the European Union*, the Office of the Refugee Applications Commissioner (which is the first instance decision making body in the Irish Asylum System) will not accept asylum applications from nationals of EU Member States.

The Roma and the 2007 "Deportations"

In the early summer of 2007, a number of Romanian nationals who are members of the Roma community, set up an encampment near Dublin's M50 motorway. The conditions were substandard and children were taken into care of the social services. It seems clear that most of the individuals concerned did not have means to support themselves and were not entitled to social assistance. In July 2007, 86 nationals were served with deportation orders. Most appear to have acquiesced in the decision to deport, but some appear to have decided to challenge the orders.

The precise basis for the deportation decisions remains unclear, and there has been no detailed public statement in relation to the matter, though the Minister is believed to have issued removal orders under Regulation 20 of the European Communities (Free Movement of Persons) (No. 2) Regulations 2006.[100] Regulation 6(1) allows a right to residence for up to three months on condition that he/she does not become an unreasonable burden on the social welfare system of the State, whilst Regulation 6(2) provides that a Union citizen not in employment/self-employment or a student may reside for a longer period only if he/she has sufficient resources and sickness insurance for himself/herself, his/her spouse and accompanying dependents.

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[99] http://www.justice.ie/80256E010039C5AF/vWeb/pcJUSQ6Y9HL7-en.

[100] See, generally, Chapter I, above.

Chapter IX
Statistics

The reporter does not claim any special expertise in statistics and, although some general (and one hopes helpful) data and explanation is provided below, the following indications should be treated with some caution. Reference should be made to the increasingly detailed statistical data published by the Central Statistics Office (CSO).[101]

For current purposes, the most important recent publications of the CSO include:

- Census 2006, Principal Demographic Results (http://www.cso.ie/census/Census2006_Principal_Demographic_Results.htm);
- Census 2006, Volume 4 – Usual Residence, Migration, Birthplaces and Nationalities (http://www.cso.ie/census/census2006results/volume_4/vol_4_2006_complete.pdf);
- Census 2006, Principal Socio-Economic Results (http://www.cso.ie/census/Census2006_Principal_Socio_economic_Results.htm);
- Quarterly National Household Survey (http://www.cso.ie/qnhs/main_result_qnhs.htm);
- Measuring Ireland's Progress, 2006 (http://www.cso.ie/releasespublications/measuringirelandsprogress2006.htm);
- Population and Migration Estimates April 2007 (http://www.cso.ie/releasespublications/documents/population/current/popmig.pdf)
- Foreign Nationals: PPSN Allocations and Employment, 2002-2006 (http://www.cso.ie/releasespublications/documents/labour_market/current/ppsn.pdf)

DURATION OF MOBILITY

Immigration

Over the past ten years, there has been a large increase in inward migration and a reduction in outward migration, leading to a more than three-fold increase in *net* migration from 19,200 in 1997 to nearly 70,000 in 2006.[102]

In December 2007, the Central Statistics Office produced population and migration estimates to April 2007, with figures for the previous four years.[103] This contains statistics on estimated immigration classified by sex/nationality and by sex/origin, and by sex and nationality, for 2002-2007.[104] The table below sets out the position on the basis of nationality.

[101] See www.cso.ie.
[102] CSO, Measuring Ireland's Progress, 2006, p. 56.
[103] CSO Population and Migration Estimates April 2007 (with revisions to April 2003 to April 2006) (18 December 2007).
[104] http://www.cso.ie/releasespublications/documents/population/current/popmig.pdf.

Table IX-6. Estimated immigration classified by nationality '000

Nationality Year	**2002**	**2003**	**2004**	**2005**	**2006**	**2007 (preliminary)**
Irish	27	17.6	16.7	18.5	18.9	20
UK	7.4	9.1	7.4	8.9	9.9	5.9
EU 15 (exc. Ireland. and UK)	8.1	8.8	13.3	9.3	12.7	10.4
Accession States EU15 to EU 27	-	-	-	34.1	49.9	52.7
USA	2.7	2.1	2.3	2.1	1.7	2.8
Rest of World	21.7	22.4	18.8	11.6	14.7	17.8
Total persons	66.9	60	58.5	84.6	107.8	109.5

Migration of persons coming from the 15 old EU Member States has fluctuated during the period, with a relative decline in 2005 and another decline anticipated for 2007. There has been relatively high, and increasing, migration for those coming from the Accession States between 2005 and 2007. Prior to 2005, immigration from the then 10 new Member States was counted as "rest of world".

The Census 2006 statistics results viewed together with the statistics gathered in the context of the Quarterly National Household Survey (discussed below) support the conclusion that many of the migrants to Ireland from the countries that acceded to the EU in 2004, and Poland in particular, have arrived since Accession: the statistics classifying residents by their usual residence twelve months before the Census in 2006 show that 52,645 of the immigrants now usually resident in Ireland were living in those countries in April 2005. The data from Census 2002, for example, showing that there were only 2,200 Polish-born residents in Ireland at that time, supports this conclusion.

Some importance has been placed on the number of Personal Public Service Numbers (PPSN) issued to the Accession Member State nationals. It is not possible to work in the conventional economy without a PPSN. The Department of Social and Family Affairs publishes data on PPSN on an ongoing basis.[105]

The total number of PPSN issued has risen sharply from 83,410 in 2002, to 117,968 in 2004 and 204,018 in 2006. There appears to have been a small decline to in 2007. A substantial proportion of the total is attributable to migrants from EU-10 Member States (and latterly Bulgaria and Romania) and, of these, Poland has a majority share: in 2007, Polish nationals had 61% of the EU Accession total (and for the period from 1 May 2004 to the end of February 2008, the figure for Polish nationals is just under 61%). The significant discrepancy between these figures and the CSO immigration figures appears to reflect the fact that there are a large number of short-stay and seasonal workers, and a number of people with PPSN who do not take up employment.[106] The PPSN figures continue to be of some value in relation to

[105] Department of Social and Family Affairs, *Your Personal Public Service Number: Statistics on the Number of PPSN's Issued.* (http://www.welfare.ie/ppsn.ppsstat.html)

[106] See FÁS *The Irish Labour Market Review* 2006, pp. 18-19. (http://www.fas.ie/NR/rdonlyres/F63B6DCE-61FA-49B5-A4CC-E34522B16944/0/LABOUR_MARKET_REVIEW_2006.pdf.)

immigration from Romania and Bulgaria. In this connection, it should be noted that in 2007, 14,525 Romanians and 1,008 Bulgarians obtained PPSN.

Allocation of PPSN by Nationality: EU Accession States, 1 May 2004 to 29 February 2008

Period *Member State*	*1 May 2004-31 December 2004*	*2005*	*2006*	*2007*	*to end-February 2007*	*1 May 2004-29 February 2008*
Poland	25,104	64,718	93,787	79,816	8,492	271,917
Lithuania	11,368	18,707	16,039	10,728	1,166	58,008
Slovakia	4,544	9,256	10,687	8,415	557	33,835
Latvia	5,733	9,327	7,954	4,674	923	28,245
Czech Republic	3,045	4,503	4,458	3,838	452	16,236
Hungary	1,746	2,985	4,330	5,046	775	16,292
Estonia	1,630	2,011	1,407	648	74	14,882
Slovenia	64	76	101	72	17	5,770
Malta	139	124	143	152	19	5,770
Cyprus	23	25	33	42	3	126
Romania	-	-	-	14,425	1,771	16,292
Bulgaria	-	-	-	1,008	160	1,168
TOTAL	53,406	113,122	138,939	128,964	14,409	447,386

The 2006 Census

Usual residence. The 2006 Census provides data on persons who were usually resident in the State on Census Night (23 April 2006) but were usually resident outside the State one year before: this provides an indication of migration levels.[107] There are around 93,200 immigrants as a whole on this basis. It is significant that, save for relatively high levels of immigration from England and Wales (8,900), the higher number of immigrants come from the new 10 Member States (Poland (33,218), Lithuania (7,346), Latvia (4,040), Slovakia (3,605).

Nationality. In relation to the nationality of migrants,[108] of the 419,733 foreign nationals usually resident in the State, 66% (275,775) are from the (in 2006) 25 Member States. Of this number, almost 41% are British, 15.5% are nationals from the other old EU Member States and 43.7% are from the 10 Member States that joined in 2004. Nearly 23% are Polish. At the time of the Census, there were 7,696 Romanians living in the State (not included in the table IX-2).

[107] CSO, Census 2006, Volume 4 – Usual Residence, Migration, Birthplaces and Nationalities, Table 11.
[108] CSO, Census 2006, Volume 4 – Usual Residence, Migration, Birthplaces and Nationalities, Table 41A.

Table IX-1. Persons present in the State on Census Night (23 April 2006), whose usual residence one year previously was outside the State, classified by former country of residence and born outside Ireland (adapted from Source CSO, Census 2006, Vol. 4, Table 11)

Nationality	*Total*	*Male*	*Female*
Austria	167	69	98
Belgium	281	139	142
Cyprus	92	49	43
Czech Republic	1,859	1,151	708
Denmark	165	83	82
Estonia	652	310	342
Finland	286	123	163
France	2,759	1,405	1,354
Germany	2,414	1,178	1,238
Greece	105	66	39
Hungary	1,333	802	531
Italy	1,643	912	731
Latvia	4,012	2,137	1,875
Lithuania	7,282	4,062	3,220
Luxembourg	33	19	14
Malta	42	25	17
Netherlands	676	374	302
Poland	32,997	20,672	12,325
Portugal	389	237	152
Slovakia	3,565	2,310	1,255
Slovenia	67	46	21
Spain	2,301	1,096	1,205
Sweden	616	311	305
UK	14,070	7,414	6,656
TOTAL	98,391	55,082	43,309

Table IX-2. Usually resident persons, present in the State on Census Night (23 April 2006), classified by nationality (adapted from Source CSO, Census 2006, Vol. 4, Tables 41A-C)

Nationality	*Male*	*Female*	*Total*
Ireland	1,836,897	1,869,786	3,706,683
Austria	237	346	583
Belgium	474	436	910
Cyprus	39	21	60
Czech Republic	3,131	2,028	5,159
Denmark	365	364	729
Estonia	1,110	1,162	2,272
Finland	283	643	926
France	4,493	4,553	9.046
Germany	4,676	5,613	10,289
Greece	261	151	412
Hungary	2,118	1,322	3,440
Italy	3,564	2,626	6,190
Latvia	7,710	6,149	13,319
Lithuania	13,764	10,864	24,628
Luxembourg	13	13	26
Malta	76	63	139
Netherlands	2,146	1,844	3,990
Poland	40,288	22,988	63,276
Portugal	1,149	649	1,798
Slovakia	5,255	2,856	8,111
Slovenia	82	48	130
Spain	2,448	3,604	6.052
Sweden	651	1,091	1,742
UK	56,210	56,388	112,548
TOTAL EU ex IRELAND	150,003	125,772	275,775
TOTAL EU	1,986,900	1,995,558	3,982,458
TOTAL RESIDENT POPULATION	2,085,192	2,086,821	4,172,013

Place of birth. The principal demographic results of the 2006 Census also provide statistics in relation to the country of birth of migrants – which are used as an indicator of long-term residence.[109] 14.8% (601,732) of all residents in the State were born in another country. The vast majority are from England & Wales (200,488) 5% of the total resident population), with persons born in Poland coming a distant second (62,495, 1.5%).

[109] CSO, Census 2006, Volume 4 – Usual Residence, Migration, Birthplaces and Nationalities, Table 29A.

Table IX-3. Usually resident persons, present in the State on Census Night (23 April 2006), classified by birthplace (adapted from Source CSO, Census 2006, Vol. 4, Tables 29A-C)

Birthplace	*Male*	*Female*	*Total*
Ireland	1,721,605	1,744,418	3,466,023
Austria	243	369	612
Belgium	655	599	1,254
Cyprus	137	103	240
Czech Republic	3,177	2,053	5,230
Denmark	391	402	793
Estonia	1,159	1,192	2,351
Finland	273	640	913
France	4,516	4,629	9,145
Germany	5,262	6,282	11,544
Greece	290	176	466
Hungary	2,004	1,281	3,285
Italy	3,285	2,420	5,705
Latvia	7,478	6,376	13,854
ithuania	13,834	10,777	24,611
Luxembourg	63	46	109
Malta	145	134	279
Netherlands	2,262	1,949	4,211
Poland	39,732	22,763	62,495
Portugal	951	545	1,496
Slovakia	5,253	2,876	8,129
Slovenia	77	56	133
Spain	2,513	3,609	6,122
Sweden	669	1,113	1,782
UK	131,266	134,881	266,147
TOTAL EU ex IRE-LAND	225,635	205,271	430,906
TOTAL EU	1,947,240	1,949,689	3,896,929
TOTAL RESIDENT POPULATION	2,034,089	2,036,666	4,067,755

The Labour Force

In 2005, the Central Statistics Office started to publish estimates of the labour force classified by nationality, ILO status and NACE Economic Sector. These figures are published as part of the Quarterly National Household Survey ("QNHS"). Although such figures have been regarded as "tentative" – as the very large migration flows in recent years present a significant measurement challenge in a general purpose household survey such as the QNHS – it has been possible to refine some data in the light of the final results of the 2006 Census).

The QNHS is published on a rolling quarterly basis and is available on the website of the Central Statistics Office.[110] QNHS Q4 2007 provides estimates of the number of persons aged 15 years and over classified by nationality and ILO economic status as follows:

[110] http://www.cso.ie/releasespublications/documents/labour_market/current/qnhs.pdf.

Table IX-4. Estimated number of persons aged 15 years and over classified by nationality and ILO Economic Status,Q4 2007/Q4 2006 (source, CSO, QNHS Q4 2007) '000

Nationality	**ILO Economic Status**								**Total**	
	In employment		**Unemployed**		**In labour force**		**Not economically active**			
	Q4 07	Q4 06	**Q4 07**	Q4 06	**Q4 07**	Q4 06	**Q4 07**	Q4 06	**Q4 07**	Q4 06
Irish	**1,804.2**	1,786	**81.1**	71.3	**1,885.2**	1,857.3	**1,153.8**	1,160	**3,039**	3,017.3
Non-Irish	**334.7**	286	**20**	19	**354.7**	305	**113.4**	95.8	**468.1**	400.9
UK	**51.4**	51.3	**4.1**	3.8	**55.5**	55.1	**36.3**	34.6	**91.8**	89.7
EU 15 (exc. Irl. and UK)	**34.5**	32.7	**1.2**	1.9	**35.8**	34.6	**8.4**	8	**44.2**	42.6
Accession States EU15 to EU 27	**167.7**	124.2	**9.4**	7.4	**177.1**	131.6	**25.9**	16.3	**203**	147.9
Others	**81**	77.9	**5.3**	5.9	**86.3**	83.8	**42.7**	36.9	**129.1**	120.7
Total persons	**2,138.9**	2,072.1	**101**	90.3	**2,239.9**	2,162.4	**1,267.1**	1,255.8	**3,507.1**	3,418.2

In Q4 2007, 334,700 non-Irish nationals thus represented more than 15.6% of the total 2,138,900 people in employment, compared with 13.8% in Q4 2006. UK nationals represented 2.4% of the total, the other 13 "old" Member States represented 1.6%, the Accession Member States represented 7.8% and "others" represented 3.8%.

As compared with Q4 2006, there was a 74% increase in the number of nationals of the Accession Member States in employment. Increases for other categories were far lower.

Duration of Mobility

It has been difficult to obtain data in relation to the duration of mobility.

However, some guidance may be obtained from the extent to which migrants obtaining PPSN numbers in one year continue in employment for future years. In December 2007, the Central Statistics Office produced data on "Foreign Nationals: PPSN Allocations and Employment, 2002-2006",[111] which established that only half of the foreign nationals assigned PPSN in 2004 had employment in Ireland in 2006.

There appears to be a distinction between EU-15 nationals (excluding the UK and Ireland) and nationals from the newly acceding Member States. In the former case, the vast majority of immigrants who arrived in 2002 were no longer working in 2006. In the latter case, employment appears to be for the longer term.

2. REPARTITION BY GENDER/BRANCH/SKILLS-QUALIFICATIONS/REGION.

Sex

In relation to *immigration*, *nationality* and *place of birth*, the 2006 Census provides a breakdown between male and female (see Tables IX-1-3, above).

[111] Foreign Nationals: PPSN Allocations and Employment, 2002-2006. (http://www.cso.ie/releasespublications/documents/labour_market/current/ppsn.pdf)

Branch

Table A1 of QNHS Q4 2007 provides estimates of the number of persons aged 15 years and over classified by nationality and ILO economic status as in the table below.

As will be seen, the bulk of the Accession Member States' nationals have taken up positions in the construction, manufacturing, retail and hotel sectors. Nationals of the UK and the other EU-15 Member States excluding Ireland are relatively strong in the financial and other business services sector. The bulk of 'other' immigrants have taken up significant positions in the health, financial and business services and wholesale and retail trade sectors.

The concentration of workers from the 10 Accession States in the construction, manufacturing, retail and hotel sectors echoes the findings of widespread underutilisation of the skills of Accession Member State workers[112] and suggests that they are engaged in lower-paid and lower-skilled work than their qualifications and experience would merit. The ever-increasing numbers of such migrants are significant in the context of the current debate on "job displacement" and arguments that immigration of "low-cost" employees from the new Member States in particular is encouraging a "race to the bottom".

It appears from the sectoral data that non-nationals have taken a disproportionate share of "new" jobs in the manufacturing, wholesale and retail trade, hotel and restaurant and construction sectors. While there is some evidence of displacement in these sectors, in the job market as a whole unemployment has remained low at just above 4% (though there has been a slight increase in 2007).

The substantial increase in both Irish and foreign national workers as a whole makes it likely that many potentially displaced workers have found other work and that non-nationals have been able to take up new jobs in the economy without prejudicing the position of Irish nationals. There may, of course, be significant variations at local level and these figures do not measure any effect the employment of migrants may have on overall wage levels.[113]

[112] The Labour Market Characteristics and Labour Market Impacts of Immigrants in Ireland'' *Alan Barrett, Adele Bergin and David Duffy – Labour Market Review* Volume 37 Spring 2006 No.1.

[113] See, generally, two important reports in February 2006 from AIB Global Treasury Economic Research, based on QNHS data, which examine the scale and sectoral distribution of non-national employment in Ireland http://www.aibeconomicresearch.com/downloadPDF.asp?620; http://www.aibeconomicresearch.com/downloadPDF.asp?624.

Estimated number of persons aged 15 years and over in employment (ILO) classified by nationality and ILO Economic Sector,Q4 2007 (source, CSO, QNHS Q4 2007)												***'000***
Nationality	NACE Economic Sector											Total
	A-B Agricul-ture,Forestry, Fishing	C-E Other production industries	F Construction	G Wholesale & Retail Trade	H Hotels & Restaurants	I Transport, Storage, Communica-tion	J Financial & other business services	L Public ad-ministration & defence	M Education	N Health	O-Q Other	
Irish	111.2	239.3	231	259.6	83	104.8	251.1	102.9	129.8	189.5	103.9	1,804.2
Non-Irish	7.4	51.4	48	54	49.3	16	46	2.1	9.3	31.8	19.3	334.7
UK	1.9	7.1	6.4	8.1	2.3	2.9	8	1	3.7	5.9	4	51.4
EU-15 (exc. Irl. & UK)	-	3.8	1.5	3.1	4.6	2.6	10.4	-	2.1	2.9	2.6	34.5
EU-15 to EU 27	3.8	32	35.1	31.1	27.4	7.7	17.4	-	1	5	6.8	167.7
Other	1,2	8.5	5	11.6	15.1	2.8	10.2	-	2.6	18	5.8	81
Total	**118.7**	**290.7**	**279**	**311.6**	**132.3**	**120.8**	**297.1**	**105**	**139.1**	**221.3**	**123.3**	**2,138.9**

Regions

The 2006 Census has produced detailed data in relation to persons usually resident in each Province, County, Town and Rural Area classified by country of birth and nationality (and broken down between male and female).[114] It is not proposed to analyse this data in any detail here. However, it should be noted that the capital, Dublin, has the highest percentage of non-national residents (13%), with Galway City and County coming second (10.7%). In one town, Gort, in Co. Galway, 40% of the population of 2,646, are non-nationals (mainly Brazilian), whilst in Ballyhaunis in Co. Mayo, 36% of its population are non-nationals, with 327 EU nationals (mainly Eastern European) and 163 nationals of Asian States.

3. TRENDS

General

In making projections for population and labour force between 2006 and 2036,[115] the CSO stated in December 2004 that:

> "In its consideration of likely future migration patterns, the [Expert] Group recognized that the high economic and labour force growth experienced for Ireland in the past decade has radically changed the outlook in relation to migration. In short the country has moved from a long-standing pattern of emigration to a new pattern of relatively strong immigration and it is very unlikely that this will be reversed to any sustained degree over the projection period."

This general trend has been sustained since 2004. In a recent report on the Irish labour market for 2007 and beyond, AIB Global Treasury Economic Research commented that "growth in employment in recent years has been fuelled by the strength of the economy and facilitated by sizable inflows of foreign nationals".[116] It went on to say that "there are increasing concerns as to the sustainability of recent robust rates of labour force and employment growth". Indeed, it is thought that the level of net inward migration may have peaked. Although the likely scale of any economic downturn is unclear, there has been a slow-down in the construction sector (where migrant labour participation has been strong).

Impact of Demographic Trends on GDP Growth

In October 2006, NCB Stockbrokers produced a report, entitled *European Population Outlook 2020,* assessing the impact that demographic factors may have on GDP growth in each of the 25 Member States. The Report concluded that Ireland would have the largest population of young people by 2010. The Report, using official UN and EU statistics, predicts that 3 in 10 Irish people in 2010 will be aged under 15. The Report states that Ireland will have an average 2% increase in population per annum up to 2010, the highest of any EU Member State and a growth rate over 50% above other countries with a rising population. The report also estimates that Ireland will have the third highest rate of net migration up to 2010 after

[114] CSO, Census 2006, Volume 4 – Usual Residence, Migration, Birthplaces and Nationalities, various Tables in Parts II and III.

[115] CSO Population and Labour Force Projections 2006-2036. (December 2004) http://www.cso.ie/releasespublications/documents/population/2004/Publication%20Pop%20&%20Labour%20force%20for%20web.pdf

[116] AIB Global Treasury Economic Research *The Irish Labour Market. 2002 and Beyond.*(June 2007).

Luxembourg and Cyprus. An earlier Report, *NCB 2020 Vision, The Irish Demographic Dividend*,[117] published in March 2006, analysed the importance of demographic influences for the growth outlook in Ireland. Points worth noting in the context of the free movement of workers include:

- Inward migration is now a significant feature of Irish demography;
- Immigrants will play an increasingly important role in the growth of the labour force and in the demand for housing in the years ahead. The rise of the immigrant population will account for as much as 50% of the growth in the total population between now and 2020;
- Immigrants accounted for 7% of the population in 2002 and could form 19% of the population, approximately 1 million people, by 2020;
- Immigrants comprised 9% of the total workforce in 2002 and their representation among the occupations was high in computer software (18%), other professional workers (16%), social workers (15%), health (13%) and scientific and technical (13%) and 8% in construction;[118]
- 3% of the total migrant population are working in the farming, fishing and forestry sectors, 11% in personal services and childcare, 10% in food, drink and tobacco production and 7% in other manufacturing roles. The study does not indicate what proportion of these workers are EU nationals;
- They have low representation among government workers, the police and the army;
- NCB estimates that immigrants were 12% of the workforce in 2005; and
- The trend of high levels of immigration is expected to continue because of the free access to the labour market granted to nationals of the ten Accession States in 2004 and the relatively better income and employment prospects in Ireland than in countries of emigration.

Changed economic circumstances may result in lower than anticipated levels of migration. However, decreasing participation rates and declines in indigenous labour force growth suggest that there will be a continued demand for immigrant labour.

[117] NCB 2020 Vision, The Irish Demographic Dividend, March 2006 http://www.ncb.ie/downloads/pdf/NCB2020Vision.pdf.

[118] This percentage does not take account of self-employed migrant workers; workers in the black economy and posted workers engaged in the construction sector and accordingly should be treated with caution.

Chapter X
Miscellaneous

Studies, seminars, reports, legal literature

Law Society of Ireland: *Employment Rights of Immigrants and Other Issues* (Law Society Seminar, March 2007)

Content: This seminar included presentations on the following: Employment Permits - Negotiating the Minefield; Non-Employment Issues for Migrants; Overview of the Position of EEA Nationals - Implications of the Citizens Rights Directive; Posted Workers Directive and Contractual Rights; Update on the Mutual Recognition of Professional Qualifications; Statutory Employment Rights for Non-Nationals.

Law Society of Ireland: *"New Rules for the New Irish"* (Conference, 27 January 2007)

Content: This Conference centred on the forthcoming Immigration, Residence and Protection Bill.

Fanning, B. (Ed.), *Immigration and Social Change in the Republic of Ireland* (Manchester: Manchester University Press, 2007)

Content: This book addresses the impact of recent rapid social, economic, political and cultural change on Irish society. It includes chapters on citizenship and constitutional change, returned emigrants, the economic contribution of immigrants, the exploitation of migrant workers, asylum seekers and forced migrants, immigrant communities, politics, integration models and choices and social policy.