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For centuries Ireland has traditionally been a country of emigration. The people of this island have long sought new lives in other countries in order to escape adverse economic and social conditions prevailing in Ireland. The Irish “diaspora” has made a valuable contribution to the societies in which they settled. They have become actively involved in the economic and political life of their adopted homelands and in doing so have underpinned the strong political and cultural bonds between Ireland and nations such as the United Kingdom, the United States of America, Australia, Canada and New Zealand.

Now, at the beginning of the twenty first century, Ireland is a very different place. Unprecedented levels of economic prosperity which we have enjoyed in recent years are the result of a range of factors including good economic policy and sound management of the public finances; a favourable demographic profile and high quality education; and our embracing of the opportunities of the international marketplace. High levels of investment in Ireland by Irish and overseas companies have created abundant work opportunities for Irish people and foreign nationals.

Our society and economy require people with specific skills and energies to ensure that we have a dynamic labour market and continued economic growth. Foreign nationals are fulfilling a real need within our nation and work here as, for example, medical professionals, engineers, information technology specialists, construction professionals and service providers.

It is a tribute to the progress we have made as a nation that for many people in other parts of the world Ireland has become one of the most desirable places in which to live and work. Just as the Irish enriched the countries in which they settled, we too are experiencing the positive influence of people from all over the globe choosing to settle in Ireland. We have much to gain from our continuing development as a diverse but coherent society. That diversity which has always existed in Irish society has now become even more varied and complex and has the capacity to benefit all our communities.

In order to maximise the benefits of diversity, migration needs to be managed and proper structures and procedures need to be established. In the Programme for Government of June 2002 there is a commitment to prepare a new Immigration and Residence Bill which will consolidate legislation in the area and provide for future developments. The Department of Justice, Equality & Law Reform has been engaged in extensive preparation and research for the new Bill. As a further step I am now publishing this discussion paper which outlines the
range of issues that will need to be addressed in legislation and details the current thinking on those issues. I hope that this paper will stimulate public debate on the complex issues relating to immigration as I continue the work of preparing legislation for publication later this year.

It gives me great pleasure to present this document as I believe that a dynamic immigration policy combined with the necessary supporting infrastructure is crucial to the continued economic and social prosperity of our nation and for the wellbeing of the society we pass on to future generations.

Michael McDowell, TD
Minister for Justice, Equality and Law Reform
1. Introduction

Background

Over the period of a few short years Ireland has moved from being a country of emigration to being a country of immigration. It is accepted by all commentators on the Irish economy that immigration will continue to be an important feature for the foreseeable future. The contribution which immigrants make to Irish society is substantial. The diversity which immigration brings enriches us all. The Irish immigration system has been able to facilitate the significant levels of legal migration to Ireland in recent years using a pragmatic approach to the issue. It has however been based on a legislative framework which was designed in very different times and to deal with a much smaller level of international movements of persons.

In the last five years over 100,000 persons from outside the European Economic Area have been admitted to the State for employment purposes. This is in addition to the substantial numbers of nationals of the European Union or other European Economic Area Member States who have also come to Ireland. In addition migration for study purposes has also been at a significant and increasing level. The immigration system has been able to facilitate these movements within the current legislative framework. Additional resources have had to be assigned to deal with the increasing workloads and a lot of experience has been gained in dealing with non-national customers by immigration staff and by the Irish administrative system as a whole. There is an opportunity now to build on this experience and to bring forward changes in our legislative structure and our administrative practices to allow the immigration system to deal more effectively and efficiently with the many and varied issues which arise within the immigration system.

The Irish immigration system touches in some fashion on every person who travels to or from Ireland, whether as a tourist, a migrant worker, an international student or, indeed, an illegal immigrant. It represents in many cases the first contact which a non-national has with the Irish State and it may therefore create the important “first impression” of Ireland and of our administrative system to the first-time visitor. It also plays an important role in protecting the State and its citizens from those who seek to abuse our immigration systems, such as people traffickers with links to organised crime, and terrorists. The immigration system must therefore play the dual roles of being welcoming to bone fide visitors and also of deterring those who have malevolent intentions in seeking to come to Ireland. This is the delicate balance which the Irish immigration system, in common with all such systems worldwide, must try to achieve.

In drawing up new legislation for the immigration system a similar balance must be achieved. The legislation must be capable of dealing with the currently projected migration needs of the economy and allowing for flexibility and responsiveness in attracting qualifying migrants to Ireland. The Enterprise Strategy Group Report of July 2004 estimates that demand for new
workers over the period up to 2010 could be in the region of 420,000 of which a large proportion may be filled through immigration. There will therefore be an ongoing requirement for significant immigration levels. There will be a range of issues arising as immigrants become more settled in Ireland, such as the status of persons who are long term residents and the issue of family reunification. The system will also need to be able to respond to the ongoing threats of illegal migration and trafficking in human beings. An immigration system which allows large numbers of legal migrants will also be a target for those who wish to come for criminal and terrorist purposes. The legislation and the administrative system must provide the means for dealing effectively with such threats.

Development of an Immigration and Residence Bill

The Programme for Government of June 2002 contains the following commitment:

“We will prepare a new Immigration and Residence Bill which will consolidate legislation in the area and provide for future developments.”

This paper represents an assessment by the Department of Justice, Equality and Law Reform of what is required in the proposed Immigration and Residence Bill. This assessment is based on wide ranging discussions within the Department and with other interested Government Departments and with other interested bodies. It represents an outline of the major issues which need to be addressed in legislation and an indication of the manner in which it is proposed to address them. It is not a definitive document. It does not set out in detail the legislative provisions proposed or the form which the exact provisions will take. It is intended to act to focus public discussion among the wider community on the important issues which the Immigration and Residence Bill will contain.

The Bill will seek to review, amend, consolidate and enhance the current body of legislation which dates from the Aliens Act 1935. In general, the Bill will not deal with the area of asylum, an area where policy is well developed and where legislation has been substantially revised in recent times in the Refugee Act 1996 and subsequent amendments. However, certain areas where the immigration system and the asylum process interact, particularly in the area of removals, will be dealt with in the proposed legislation.

The Minister for Justice, Equality and Law Reform would like to hear the views of anyone who wishes to comment on the proposals contained in this document. All comments made will be taken into consideration in the preparation of the legislation which the Minister aims to publish in 2005. Comments marked Immigration and Residence Legislation should be sent, before the end of July 2005, to;

Immigration & Citizenship Policy Unit
The Department of Justice, Equality & Law Reform,
13-14 Burgh Quay,
Dublin 2.

Comments can also be e-mailed to immigrationpolicy@justice.ie
The process of developing immigration policy

During 2001 and 2002 preparations began for the drafting of the Immigration and Residence Bill. The steps undertaken were:

- A consultancy study of international legislation and practice in the field of migration — this study was undertaken by the International Organization for Migration (IOM) and published in August 2002. This is valuable as an independently-prepared and factual compilation of the issues that face modern immigration systems across the world and the variety of approaches adopted towards dealing with them in different countries.

- A public consultation document on immigration policy was launched in June 2001, inviting responses, and 66 submissions were received. A summary report was produced and published.

- A cross-Departmental Group on Immigration was established with representatives of the main Departments dealing with issues affecting immigrants or immigration. At the time the Group dealt with the consultancy study and the consultation process.

In summary, work in 2001 and 2002 attempted to set out a broad framework for determining what should be included in the legislation. The outcome of that work is outlined in this document. Progress in developing proposals was affected by more immediate legislative and policy priorities and by the commitments involved in preparing for and running the EU Presidency in 2004.

Developments since 2002

There have been significant changes in the legislative and policy environment which will have to be taken into consideration as we move forward in developing the Bill. These developments have taken place both domestically and internationally.

On the domestic legislative front, the main developments have been as follows:

- the Immigration Act 2003: includes among its main features carrier liability provisions, modernised provision for removal of persons refused entry, and clarifying provisions on exchange of information between public authorities on non-nationals. The Act also made significant changes in the asylum system (including the safe country of origin concept, and the streamlining of processing procedures).

- the Immigration Act 2004: passed in an emergency as a result of the High Court judgment in Leontjava & Chang in January 2004, this legislation replaced the bulk of the Aliens Order 1946; the opportunity was taken to clarify lawful and unlawful residence in statute and to put on a firm footing the derived Ministerial authority of immigration officers when carrying out their functions.

- The Department of Enterprise, Trade and Employment’s Employment Permits Act 2003 introduced a revised legislative basis for work permits, including penalties for employers for illegal employment of non-nationals (up to then an offence only for non-national employees). It also made preparations for the implementation of free movement of workers from the new EU Member States in 2004. The Department of Enterprise, Trade and Employment is currently developing further proposals for work permit legislation.
There have also been developments in Social Welfare legislation relating to immigration. In April 2003 the general payment of rent allowance to asylum seekers and illegally resident non-nationals was abolished, requiring such persons to remain in direct provision accommodation. On 1 May 2004, in the context of EU accession and measures being taken in other existing EU Member States, a habitual residence requirement was introduced into social welfare legislation which would limit the access of non-nationals (including EU nationals) to many social welfare payments. Previously even persons resident for a very short period of time in Ireland potentially had access to a wide range of social welfare payments.

Other relevant policy developments since 2002 include:

- policy developments in relation to the handling of Irish born child related cases. The January 2003 Supreme Court judgment in the L&O case resulted in the Government’s strategy for the handling of such cases. The subsequent referendum on constitutional change regarding citizenship and the related Irish Nationality and Citizenship Act 2004 are also significant developments in the area.

- In the education sector the Minister for Education and Science published the report of the Interdepartmental working group on the Internationalisation of Irish Education Services which has recommended a new body (Education Ireland) to regulate colleges recruiting international students and to underpin a new quality framework in that sector. This will involve legislation.

- The National Economic and Social Council (NESC) is currently engaged in a wide ranging study of the migration phenomenon in Ireland. The International Organization for Migration (IOM) have been commissioned to undertake this study which will examine issues such as Irish migration trends in the international context, causes and determinants of migration, labour market performance of migrants, economic effects of migration, the social effects of migration and fostering integration. It is expected that the study will be completed later in 2005.

**Developments at European Union level**

At EU level there have been significant developments in the immigration area in the last few years. The main directives which have been agreed are as follows:

- directive on family reunification
- directive on the status of long term residents
- directive on the victims of trafficking
- directive on the admission of students.

While Ireland is not bound by these directives, its position is to participate as fully as possible consistent with the maintenance of the Common Travel Area with the UK. It is possible that at some point in the future Ireland and the UK will become fully involved in the immigration area of the EU acquis. The preparation of Irish legislation should therefore endeavour to ensure that, as far as possible, such legislation is in accord with EU legislation and that we benefit from the collective European experience in developing and implementing such legislation.
There are also a number of areas of EU legislation in which Ireland does participate and which will require action and legislative change in Ireland. These include:

- the introduction of a uniform format of visas and residence permits, including the incorporation of biometric identifiers,
- passenger data obligations on carriers,
- joint operations on border controls, and
- the creation of an immigration liaison officer network.

A Directive on the admission of researchers is expected to be agreed shortly. A revised proposal for a Directive on the admission of workers is likely to follow the Commission’s green paper on economic migration which was published in January 2005. The draft Services Directive which is currently being debated by Council, will have migration implications for companies employing non-EU workers.

Developments in these areas should be taken into account when preparing the new legislation.

In the area of free movement of persons within the EU, in 2004 there was agreement on a Directive on the Free Movement of EU Citizens and their Family Members. This applies automatically to Ireland and there is a requirement for this to be transposed into national legislation by 30 April 2006.
Summary of Key Proposals

The Immigration and Residence Bill is intended to provide a comprehensive framework within which immigration policy can be developed and implemented.

Overall objectives and basic principles — chapter 2

The overall objectives and basic principles on which the immigration system will be based are as follows:

- to maintain the safety and security of the State and its residents and to promote the common good;
- to manage migration in an orderly fashion to serve the economic and social needs of the State and its residents;
- to protect human rights;
- to protect and develop Ireland’s international relations;
- to ensure fair treatment of persons;
- to achieve reasonable standards of clarity and transparency; and
- to provide satisfactory standards of service.

The Immigration and Residence Bill should reflect these principles.

The structure of the Bill — chapter 3

The Bill will set out principles for the guidance of—

- the Minister for Justice, Equality and Law Reform when formulating immigration policies and
- staff making immigration decisions under the legislation in fulfilment of declared immigration policies.

- The Bill will provide a process for the promulgation by the Minister of statements of immigration policy from time to time.
- It will be an obligation on immigration decision-makers to observe the statutory principles and any relevant statements of immigration policy in their day-to-day work.
- The Bill will respect the principle of Ministerial discretion.

Visas and pre-entry clearance — chapter 4

Control of the entry of foreign nationals to any State is an inherent element of national sovereignty. It is necessary for the protection of the fundamental rights of citizens and
residents and for the defence of the immigration system and of the State itself. Visa and pre-entry clearance systems are a crucial element of such immigration controls and allow States to apply such controls in advance of a person arriving at the borders of a State to seek entry. Key proposals in this area include:

- **The visa system will be provided with a new legislative basis specifying the nature of the visa and enabling the Minister to make necessary secondary legislation.**

- **The re-entry visa requirements for holders of a valid registration card (residence permit) should be reviewed.**

- **The Minister should set customer service standards for the visa service, but this should not be a matter for legislation.**

- **There should be provisions to permit the prioritisation of certain categories of visa application.**

- **A scheme for the sponsorship (with financial guarantees) of certain categories of visa application should be developed.**

- **Customers should be given reasons for refusals and details of review or appeals procedures, if any, applicable.**

- **Reviews or appeals of refusals should be limited, for example, to cases involving those seeking to join family members who are long term residents in the State and those seeking to enter for more than 3 months.**

- **Upfront checking of visa applications with applications with insufficient information being returned to the applicant rather than refused, should be provided for.**

- **There should be automatic refusal of visa applications where false information is supplied.**

- **The legislation should provide for the development of visa computerisation including the sharing of data where appropriate.**

- **The organisation of processing work within the public service bodies involved in the visa process should be streamlined.**

- **There should be provision to allow the delegation of visa processing / decision making to other public bodies or to other outside bodies where appropriate.**

- **There should be provision for international co-operation in the visa area, including the sharing of information on visa application with systems abroad such as the proposed EU Visa Information System (VIS) and other national systems.**

**Border controls — chapter 5**

Effective border controls are a key element of the general security of any State. If a State cannot control the movements across its own frontiers it will be unable to implement any immigration policies as well as leaving itself susceptible to significant criminal and terrorist threats. Key proposals in this area include:
• There should be a review of the provisions of the Immigration Acts 2003 and 2004 in relation to border controls, and the granting and refusal of entry — to ensure that they are operating effectively.

• The effectiveness of the carriers liability provisions should also be reviewed in the light of experience and any improvements necessary should be provided for.

• The increased use of active border controls is to be encouraged, including the use of advance passenger data.

• Legislation should provide for immigration officers to request biometric data, such as fingerprints from persons seeking to enter the State.

• Secondary legislation should set out in detail conditions which may apply to persons granted permission to enter the State.

• A person may be refused permission to enter the State for reasons to be set out in the legislation.

• A person refused permission to enter the State should be given reasons for that refusal.

• There should be provision for an immediate review of a refusal by a more senior Immigration Officer, if requested.

• There should be provision for the detention of persons refused permission to enter.

• There should be an obligation upon carriers to return persons refused entry and to bear the costs of that return. The legislation should consider extending the period in which carriers can be required to return illegal entrants from the present limit of two months.

• The appointment of public servants dealing with non-national arrivals, such as customs officers, as immigration officers should also be considered.

• There should be an obligation on airport and port authorities to provide appropriate facilities for immigration purposes and for immigration issues to be taken into account in the planning and design of airports and ports.

• There should be provision for exit controls to be implemented where deemed necessary by the Minister.

Entry to the State — general principles — chapter 6

General principles for the admission of persons to the State for a variety of reasons will apply. Key proposals in the area include:

Short term visits (up to 3 months)

• The existing system of checking applications for entry from short term visitors through the visa application process and at points of entry to the State is a practical and pragmatic approach and should continue.
• A requirement for financial guarantees as an additional safeguard in certain cases should be provided for.

• The possibility of non-visa-required nationals being able to apply for a form of advance clearance before travel should be considered.

Longer term entry (over 3 months)

• The Minister, and where necessary in consultation with other Ministers, should have the power to prescribe schemes for longer term admission to the State for a range of purposes. These should be clearly set out in secondary legislation or other form and be publicly available.

• The Minister should have the power to regulate entry through such schemes: for example, by setting quotas and by introducing points systems for assessing applications.

• The possibility of non-visa-required nationals being able to apply for a form of advance clearance before travel should be considered.

Admission for the purposes of work, self employment and research — chapter 7

The growth of the Irish economy in recent years has resulted in significant numbers of foreign nationals being required to meet demands for skilled and unskilled labour across various sectors of economic and social life. Economic migration policy is a matter for the Minister for Enterprise, Trade and Employment and the Immigration and Residence legislation should be fully consistent with Employment Permit legislation. The legislation should facilitate the future requirements of the State in this area as well as accommodating those who travel to Ireland to fill key economic functions on a permanent or temporary basis. Key proposals in this area are as follows:

Employment

• A range of approaches to economic migration is required — there is no single best solution. There is a need for co-ordination of legislation relating to economic migration and the Immigration and Residence Bill. Legislation should provide powers for the Minister (or the Minister for Enterprise, Trade and Employment, as appropriate) to set out in secondary legislation schemes for economic migration.

• The development of the Immigration and Residence Bill to be undertaken in conjunction with the development of employment legislation being brought forward by the Department of Enterprise, Trade & Employment.

• Streamlining and simplification of the current administrative systems should be considered.

• A permanent migration system, with a primary focus on attracting skilled people to Ireland, could be considered which would select people as potential future citizens, not just workers.

• A fast-track scheme of temporary skilled labour migration should be considered based on sponsorship by the employers.
Employer sanctions should be strengthened. Consideration should be given to, for example, barring employers who have been in breach of immigration or employment law from bringing non-national workers to Ireland.

**Self-employment**

- The Minister should have the power to set out in secondary legislation schemes for entry for self-employment purposes.
- A possible scheme should be considered for individuals with innovative business ideas but without capital.
- Penalties should be set for individuals who start businesses without the relevant permission.

**Researchers**

- A scheme for the admission of researchers should be set out in secondary legislation. It should facilitate and support the attraction of international researchers to Ireland.

**Admission for the purpose of study — chapter 8**

In recent years there has been a significant level of migration to Ireland for the purposes of studies. At present there are some 28,000 non-EEA national students registered with the Garda National Immigration Bureau. The growth of this sector in both the public and private spheres will necessitate special attention in any new immigration proposals. Key proposals in this area include:

- The immigration system should support the education sector in attracting overseas students to Ireland, while also safeguarding the integrity of the immigration system.
- Future arrangements for the admission of non-national students will be determined by the arrangements which arise from the implementation of the Report on the Internationalisation of Irish Education Services.
- In the proposed new regulatory framework there will be scope for streamlined procedures for the handling of applications from approved educational institutions.
- The implementation of the short term measures proposed in the Internationalisation report (access to employment and the renewal of short term courses) should limit the scope for abuses within the system and reduce the attractions for those who seek to circumvent immigration controls in the labour market.
- The question of whether students should be entitled to move between educational institutions during the period of their approved courses should be considered.
- Consideration should be given to whether new educational institutions should be precluded from recruiting outside the EEA for, an initial period after they have been established.
- Consideration should be given to increased co-operation with schools to monitor the attendance of students. It should be possible to withdraw recognition or cease granting visas.
in respect of schools with low attendance rates or high drop out or early transfer rates or which have given rise to overstayers.

Admission for the purpose of family reunification — chapter 9

The admission of a foreign national family member of migrants established in Ireland is a very important issue. Family reunification has been the chief form of legal migration into EU Member States for some years. In most cases it accounts for almost 60% of migration. As well as addressing the current practice in Ireland and internationally, we shall also need to consider the Constitutional provisions relating to the family and the relevant international conventions. Key proposals include:

Family reunification

- Family reunification provisions to be set out in an accessible and transparent fashion in secondary legislation or practice instructions

- A non-national entitled to reside in Ireland on a long term or permanent basis should be entitled to apply to be joined by his/her spouse and minor unmarried children where the family will be economically viable in the State, subject to public policy and security issues.

- The admission of family members in other cases should be covered by schemes made by the Minister.

- The issue of non-marital partnerships and same sex relationships will be considered and provision could be made for schemes to deal with these in accordance with the treatment of such relationships in Irish law generally.

- A sponsorship scheme to allow unmarried children over 18 to join their family members with long term or permanent residence in Ireland is to be considered.

- Other circumstances to be covered in schemes to be made by the Minister include: admission of fiancé(e)s of persons resident in Ireland, foreign adoptions and the situation of family members in the event of the death of head of a family, marriage breakdown or in the event of domestic violence.

- Consideration is to be given as to how abuses of family reunification, including marriages of convenience, can be dealt with. Sanctions should be provided.

Children

- There should be a general requirement for proof that unaccompanied children seeking to travel to Ireland are travelling with their parents’ or guardian’s consent.

- To combat child trafficking, there should be provision for appropriate action to be taken to protect children where there are suspicions about the nature of the relationship of a non-national child to the adults accompanying him/her in entering the State.

- The compulsory registration of all non-national children resident in Ireland is to be considered.
Admission for non-economically active persons — chapter 10

The category of non economically active migrants covers a diverse group of people who may choose to immigrate to Ireland for a variety of reasons such as retirement, medical treatment or extended tourism. Key proposals in this area include:

- Primary legislation should allow the Minister to specify, in secondary legislation, schemes for persons seeking to migrate to Ireland for non-economic purposes.

- Persons benefiting from these schemes should not be able to engage in economic activity in Ireland, must have a specified minimum level of resources and must be able to subsist without recourse to public funds.

- Relevant Government Departments should consider the basis on which persons admitted as non-economically active migrants can be excluded from entitlements to public services.

Residence status and residence permits — chapter 11

Key proposals in this area are:

- The Immigration and Residence Bill should provide a clear basis for a new system of residence permits for non-EEA nationals resident in Ireland.

- The residence permit should clearly indicate the holder’s status in Ireland and should be necessary to establish entitlements and gain access to public services by non-EEA nationals.

- The residence permit will be evidence of the holder’s permission to remain in Ireland. The possibility of issuing residence permits in certain circumstances to people in advance of arrival in Ireland should be considered.

- Legislation should provide for the sharing of residence data within the public service in Ireland. In certain circumstances, the possibility of sharing residence data internationally should be provided for.

- Legislation should provide the Minister with the power to revoke residence permits in certain specified circumstances e.g. where false/forged documents have been provided as part of the application, where the individual is convicted of a serious offence resulting in them being considered a threat to public order or national security.

- The scope for change of immigration status of persons while remaining in Ireland should be clarified in secondary legislation.

- A new category of long term resident status should be introduced for persons resident in the State for more than 5 years. This status should be recognised for entitlement purposes across the public service.

- The format of residence permits should be in accordance with EU Regulations and should include biometric features.

- Charges should be introduced for residence permits to fund administrative costs and system developments.
• The possibility should be considered of the residence permit being acceptable as a re-entry visa also containing, in certain circumstances, permission to work.

• Developments on residence permits will be co-ordinated with developments on the proposed public service cards.

• The system of issuing Irish travel documents to non-nationals other than refugees should be restricted to exceptional cases only.

Monitoring and Compliance — chapter 12

The enforcement of immigration legislation and procedures is a crucial element of any immigration system. The objective of enforcement procedures is to protect the interests and welfare of both citizens and legal migrants. All immigration regimes experience threats to their integrity from a tiny minority of citizens and foreign nationals seeking to exploit them for illegal gain. Key proposals are:

• There is a need for co-operation and co-ordination across the public service to ensure that access to public services by persons illegally in the State is limited to emergency services so as not to encourage illegal immigration.

• There is a need to consider whether additional provisions are needed in the Immigration Bill to allow the Gardaí to deal effectively with the use of forged and fraudulent documents within the immigration system.

• The introduction of biometric identifiers in immigration documentation in Ireland (visa and residence permits) should take place as soon as possible.

• Existing legislative provisions on the issue of trafficking and smuggling should be examined to see whether they can be strengthened. The position of victims of trafficking should be safeguarded with a view to assisting them and getting their co-operation in the prosecution of perpetrators.

Removals — chapter 13

The State’s powers to remove from the State persons who are foreign nationals is a fundamental element of State sovereignty and is in the interest of the common good. Key proposals in this area are:

• The legislation should provide for two mechanisms for removing persons from the State — a removals process and a more serious deportation process.

• The removals process for persons with no legal basis for being in the State should be along the lines of the current process for removing a person who has been refused leave to land.

• A single procedure for consideration of protection claims should be introduced. The removals procedure should apply to those with failed claims for protection.

• In general a removal should not preclude a person applying to return to Ireland but the Minister should have the power, in certain circumstances, to require a removed person to remain outside the State for a period of time.
• Persons who could not be subject to the removals process are, for example, persons who are dependents of Irish or EU nationals, parents of Irish citizen children and failed asylum seekers with an alternative legal basis for remaining in the State.

• A deportation process along the lines of the current process should be provided for. The Minister should be able to provide for different periods of exclusion depending on circumstances.

• Consideration should be given to the automatic conversion of a removal order into a deportation order if the person has not complied with it within a set period of time.

• Any provision for legislation that reviews removals cases should not in general have suspensive effect.

• The legislation should make provision for voluntary return schemes.

• Persons who seek to return to the State within a certain period of time after deportation should be required to repay the cost of deportation before being admitted.

Administration and Delivery of Services — chapter 14

The current immigration system in Ireland involves a number of public bodies dealing directly with the admission of migrants and a greater number dealing with migrants after they have arrived in Ireland. The new legislation will address the reorganisation of immigration and citizenship services in the context of the establishment of the Irish Naturalisation and Immigration Service (INIS), which was approved by Government in March 2005. The proposed legislation should address the following issues:

• The legislation should contain any provisions necessary for the reorganisation of immigration, asylum and citizenship services in the Irish Naturalisation and Immigration Service (INIS).

• User charges will play an important role in providing resources to the INIS to develop service-based initiatives.

• The roles and functions of immigration officers should be set out in legislation.

• The legislation should set out the powers of the Minister to appoint immigration officers and to suspend or revoke such appointments, and the procedures to be followed.

• Legislation should provide the Minister with power to give instructions to immigration officers and for the development of a body of immigration instructions, or manual, which should in general be publicly available.

• The role of a senior immigration officer in reviewing decisions should be set out.

• The legislation should provide powers for immigration officers to undertake necessary functions outside the State and to co-operate in international operations.
2. Overall objectives and basic principles

Introduction

The current body of immigration legislation is contained in a number of pieces of legislation, both primary and secondary, including:

- the Aliens Act 1935
- the Aliens Order 1946 with its many amendments by subsequent Aliens orders
- the Immigration Act 1999
- the Illegal Immigrants (Trafficking) Act 2000
- the Immigration Act 2003
- the Immigration Act 2004

It has been clear for some time that the basis for immigration law in Ireland, the Aliens Act 1935, is not suitable for the needs of the modern Ireland, now a country of net inward migration. Recent legislation has gone some way towards modernising certain aspects of immigration law but these have, of necessity, been stop-gap measures generally brought forward to address specific aspects of immigration that needed an urgent legislative response. The Government is now embarked on this root-and-branch replacement of the present law with a view to putting in place a modern legislative framework that will enable policies to be made and modified as needs require and that will provide a fair and transparent set of procedures for the day-to-day implementation of those policies.

In setting out a framework for the new legislation it is important to set out first of all the overall objectives which the legislation is intended to achieve and the basic principles which should underpin the legislation. In this chapter the objectives and principles are outlined and issues arising from them are set out. The manner in which these objectives and principles are to be carried into the more detailed provisions of the legislation is set out in the later chapters dealing with particular aspects of the legislation. In summary the overall objectives and basic principles are:

- to maintain the safety and security of the State and its residents and to protect the common good,
- to manage migration in an orderly fashion to serve the economic and social needs of the State and its residents,
- to protect human rights,
- to protect and develop Ireland’s international relations,
- fair treatment of persons,
• clarity and transparency, and
• to provide satisfactory standards of customer service.

These factors are detailed below.

I. To maintain the safety and security of the State and its residents and to protect the common good

A fundamental function of the immigration system is to protect the safety and security of all who live in Ireland and to protect the common good. The control of non-nationals is an aspect of the common good related to the definition, recognition and the protection of the boundaries of the State. The Irish Courts have recognised that the State must have very wide powers in the interest of the common good to control the entry to, and departure from, the State of non-nationals and their activities within the State. This reflects an inherent element of State sovereignty over national territory long recognised in both domestic and international law. For this reason, in the area of immigration, non-nationals may be subject to legislative and administrative measures which would not, or in some aspects, could not, be applied to Irish citizens.

Immigration systems worldwide are exploited by international criminals, people smugglers and traffickers in human beings. The potential abuse of immigration systems for terrorist purposes was clearly demonstrated in the events of 11 September 2001 in the US. As a result of this we are required to comply with UN Security Council Resolution 1373 and the European Council Conclusions of 20 and 21 September 2001.

Ireland’s immigration system must not provide attractions to those who are involved in criminal activity, including organised criminals, traffickers in human beings and terrorists. It should not be open to abuse by people who have no entitlement to come to Ireland or who seek to come here to do harm either to people in Ireland or to people elsewhere. Border controls should seek to ensure that persons do not enter the State without permission. Persons who enter or remain in Ireland without permission should not be facilitated in remaining in the State and should if necessary be removed from the State.

II. To manage migration in an orderly fashion to serve the economic and social needs of the State and its residents

It is recognised that managed migration has much to contribute to Ireland’s development. The Irish immigration system should promote and facilitate proper and orderly management of migration to Ireland. It should allow the application of policies which ensure that migration to Ireland is at a level which is economically and socially sustainable.

Most immigration into Ireland in recent years has been economically-driven, in particular foreign national workers coming to Ireland to provide necessary skills or to fill vacancies which could not be filled domestically. These economic needs are determined by the Department of Enterprise, Trade and Employment. On current trends, this is expected to continue into the future and the immigration system should assist in making Ireland attractive to the people Ireland needs. There is intense international competition for highly skilled persons in a range of fields. We must ensure that our immigration policies and
II. Protection of human rights

Migration should be managed in a way which protects human rights. The development of the legislative framework for immigration in Ireland should reflect best international practice developments in this area and should fulfil our constitutional and international obligations in this area. International human rights conventions and other international agreements and policy developments at European level will be important inputs in informing developments.


In the area of labour migration, there are several international Conventions which deal with the rights of migrant workers. These include the UN Convention on the Protection of all Migrant Workers and Members of their Families and the Council of Europe Convention on the Rights of Migrant Workers. Also, there are a number of International Labour Organisation Conventions dealing with the rights of migrant workers. While Ireland (like most EU Member States) has not ratified these Conventions, which are therefore not binding on Ireland, their contents should be taken into consideration in the development of policy in this area. The Irish Human Rights Commission has also recently expressed views on the safeguarding of the rights of migrant workers and their families which will have to be considered.

The UN Convention against Trans-national Organised Crime, includes Protocols on the issues of people smuggling and trafficking in human beings. The immigration system must not be subject to abuse by traffickers or smugglers who abuse the human rights of migrants. The protection of women and children from sexual exploitation is an issue of particular relevance in this area.

While recognising that the human rights of migrants must be protected, this does not mean that in every respect the treatment of migrants in Irish legislation and administrative practice should equate to that of Irish citizens. The Irish Courts have recognised that in the area of immigration, non-nationals may be subject to legislative and administrative measures which would not, or in some aspects, could not, be applied to Irish citizens.

It must also be recognised that people may come to Ireland who claim they are suffering abuses of human rights in their countries of origin. Within the asylum system there are processes for dealing with such claims. The system also prohibits the return of persons to a place where they would be subject to persecution or torture (the non-refoulement provisions in section 5 of the Refugee Act 1996 and section 4 of the Criminal Justice (UN Convention against Torture) Act 2000). However it must be recognised that persons who are not deemed to require protection in the State on foot of such a claim are (unless they have an alternative legal basis for being in the State) illegally present in the State and must be dealt with as such.
IV. To protect and develop Ireland’s international relations
— relations with the UK, EU, UN and our resulting international obligations

The Common Travel Area with the United Kingdom

The Common Travel Area arrangements between Ireland and the UK are longstanding arrangements which provide for the free movement of Irish and UK citizens between the two jurisdictions. The Irish Courts (Kweder v the Minister for Justice [1076] 1 IR 381) have accepted that the maintenance of the Common Travel Area arrangements is a fundamental public policy issue.

At EU level the importance of the Common Travel Area to Ireland is reflected in Ireland’s position on immigration matters in the Amsterdam Treaty. Ireland’s position under the fourth Protocol to that Treaty (on the Position of Ireland and the UK) in relation to proposals in the Immigration, visas and asylum fields is based on Ireland’s wish to maintain the Common Travel Area.

The bringing forward of comprehensive legislation could be viewed as a suitable opportunity for placing the Common Travel Area (CTA) arrangements on a formal footing. Unlike some other international areas of free movement, the CTA does not arise out of an international agreement between Ireland and the UK. However, recognition has been given to the arrangements in legislation in both Ireland and the UK.

Its present legal footing is that it is a set of arrangements put in place independently by each State which happens to permit the operation by that State of special arrangements whereby immigration controls are not operated in a routine way on nationals of either State arriving from the other State. Those domestic arrangements are incorporated in primary legislation in the UK (Immigration Act 1971 — definition of CTA in section 2) and now also in Ireland (Immigration Act 2004). There is an argument for seeking to put the arrangements on the footing of an international agreement (on the model of Schengen or the Nordic Passport Union or the Trans-Tasman Agreement between Australia and New Zealand). However there would be a substantial requirement in effort and time to negotiate a new international agreement with the UK. There is no particular advantage in starting such a process and it is not a priority at this time in reforming our immigration system. The objective in this area in the new legislation should be to give greater recognition to the existence of the Common Travel Area arrangements.

Relations with the EU and EU legislation

In chapter 3 consideration is given to the issue of whether EU, other EEA and Swiss nationals should be covered by the Immigration and Residence Bill, having regard to the extensive European legislative basis for their entitlements. The Bill must clearly deal with the growing body of EU legislation dealing with the admission and status of third country nationals who are admitted, or are already resident in the EU Member States for a wide range of purposes. The Bill must also reflect developments at European level in tackling the problem of illegal immigration and trafficking in human beings and the control measures which have been introduced to combat threats in this area. The Bill must also have regard to relevant judgements of the European Courts in this area.
Ireland’s participation in EU developments in the area of immigration, visas and asylum is subject to the fourth Protocol to the Treaty of Amsterdam under which Ireland is not bound to participate in any measure but may opt to participate. Ireland participates in a number of measures in this area, which it is bound to implement. The Immigration and Residence Bill should provide the means to implement our existing commitments in this area and provide the framework for the implementation of future measures. In the measures in which Ireland does not participate, the Immigration and Residence Bill should have regard to EU legislation in these areas. As a general principle it would seem desirable to move in the broad direction of EU developments, unless there are reasons for not doing so in any particular respect.

UN and other international relations

In section III of this chapter Ireland’s obligations under Council of Europe and United Nations Conventions were referred to. The issue of migration also features in other aspects of Irish foreign policy. For example in relation to labour migration, policies must have regard to the situation in the countries of origin of those who come to Ireland. It would not be desirable that Ireland’s migration policy should contribute to denuding developing countries of skilled people they need for their own development. Furthermore, migrants should be enabled to make a contribution to their countries of origin, either by returning to them after gaining experience, qualifications and financial resources by working in Ireland for a period of time, or by sending remittances to their families who remain in the countries of origin. At a more general level, the role of Irish foreign policy in relation to migration to Ireland must also be considered, including the potential use of development aid to aid in tackling poverty and other factors causing illegal migration.

V. Fair treatment of migrants

The immigration system should provide for the fair treatment of migrants and should operate in accordance with the equality policies set by Government. It must however have regard to the necessity of immigration practices which require distinctions to be made between nationalities.

Fair procedures must be employed in the determination of immigration applications of all kinds. However, it must be made clear that in most immigration cases there is no entitlement for a non-national to be given entry to the State. In general this is, and will remain, a matter for the discretion of the Minister. Fair procedures must be used in considering cases and there should in many cases be an opportunity for decisions to be reconsidered or reviewed if necessary. Not all decisions should be open to review or appeal and a distinction will have to be made between those which are and those which are not.

An issue to be considered is whether any specific provisions in relation to equality, or direct references to it, are required in the Immigration and Residence Bill given the existing extensive equality legislation framework in Ireland. Equality considerations would apply to the service provision aspects of the immigration system, but not in respect of the controlling functions being exercised by the State.

Immigration laws of necessity make distinctions between persons on grounds of nationality, since they must distinguish between nationals of the legislating state and non-nationals, and between different categories of the latter. For example schemes such as working holiday schemes are agreed with individual countries only. There are also humanitarian schemes,
such as the arrangements which apply to applications for the admission of Chernobyl children, which are country-specific. The Immigration and Residence Bill should be drafted in a way which provides for the making of such schemes in future.

Internationally, permanent migration selection procedures use age as a criterion for selection of migrants — on the basis that younger migrants are more likely to integrate into a new society and will have a longer period of economically productive life in the host country. Issues of health status can also arise in selection procedures. These should remain as options for use in future schemes.

**VI. Clarity and transparency**

The current body of Irish immigration legislation is contained in a number of pieces of legislation, both primary and secondary, spanning 70 years since the Aliens Act 1935. The Immigration and Residence Bill should provide a comprehensive legislative basis for all immigration provisions including many which are currently operating on an administrative basis on foot of the general provisions of the existing legislation. It is also to be considered whether the Immigration and Residence Bill should consolidate or restate existing immigration and residence provisions and, where necessary, update them.

The Irish courts have recognised that the State must have very wide powers in the interest of the common good to control the entry and departure of non-nationals and their activities while in the State. The Laurentiu judgement of the Supreme Court in 1999 found that the statutory delegation of powers to make regulations or orders was unconstitutional where the power delegated was more than a mere giving effect to principles and policies which are contained in the statute itself. It will be necessary therefore for the Immigration and Residence Bill to set out clearly the principles and policies underlying the immigration system. While it will be necessary to leave a lot of detailed provisions to secondary legislation, the intention is that general principles will be set out in the primary legislation.

**VII. To provide satisfactory standards of customer service**

The immigration system must be capable of providing quality services to its customers. It is clear that in recent years the volume of work has grown faster than the system’s ability to deal with it. A major factor has been the volume of resources which have been required to deal with asylum-related issues — reception and processing of asylum applicants and integration of refugees — and the urgency which was afforded to these issues nationally. Limited resources were available to deal with the growth in other immigration and citizenship business. With the reduction in asylum applications and progress in the processing of asylum claims, there is now an opportunity for resources to be targeted at the general immigration and citizenship areas. This also presents an opportunity to examine the way in which certain services provided to migrants, which are provided by a number of Departments and bodies, could be delivered in a more user-friendly way.

The objective of all who work in the immigration and citizenship areas is to provide high quality services to our customers. The legislative change proposed in the Immigration and Residence Bill should support that objective.
In addressing the issue of customer service, it is necessary to consider what is the most appropriate way of organising immigration service provision in future. The organisation of services relating to entry to the State, currently delivered to immigrants by a number of Government Departments and bodies is considered in Chapter 14. A range of Government Departments and bodies are involved in providing services to non-nationals as part of the provision of services to customers generally — such as the Department of Social and Family Affairs, the Revenue Commissioners, and the Departments of Education & Science, Health & Children and Environment, Heritage and Local Government. The immigration system should operate in a way that provides appropriate quality services to legal migrants.

In developing procedures for the handling of applications within the immigration system it will be necessary to consider the manner in which decisions made can be open to review. It would be hoped that the proposed legislation should result in a more transparent system with details of decision processes included in legislation (primary or secondary) and should therefore result in less demand for decisions to be reviewed. However, the reality is that many refusals will continue to be appealed and there will be a need for a clear process for considering such cases. This is in the interests of both customer service and efficient management of the system.
3. Structure of the Bill

Key Proposals

- The Bill will set out principles for the guidance of—
  - the Minister for Justice, Equality and Law Reform when formulating immigration policies and
  - staff making immigration decisions under the legislation in fulfilment of declared immigration policies.

- The Bill will provide a process for the promulgation by the Minister of statements of immigration policy from time to time.

- It will be an obligation on immigration decision-makers to observe the statutory principles and any relevant statements of immigration policy in their day-to-day work.

- The Bill will respect the principle of Ministerial discretion

Outline of the overall structure

It is intended that the Immigration and Residence Bill should be a comprehensive treatment of the entire issue of immigration and residence in Ireland. It should deal with the process from before a person enters Ireland, covering the many aspects of the person’s stay in the country and deal also with departure. The main topics to be covered in the Bill will be as follows:

- Visa and pre-entry clearance
- Border controls
- Entry to the State — general principles
- Admission for the purpose of work, self employment and research
- Admission for the purpose of study
- Admission for the purpose of family reunification
- Admission of non-economically active persons
- Residence status and residence permits
- Monitoring and compliance
- Removals
- Administration and Delivery of Services
These are the subjects of the following chapters of this document. In each chapter an outline of major issues is given as well as an indication of the type of approach proposed in addressing the issues. In relation to each area we will set out the current position in Ireland, the situation internationally — EU and other international developments — taking account of the IOM’s study of international legislation and practice. The results of the public consultation process are also taken into account as are any other relevant matters.

Some general issues have already been discussed in chapter 2. In this chapter we will attempt to address a number of general issues relating to the form of the proposed legislation and its scope. These issues include:

- Statutory statement of principles;
- The treatment of EU, EEA and Swiss nationals;
- The question of restatement or re-enactment of existing legislation;
- The interrelationship with other Departments’ legislation.

These are discussed in general terms at the outset, and the issues raised and approaches discussed are also considered in the more detailed later sections.

**Statutory statement of principles**

An essential element of the new legislation will be a statement of the basic principles which will guide the formation of immigration policies and the day-to-day operation of the legislation in implementation of those policies.

The Bill will include provisions to ensure that the principles are complied with and operated in a transparent manner. This will be achieved by statutory provisions requiring that the Government’s immigration policies be published and setting out the manner of their publication. It will also be a requirement of the Bill that the Minister and his officers, immigration officers and other authorised officers dealing with immigration matters, must have regard to the principles and objectives of the Bill and to the published policies of their work and that any statutory discretion exercised must be consistent with the principles and within the framework of published policies. The Bill will also ensure that Ministerial discretion in relation to immigration matters generally is retained and it will contain provisions outlining the circumstances in which this discretion can be exercised. It will also ensure that the Minister cannot be required to exercise the discretion in any particular case.

The proposed approach is in line with that of other common law countries of migration such as New Zealand, Canada and Australia, all of whom have well-established migration systems in place. Section 13 of the 1987 New Zealand Immigration Act, section 3 of the Canadian Immigration and Refugee Protection Act 2001 and section 4 of the Australian Migration Act 1958 set out the policy objectives underlining those Acts.

It is worth emphasising that the development of policies in the immigration area is not a matter for legislation but falls to be determined by the Government of the day in exercise of its executive powers. The new legislation will acknowledge the primacy of the Executive in the formulation of immigration policy; will guide the Executive by setting forth the principles (on the lines set out above) which it must observe when formulating immigration policies;
and ensure that the implementation and operation of those policies using the procedures laid down in the new legislation will also be informed by those principles. The intention is that principles will guide the formation and expression of immigration policies from time to time by the Government and that the principles and those policies will guide the day-to-day operation of the new legislation.

It will also be noted that the principles set forth will not include a generalised right for non-nationals to enter or be in the State. No such right exists either in relation to entry into the State or any other country. It is a well-established principle that any sovereign state is entitled to control or manage the entry into, duration of stay and departure of non-nationals from its territory. Our courts have recognised that control of entry of non-nationals into the State is a matter of Executive discretion which is vested in the Minister for Justice, Equality and Law Reform. They recognise that the Government is not only entitled but obliged, in order to protect the fundamental rights and integrity of the State and its citizens, to exercise these powers.

**Treatment of EU, EEA and Swiss nationals**

A question to consider is whether the bill should deal only with all non-Irish nationals or whether it should deal only with nationals of countries other than EU Member States, nationals of other EEA countries and Swiss nationals. It is clear that certain elements of immigration law will apply to all nationals (and indeed Irish nationals), such as the obligation on carriers to present all passengers to an immigration officer on arrival in the State. This will continue to be the case under the new legislation. However, the legal position of EU/EEA/Swiss nationals is already described in detail in the European and other international treaties as well as in European Directives and Regulations. In Irish law their legal situation is set out primarily in the European Communities (Aliens) Regulations 1977 and the European Communities (Non-Economically Active Persons) Regulations 1997.

On 29 April 2004 Directive 2004/38/EC of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States was adopted. Article 40 of the Directive requires Member States to bring into force such laws, regulations and administrative provisions as are necessary to comply with the Directive by 30 April 2006. It will be considered whether this should be done by way of the Immigration and Residence Bill. However it may be more appropriate to deal with EU nationals by way of a separate legislative instrument. Consideration should be given as to whether such free movement legislation should also deal with the position of EEA nationals and Swiss nationals, as their position under international law more closely resembles that of EU nationals than of other nationals. In doing so, it must be ensured that between the passage of the Immigration and Residence Bill and of the legislation implementing the free movement Directive, that no groups “fall between the cracks” of new legislation. We must also ensure that in repealing existing immigration legislation as the new legislation is enacted, that no categories are left out, even temporarily.

**Consolidation / restatement of existing legislation**

Current immigration is spread over a large number of orders produced since 1935 and with the added complication of their having been given the effect of primary legislation by section 2 of the Immigration Act 1999. (The Immigration Act 2004 re-enacted the main provisions of
the Aliens Order 1946.) For the purpose of simplification, the general intention would be that
the new legislation should incorporate the provisions of legislation up to 1999, though many
orders made under the earlier legislation will not be repealed (e.g. those relating to
individuals, etc.)

In relation to the more recent legislation — specifically the Immigration Act 1999, the Illegal
Immigrants (Trafficking) Act 2000, the Immigration Act 2003 and the Immigration Act 2004
— an issue arises. Should the policy matters in these pieces of legislation, which have
relatively recently been settled by the Oireachtas, be opened to discussion by the Oireachtas
again so soon? On the other hand, there may be provisions in this legislation which should
be changed in light of the overall proposals and this may provide an opportunity to revise
the entire body of immigration legislation and to have the important principles restated.

The Statute Law (Restatement) Act 2002 provides for the restatement of legislation by means
of a simpler mechanism than consolidation. This may provide an opportunity to simplify
immigration legislation in the future.

**Interrelationships with other Departments’ legislation**

There are also a number of areas where immigration-related provisions are included in
legislation of other Departments (e.g. in the area of visa fees in the Department of Foreign
Affairs, in the area of economic migration in the Department of Enterprise, Trade and
Employment). The relationship between this legislation and the Immigration and Residence
Bill will have to be examined.

There is clearly a need to co-ordinate the Immigration and Residence Bill with other
Departments’ legislation which deals with immigration-related issues and to ensure that there
is clarity as regards the immigration status and entitlement to services of non-nationals who
are present in the State. This arises in relation to entitlements to work, to obtain social welfare
benefits as well as access to health and education services and to housing. On the question
of whether the Immigration and Residence Bill should address the issue of entitlements of
non-nationals or whether this should be left to other Departments’ legislation, it seems
preferable to leave details of entitlements in the relevant Departments’ legislation. What the
Immigration and Residence legislation will provide is a clear definition of legal residence (and
categories of such). This will allow other Departments to use these definitions in defining the
entitlements of non-nationals to the services provided by those Departments.

At present much legislation under which other Departments operate are largely silent as
regards non-nationals (other than nationals of other EU or EEA Member States) as they were
written at a time when immigration was not a significant issue in Ireland. There may be
provisions for universal entitlements which applies to all residents regardless of nationality.
While such universal-type provisions have advantages in terms of social equity and simplicity
of administration, in recent times it has been clear that they also potentially present
attractions to persons entering the State illegally. This is an issue which needs to be addressed
and will require further consideration by all the Departments concerned. As well as the
concerns about the attractions for illegal immigration there are also significant resource
implications for the Departments concerned and ultimately for taxpayers. In general terms
consideration should be given as to what extent there should be a prohibition on providing
public services to non-nationals who are not legally resident in the State and the extent of
such a prohibition, e.g. such migrants might be allowed to access emergency medical treatment, but not social housing or publicly funded third level education courses.

The manner of co-ordinating services relating to the admission of immigrants is considered in chapter 14. However, it is quite clear that immigration in Ireland is a wide issue with implications for all public services and how they are delivered. It is not an issue which can be pigeonholed into a single Department or body. No single body would be capable of dealing with the wide range of services which must be delivered to migrants. There are strong arguments for the delivery of services to migrants to be considered as part of the mainstream provision of services in the areas concerned.
4. Visa and pre-entry clearance

**Key Proposals**

- The visa system will be provided with a new legislative basis specifying the nature of the visa and enabling the Minister to make necessary secondary legislation.

- The re-entry visa requirements for holders of a valid registration card (residence permit) should be reviewed.

- The Minister should set customer service standards for the visa service, but this should not be a matter for legislation.

- There should be provisions to permit the prioritisation of certain categories of visa application.

- A scheme for the sponsorship (with financial guarantees) of certain categories of visa application should be considered.

- Customers should be given reasons for refusals and details of review or appeals procedures, if any, applicable.

- Reviews or Appeals of refusals should be limited, for example to cases involving those seeking to join family members who are long term residents in the State and those seeking to enter for more than 3 months.

- Consideration should be given to a system whereby there is upfront checking of visa applications, and applications with insufficient information being returned to the applicant, rather than refused.

- There should be automatic refusal of visa applications where false information is supplied.

- The legislation should provide for the development of visa computerisation including the sharing of data where appropriate.

- The organisation of processing work within the public service bodies involved in the visa process should be streamlined.

- There should be provision to allow the delegation of visa processing / decision making to other public bodies or to other outside bodies where appropriate.

- There should be provision for international co-operation in the visa area, including the sharing of information on visa application with systems abroad such as the proposed EU Visa Information System (VIS) and other national systems.
Introduction

Control of the entry of non-nationals to a state is an inherent element of state sovereignty and has been long recognised as such in both domestic and international law. Visa and pre-entry clearance systems are at the core of such immigration controls, allowing states to apply such controls in advance of a person arriving at the borders of the state seeking entry.

Apart from its own citizens, a state has discretion to either grant or refuse entry to persons who are not citizens. While there may be commitments under international law which circumscribe this discretion — such as, in the case of Ireland, the Treaty rights of EU citizens and the situation of refugees under the 1951 UN Convention — a non-citizen does not have a right to enter a state of which he or she is not a national and the state is not obliged to issue a visa.

Visa systems allow states to distinguish between nationalities which pose an immigration risk and those which do not, allowing them to focus resources in dealing with potential problems. The inclusion of nationalities on lists of persons who require visas is usually the result of experience regarding the nationalities concerned within the immigration system, such as the history of compliance with immigration law. Individual consideration of visa applications focus on the evidence provided as regards the purpose of the proposed visit and the credibility of the applicant, and any past history the applicant has had within the immigration system. There may also be reasons of security or public policy which result in persons being refused visas.

From the point of view of a traveller or migrant, a visa provides a form of advance clearance of an application to enter the state concerned and a high degree of certainty that they will be permitted to enter that state. This can avoid wasted journeys, refusals of entry and the inconvenience and costs associated with them.

From the general point of view of a state, visa systems also represent an important interface with customers of the immigration system. The impression given by the visa system is often the first impression which a foreign national seeking to travel to a country will get of it and of its public service. It is desirable that a positive impression is created. Service should be efficient and courteous. It should provide access to the State with a minimum of disruption to those who are seeking to travel for genuine reasons. It should also deal firmly with those who seek to come to the State to cause harm or those who would seek to use deception or to evade controls.

The current Irish visa system

An Irish visa is a form of pre-entry clearance required by certain nationals prior to travelling to Ireland. It does not grant permission to enter the State and visa holders are subject to immigration control at the port of entry. Currently the Aliens (Visas) Order 2003 (S.I. 708 of 2003) specifies those persons who are required to have a transit visa and those persons exempt from Irish visa requirements.

Visa applications are handled by the Department of Foreign Affairs through its consular office in Dublin and its embassies and consulates abroad. Overall policy in relation to the
issuing of a visa is, however, the responsibility of the Department of Justice, Equality and Law Reform. Approximately 60% of visa decisions are made by the Department of Foreign Affairs and its embassies on the basis of delegated sanction from the Department of Justice, Equality and Law Reform. The remaining 40% are submitted to the Department of Justice, Equality and Law Reform for decision. The issuing of a visa involves the printing of a sticker which is fixed in the passport of the applicant. All visa stickers are issued by the Department of Foreign Affairs.

Re-entry visas are required by visa-required nationals resident in Ireland who wish to travel abroad and return to Ireland. They obtain these visas from the Department of Foreign Affairs before they leave the State.

Recent years have seen a significant increase in the number of visa applications from persons wishing to travel to the State for a variety of purposes. In 2000, 61,000 visas were issued. By 2003 this had increased to 120,000, almost double the 2000 figure.

In 2002 specialist visa offices were established by the Department of Justice, Equality and Law Reform in Beijing and Moscow in response to a dramatic increase in recent years in the number of visa applications from China and Russia. This initiative has resulted in an improved service at those locations as immigration staff can make decisions locally without referring cases to Dublin. Initially a high level of fraudulent applications was detected in these two locations. The possibility of extending this local processing model to other locations overseas is being considered.

Under the current system, it is open to persons who have been refused a visa to appeal against the decision. Reasons for the initial refusal of the application are provided on request. Appeals are dealt with by a Visa Appeals Officer within the Immigration Division of the Department of Justice, Equality and Law Reform.

The Department of Justice, Equality and Law Reform and the Department of Foreign Affairs are involved in the development of a new computerised visa system accessible to staff in both Departments as well as to the Garda National Immigration Bureau. Tenders are currently being invited for this project and it is expected that the new system will come into operation in the Department of Foreign Affairs during 2005. It will lead to an improvement in the system both for customers and staff.

**International study**

The IOM study considered a range of issues in relation to visa systems in Europe, the UK, Australia, Canada, New Zealand and the US. All the countries examined operate visa systems, requiring persons of certain nationalities to be “pre-cleared” by way of the visa system prior to their arrival at the borders of the State. All countries saw a value in distinguishing between nationalities that were high risk in immigration terms and those that were low risk, and focussing resources on dealing with the high risk category. The systems as regards drawing up visa lists varied from the formal systems operated in the US (the “visa waiver” programme which requires criteria to be fulfilled by a country before it can be included in the programme) to the systems used in the EU and the UK which did not set out explicit criteria for inclusion/ exclusion of countries in visa requirements.
As regards the nature of a visa, the study found that in most countries the visa entitled the holder to present at the border of the State concerned at which point an immigration officer would determine if entry should be permitted. In the case of Australia the visa document also covered the entitlements of the person once he/she had entered Australia. This was also the case to a certain extent in the US. In all other states permission to enter was granted by the immigration officer at the border.

The IOM examined the systems used by the countries to process visas and a variety of systems and organisations were involved. Most countries involved Foreign Ministry staff in processing abroad, but other (migration) ministries were also involved. In the UK a joint unit between the Home Office and the Foreign Office was established in 2000 to process visas. Internationally the importance of computer databases in visa processing was outlined, as was the possibility of funding systems from user fees. The scope for countries to co-operate in visa processing and for the use of third parties to process visas (as in the case of New Zealand) was also noted.

Pre-clearance and pre-inspection systems operated by the countries concerned showed many similar features, such as computerised “lookout” or “alert” lists containing the names of criminals and terrorists. There was also co-operation with airlines and other carriers through the use of advance passenger information and immigration liaison officers working with carriers and authorities abroad. The objective is to carry out as much of the checking of individuals before they arrive at the borders.

**European Union initiatives on visas and pre-entry clearance**

**Schengen visa system**

All EU Member States, apart from Ireland and the United Kingdom, are participants in the Schengen acquis on internal and external borders. The Schengen system, in effect, creates a common travel area among the EU Member States together with Iceland, Norway and Switzerland. All internal border checks have been abolished and transferred to the external borders of the participating States. To support this system the Schengen States operate a common visa policy, which includes a common visa list. The Schengen visa list differs somewhat from the visa required lists operated by the UK and Ireland. Schengen short stay visas are granted for periods not exceeding three months and are valid for travel within the Schengen area.

The arrangement is supported by the Schengen Information System (SIS) which provides an alert list including those who have committed offences, been deported or refused entry in Schengen States. If a visa applicant’s name appears on the SIS, the visa is denied.

Another Schengen initiative in the visa area is a Council Recommendation of 4 March 1996 concerning local consular cooperation regarding visas. Member States are encouraged to establish co-operation between their consular services in order to facilitate the exchange of information and contribute to reducing illegal immigration into the Schengen area.

**EU uniform visa format**

A uniform format for EU visas with common security features and technical specifications has been in place since 1995, in accordance with the terms of Regulation (EC) No 1683/95.
In February 2002 this Regulation was amended by Regulation (EC) 334/2002. Ireland has opted to participate in this instrument and is bound to follow the specifications set in them.

In March 2003 EU Justice and Home Affairs Ministers called for the integration of biometric identifiers into the uniform format for visas and residence permits for third country nationals. As a result the Commission presented two proposals, one for the amendment of Regulation (EC) No 1683/95 and one for the amendment of Regulation (EC) No 1030/2002. A general approach in relation to these proposals was agreed at the Justice and Home Affairs Council in November 2003. The adoption of the Regulation must await the European Parliament’s opinion. Ireland has exercised the option under the fourth Protocol to participate in these proposals and, consequently, will be required to comply with the technical requirements and the deadlines set in the Regulations.

**EU Visa Information System (VIS)**

The proposed Visa Information System (VIS) will be an information system containing details of all visa applications made to EU Member States. It aims to counter visa fraud and to improve exchanges of information on visa applications. It is expected to facilitate checks carried out at immigration or police checkpoints to ensure that the carrier of the visa (i.e. the person having physical possession it) and the holder of the visa (i.e. the person to whom it was issued) are the same. The VIS is a development of the Schengen acquis. Ireland (and the UK) will not participate in VIS but it is expected that there will be a mechanism for co-operation with it which may allow for exchange of information between the VIS and the Irish visa system.

**UK e-Borders programme**

A major factor in Irish immigration policy is the protection of the Common Travel Area with the UK. To this end, developments in the UK visa system are of particular relevance. The UK is currently engaged in developing a modernised integrated secure border under what is called the e-Borders programme. e-Borders is a medium to long term cross-agency programme which will modernise and integrate the management of passenger information including biometrics to expedite the movement of legitimate passengers while helping to safeguard the UK against serious and organised crime, terrorism and illegal immigration. The aim is to combine existing carrier information systems with advanced information technology to allow the border agencies, working together, to ‘export the border’ from the UK, assessing passengers in advance of arrival, filtering out known threats and creating new opportunities to share information and intelligence between border control, law enforcement and intelligence agencies in the UK and overseas. The maintenance of the Common Travel Area between Ireland and the UK and the need to combat terrorism means that Ireland must be in a position to keep up with such developments in border control and migration management.

**Issues and Proposals**

The need for a visa system is clear from national experience and international practice. The manner in which such a system operates should be set out clearly in Irish legislation.
The nature of an Irish visa

The proposed legislation should include a definition of a visa and what it entitles the holder to do. At present an Irish visa entitles the holder to present at the frontiers of the State for permission to enter the State. A question arises as to whether the visa should in future give a higher level of guarantee to the person concerned that he/she will be effectively guaranteed entry to the State. For example, a situation applies in the UK that a visa may be revoked by an immigration officer only if there are reasons to believe the visa was obtained on false information, there has been a change in circumstances, or there are reasons of public good.

It was considered whether such a system could operate in Ireland. It was noted that at present there was limited capacity in Irish overseas representations to fully consider applications, including interviewing applicants. For that reason in particular, it is considered that such a model could not operate here in the near future. There will be a continuing need for immigration officers to consider persons presenting at the border on arrival to determine if their circumstances are as outlined at the time of application. Immigration officers will continue to determine whether the person presenting at the frontier is genuine and satisfies the conditions under which the visa was issued. This role of immigration officers is also addressed in the next chapter.

In some countries a visa is used as a single document which deals with pre-entry clearance, entry and residence in the country concerned. This is a situation which can apply in a country where there is a universal visa requirement (such as Australia). This is not the system that operates in Europe (nor does it in Canada or the US). Generally in other EU Member States, the application for a visa is separate from the application to enter the state for medium or long term purposes.

It is proposed that the Irish visa will continue to operate as a document granting an entitlement to present at the borders of the State seeking admission to the State. In relation to entry to the State, the terminology to be used in this process should be simplified and made more understandable. In the case of a person coming to live on a long term basis in Ireland from a visa-required country, there will be a three stage process:

- applying for a visa from the country of origin;
- applying for permission to enter the State on arrival at the borders of the State; and
- applying for permission to remain in the State before the permission to enter has expired (in particular if the person wishes to stay for more than 3 months).

Visa issues requiring legislative provisions

It is proposed that the legislation will be prepared on the basis that:

1. It should be clearly stated that the Minister retains discretion in deciding whether to issue or not to issue a visa. It should not be possible to compel the Minister to apply this discretion.

2. The obligation should be on the applicant to satisfy the Minister as regards his/her identity and circumstances, the purpose of travel, etc. There can be no presumption that applications are genuine.
The Minister should have powers to specify in secondary legislation, among other things:

- classes or types of visa (e.g. transit visas, short-stay and long-stay visas);
- the form and content of visa documents;
- the nationalities and/or categories of persons requiring a visa to travel to Ireland or exempt from a visa (e.g. holders of diplomatic passports, holders of Irish residence permits);
- details of the visa application process, including visa application forms and information to be provided by applicants, and a requirement that the applicant may be asked to attend an interview;
- arrangements for review/ appeal, if any.

**Organisation of visa services**

At present the approval of visa applications and visa issuance is a matter for two Departments: the Department of Foreign Affairs and the Department of Justice, Equality and Law Reform. Administrative arrangements in the visa area are considered in chapter 14 as part of the wider consideration of arrangements for the provision of immigration services generally.

**Re-entry visas**

At present, if a visa-required national who is resident in Ireland wishes to leave the State and re-enter later (for example to return to his/her country of origin or to go on holidays abroad) he/she must apply for a re-entry visa before leaving the State. This is a requirement which is inconvenient for the customer and also makes significant demands on visa staff resources. In view of the proposed developments in the visa service, in particular computerisation, and the ongoing developments in the registration system operated by the Garda National Immigration Bureau and in the registration cards (residence permits) issued, it is proposed that the re-entry visa regime should be reviewed. This will consider the possibility of the re-entry visa requirement being eliminated for persons granted permission to remain in Ireland for a period of more than 3 months and who are in possession of an Irish residence permit.

**Customer service**

It is in the interests of customers and of the authorities operating the visa and immigration systems, that visa applications should be dealt with as quickly as possible. It would be desirable to be able to say that a visa application would be dealt with within a certain fixed period of time. At present visa applications are generally dealt with within four to six weeks of application. Action to improve service is being undertaken including increased staffing in the visa area and the initiation of the visa computerisation project. The Minister has recently provided additional staff resources to the visa service which is expected to improve customer service in the coming months.

As a general principle decisions should be taken as quickly as possible and within a reasonable time. It is not possible to guarantee a response in all cases within a particular timescale because individual circumstances in certain applications may be complex. There may also be seasonal factors resulting in surges of applications at particular times which
would result in temporary backlogs of work. The applicant should be notified of the result within a reasonable time and the reasons for a refusal to issue a visa should be given. Where an appeal of a refusal is possible, details of the procedures to be followed and the time limits applicable should be given.

Customer service is not an area which is appropriate to legislation. The Minister can set service standards which the visa service should endeavour to achieve. However, it can not be the case that if the time limits are not met a visa is automatically issued.

**Prioritisation**

It should be possible for the Minister and the visa service to organise business in the visa processing system so that, for example, certain types of application can be prioritised. This may be done in the general national interest (such as applications from highly skilled workers) or for administrative efficiency (such as applications from persons or organisations who enjoy a high level of trust, or who have a good record of dealings with the immigration system). It must be considered whether such matters need to be explicitly covered in legislation or whether they can be implicitly covered under the Minister’s general powers to organise business. It would be reasonable that applicants and the general public should be aware of areas to which priority is being given.

There should also be a possibility to introduce schemes whereby, for the payment of a higher fee, a faster service could be provided. This currently applies in other areas, such as in the Passport Office where a higher fee is charged, for example for a same-day service. It would be reasonable for the visa service to operate schemes such as this, and the legislation should provide for the possibility of such schemes being introduced.

**Guarantees by sponsors of applicants**

A possibility being considered is whether there should be an opportunity for a sponsor in Ireland of a visa application to provide financial guarantees for the applicant and his/her conduct while in Ireland. In particular, the guarantee should cover the return of the person to his/her country of origin at the end of the permitted time in Ireland. In the event of non-return, the sponsor would be liable for any costs incurred by the State in respect of the person such as the cost of accommodation and return of the person, should the State be required to remove him/her. The guarantor should also be liable for any other costs which the State incurs as a result of the non-national’s presence in the State (such as social welfare or health costs) after they should have left. The possibility of an additional financial penalty could also be considered.

Such an arrangement could allow for the fast-tracking of such applications with minimal (or no) checking of financial resources. It may be an option that would only be used in relation to certain categories of application. The legislation should provide for such a possibility.

**Appeals of visa decisions**

The system of appeal of visa decisions is being reviewed. One approach that could be adopted is that applications which are not complete or which do not supply sufficient backing information would be returned to the applicant rather than being refused. Ideally this should be done at an early stage in the process, preferably at the first point of contact with the applicant — generally at the relevant Irish embassy. Consideration will also be given to
whether appeals of visa refusals should be possible in all cases. At a minimum, such an appeal should be possible for persons seeking to travel to visit family members who are long term residents in Ireland. In other cases appeals could be limited to cases where the stay in Ireland is for at least three months. Appeals for other specific categories of visa could also be specified by the Minister in secondary legislation. A refusal of a visa application without appeal would not preclude the making of a further visa application in the future.

It is clear from experience that large numbers of persons applying for a visa to come to Ireland do so using false information or false supporting documentation. The visa system is based on credibility of applicants and the information they supply. Where false information or supporting documentation is supplied the credibility of the applicant is undermined. It is proposed that there should be an obligation to refuse such applications. In such cases there should be no appeal or review possible. The person could of course apply again in the future, but account could be taken of previous refusals in such circumstances.

Costs and fees

The visa system should operate on the basis of the costs of the technology underpinning the service being covered by the users. In view of the benefits which accrue to persons allowed to enter and reside in Ireland, fees should therefore not be limited to the administrative costs of operating the system. However, they should be at a reasonable level. The possibility that for the payment of a higher fee a faster service could be provided has been referred to earlier. Such a possibility should also be comprehended by the legislation.

At present there is a provision in Section 3 of the Diplomatic and Consular Officer (Provision of Services) Act 1993 for the Minister for Foreign Affairs to charge for consular services, which includes visa services. The Immigration Act 2004 permits fees to be levied for certain services. There should be a specific provision in the Immigration and Residence Bill for visa fees. The links with the Department of Foreign Affairs legislation will be examined.

International co-operation and sub-contracting of work on visas

The Schengen visa system makes explicit provision for visas to be issued by one Schengen State on behalf of another and Schengen visas have validity throughout the Schengen area. There are also proposals for the establishment of common offices in third countries for the issuing of Schengen visas. While Ireland does not currently participate in the Schengen visa system (nor does the UK), this may change in the future. Also, given the limited number of Irish diplomatic representations abroad, it would make sense to provide in new legislation for the possibility of Ireland entering into agreements with other governments for the issuing of Irish visas. There should also be provisions to allow the sharing of information concerning visa applicants with other states and to allow for potential future participation in systems such as the EU’s Visa Information System (VIS). There is also a practice in other countries for the sub-contracting of visa processing work to other service providers. It would be advisable to provide for the possible contracting of visa processing work to other bodies where appropriate.

Should pre-clearance be applied to non-visa required nationals?

A person from a visa-required country issued an Irish visa will arrive at an Irish immigration control point with the knowledge that the Irish authorities have examined his/her request to travel to Ireland and have been satisfied with the case made — though, of course, entry will
not be guaranteed. However, the question arises as to whether a person from a non-visa required county should also be in a position to obtain, through a pre-clearance procedure, some level of certainty that he/she will be admitted. This will be examined further in chapter 6.
5. Border controls

**Key Proposals**

- There should be a review of the provisions of the Immigration Acts 2003 and 2004 in relation to border controls, and the granting and refusal of entry — to ensure that they are operating effectively.

- The effectiveness of the carriers liability provisions should also be reviewed in the light of experience and any improvements necessary should be provided for.

- The increased use of active border controls is to be encouraged, including the use of advance passenger data.

- Legislation should provide for immigration officers to request biometric data, such as fingerprints from persons seeking to enter the State.

- Secondary legislation should set out in detail conditions which may apply to persons granted permission to enter the State.

- A person may be refused permission to enter the State for reasons to be set out in the legislation.

- A person refused permission to enter the State should be given reasons for that refusal.

- There should be provision for an immediate review of a refusal by a more senior Immigration Officer, if requested.

- There should be provision for the detention of persons refused permission to enter.

- There should be an obligation upon carriers to return persons refused entry and to bear the costs of that return. The legislation should consider extending the period in which carriers can be required to return illegal entrants from the present limit of two months.

- The appointment of public servants dealing with non-national arrivals, such as customs officers, as immigration officers should also be considered.

- There should be an obligation on airport and port authorities to provide appropriate facilities for immigration purposes and for immigration issues to be taken into account in the planning and design of airports and ports.

- There should be provision for exit controls to be implemented where deemed necessary by the Minister.
Effective border controls are a key element of the immigration system of any state. If a state is unable to control movements across its border it will be unable to implement any immigration policies. It will also be leaving itself open to serious criminal and terrorist threats. A state must be able to monitor who is attempting to enter its territory, allowing entry to those who are legitimately entitled to do so with the minimum of disruption but also ensuring that those who are not entitled to enter the state are prevented from doing so.

The Central Statistics Office tourism and travel statistics show that in 2003 there were 6,369,000 visits to Ireland from overseas. Of this total, some 4,515,000 (or almost 71%) were visits from the United Kingdom. This shows the importance of traffic through the Common Travel Area. The remaining visits comprised approximately 1,287,000 visits from Continental Europe (20% of total) and 567,000 visits from North America (9% of total).

These statistics estimate the level of traffic on the principal routes of entry into Ireland, rather than the country of origin of the person in question. The CSO give the residence of those visitors as follows:

<p>| | | |</p>
<table>
<thead>
<tr>
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<th></th>
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<tbody>
<tr>
<td>Great Britain</td>
<td>3,719,000</td>
<td>(58%)</td>
</tr>
<tr>
<td>Europe</td>
<td>1,497,000</td>
<td>(24%)</td>
</tr>
<tr>
<td>USA and Canada</td>
<td>904,000</td>
<td>(14%)</td>
</tr>
<tr>
<td>Rest of the World</td>
<td>249,000</td>
<td>(4%)</td>
</tr>
</tbody>
</table>

The vast majority of these visitors are subject only to minimal checking.

**The Current Situation in Ireland**

The Garda National Immigration Bureau (GNIB) is responsible for immigration controls at points of entry into the State. The Bureau was established in May 2000 to provide an effective organisational structure to support those elements of the enforcement of immigration policy which rest with the Garda Síochána. Its functions include:

- enforcement of immigration law generally;
- the co-ordination of Garda operational strategies at points of entry into the State;
- the removal of persons who have been refused permission to land in the State;
- the enforcement of deportation orders;
- the provision of a non-national registration service and maintenance of an associated database;
- the implementation of effective strategies to combat trafficking in illegal immigrants (including international operational liaison);
- international liaison on relevant immigration issues (including liaison with Garda liaison officers based abroad);
- effective co-ordination and interaction with other Garda National Units in investigating crime involving non-nationals.
Permission to land

A non-EEA national arriving in Ireland for legitimate purposes is granted permission to land on arrival and his/her passport is stamped indicating the duration of the permission and any conditions it is subject to.

Persons who do not satisfy an immigration officer that their reasons for travelling to Ireland are genuine are refused permission to land in the State. They are informed in writing of the reasons for the refusal. The circumstances under which permission may be refused are set out in Section 4 (3) of the Immigration Act 2004. The most common grounds for refusal are inadequate documentation or insufficient funds.

Immigration officers have the power to detain a person who has been refused permission to land pending the making of arrangements for his/her removal from the State. Detention is usually for a very short period only, typically overnight. However, this detention may be for a longer period where a person is to be returned to a country to which there are not regular daily flights. It is the obligation of the carrier who transports the refused person to the State to facilitate the return journey.

The Common Travel Area (CTA)

Ireland and the United Kingdom have operated the Common Travel Area arrangements for many years. Both states co-operate to ensure that their respective immigration procedures prevent persons from being allowed to enter one state if they would not be allowed to enter the other state and if it is suspected that they are likely to exploit the Common Travel Area in order to do so illegally. As a result citizens of both jurisdictions enjoy passport-free travel within the Common Travel Area. Under Irish immigration law the benefit of passport-free travel does not apply to persons who are not Irish or British citizens. Consequently, immigration officers are empowered to carry out immigration checks on persons who are not Irish or British citizens upon their arrival in the State, even when coming from Britain or Northern Ireland.

Free movement of EU citizens, EEA and Swiss nationals

Provisions in EU Treaties and in agreements on free movement with the EEA states and Switzerland, while providing for free movement of their citizens, still provide for border checks to be carried out.

International study

The IOM study showed that there is a wide range of methods of delivery of border control/immigration services worldwide. Even within Europe there are some states with
civilian services whereas others use police. In Australia and Canada, Customs services are involved in immigration checks. All states reserve the power to refuse entry to non-nationals for a variety of reasons including: lack of valid travel documents (passport or visa); having insufficient funds; and threats to public policy, security or international relations.

There is also a range of practices regarding the treatment of those refused entry. Some states allow appeals but most do not allow such appeals to suspend the removal of the person refused entry.

The use of carrier sanctions and of liaison with carriers was also seen as important in ensuring effective border controls. The importance of staff training and technology in the recognition of false documents was also noted. The use of high quality travel documents is important: developments in machine readable documents and the incorporation of biometric data were referred to. Investment in technology at border control points has the potential to speed up the processing of bona fide travellers and improve the detection of irregular migrants. There was also stated to be value in immigration authorities sharing data.

**European Union initiatives on Border control**

European Union policy on border control has been in development since the Treaty of Amsterdam conferred a competency on the EU in this area. A number of European Councils have emphasised the importance of measures to combat illegal immigration (Laeken in December 2001, Seville in June 2002, Thessaloniki in June 2003). Member States have undertaken to improve the management of the Union’s external border controls so as to effectively combat terrorism, illegal immigration and human trafficking. Commission communications in 2001, 2002 and 2003 dealt with the issues of illegal immigration and border management.

Several initiatives have been adopted by the Council with the aim of improving the security of Europe’s external border.

- A Regulation establishing an Agency for the management of operational co-operation at the external borders,
- A Regulation on the creation of an immigration liaison officers network, and
- A Regulation laying down the requirement for the competent authorities of the Member States to stamp systematically the travel documents of third-country nationals when they cross the external borders of the Member States.
- A directive on the transmission of passenger data to the competent border authorities.

The Council is currently negotiating a proposal for a Regulation establishing a community code on the rules governing the movement of persons across borders.

It should be noted that many of the above measures build upon elements of the Schengen Acquis which do not apply to Ireland. Consequently they are not being implemented by Ireland.
Improving the levels of border security has also been an imperative behind the proposals for regulations amending the format of EU visas and residence permits to include biometric identifiers. A similar proposal to include biometric identifiers in Community passports has recently been agreed by Council.

**Carrier Sanctions and passenger information**

Articles 26 and 27 of the Schengen convention compel Member States to impose financial penalties on those carriers that transport foreign nationals into the Schengen territories and who are subsequently refused entry. Carrier sanctions are viewed as an effective tool in border security for detecting and deterring potential illegal migrants, criminals and smugglers. Many individual States support their carrier sanction regimes with a network of airline/immigration liaison officers, based in countries of origin and embarkation. The function of these personnel is, among other things, to co-operate with carriers on identifying illegal immigrants and forged documents. The EU has recognised the value of these officers and has adopted a regulation on establishing a network of Member States immigration liaison officers. The objective of the network is to increase co-operation and intelligence exchanges between Member States’ administrations.

The EU is also investigating the application of advanced passenger information systems. These systems are designed to transmit data on passengers entering the EU territories from third countries to the relevant national border authorities. The national authorities will then have information on passengers before they arrive in the territory of a Member State. As noted above a Council Directive on the transmission of passenger data has been adopted. It applies only to airline passengers. The Commission are currently examining the issue of advance passenger data systems with a view to reporting on their application on a Community level. Any such proposals will, of course, have to be fully compliant with Community data protection legislation.

**Issues and proposals**

**Border procedures**

Existing immigration legislation (the Immigration Acts 2003 and 2004 in particular) already provides in detail for the procedures to apply in border controls and the procedures for granting and refusing permission to land. In preparing the new legislation the existing legislative provisions and procedures as regards refusal of permission to land and the obligations on carriers to return persons refused and to bear the costs of detention and return will be examined. The new legislation should also contain detention provisions for those who are refused leave to land.

**The need for active border controls**

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

Immigration officers must co-operate with their counterparts abroad and with international transport companies to try to deal with illegal immigration in its countries of origin or
transit, rather than in the intended destination. If an illegal immigrant arrives in Ireland it represents a failure of our system and a success for those who facilitate or traffic illegal immigrants. Success against illegal migration networks requires action at or close to its source, disrupting the operations of those who exploit vulnerable people.

In practice this co-operation will involve:

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

In Ireland we have experience of the misery that trafficking in human beings can bring from the tragic events in Wexford in December 2001 when eight people lost their lives in terrible circumstances. We are also aware of the ongoing attempts of illegal immigrants to enter into the European Union by sea. Ireland is a potential target of such activity and we must ensure there is co-operation with all bodies which are involved in monitoring and controlling our external borders — immigration officers, An Garda Síochána generally, the Customs Service and the Naval Service — and that co-ordinated action is taken to counter any threats in this area.

We are also aware that immigration systems worldwide are vulnerable to abuse by persons who wish to commit terrorist acts. We must also ensure that our immigration systems are not open to such abuse. We must be in a position to co-operate with international activity which is attempting to counter such threats.

The use of new technology

Computerisation at the border control points has reached an advanced stage with the roll-out of the GNIB registration system to most border crossing points. If effective border controls are to be carried out, it will be necessary for all non-EEA nationals entering the State to be subject to checks which will enable the immigration officer at the point of entry to make an informed decision about whether the person concerned should be permitted to enter the State. The immigration officer should have access to relevant history of persons who have previously been in the State as well as details of any authorisations which have been given relating to entry, such as visas or work permits issued. In particular, any alerts concerning the person should be immediately obtained, such as whether a deportation order exists. All of this information must be available to the immigration officer on foot of a simple enquiry on the computer system which may be triggered by the scanning of the person’s passport.

In the near future there will be a requirement for visas and residence permits to contain biometric identifiers. It should be possible for immigration officers at a border to request that a non-national provide a biometric identifier, such as a fingerprint so that checks can be made with the existing immigration databases. This will help inform the immigration officer about any previous presence in Ireland of the person concerned and will allow for more informed decision making. It will also help in establishing that non-nationals carrying an Irish identity document are who they say they are and simplify entry for them. It will
also help enforce immigration laws by ensuring for example that a person who had previously been in Ireland under another identity is identified before attempting to enter the state under a different identity, and appropriate action can be taken.

**Who should carry out border controls?**

At present most immigration controls are carried out by Gardaí in the GNIB. Section 3 of the Immigration Act 2004 provides that the Minister for Justice, Equality and Law Reform may appoint persons as immigration officers to perform the functions conferred on them by the Act. The Act does not restrict appointment to serving Gardaí. There is scope to appoint other public servants who may deal with migrants. Examples of officials who may have to deal with migrants on their arrival in the State include customs officers, naval personnel and civil servants. New legislation should provide for the appointment of immigration officers from a range of backgrounds for the purposes of border controls, where appropriate. It should be left to organisational arrangements to decide who should undertake them in practice and in what circumstances. This may be particularly relevant in locations where full-time immigration facilities may not be provided.

**Immigration facilities at airports and ports**

Immigration facilities at Irish ports and airports in some respects fall short of what is needed for effective checking of arrivals and from a customer service viewpoint, or providing adequate customer service i.e. provision of adequate checking booths, interview rooms, detention facilities etc. The smooth operation of modern airports and ports requires a rapid flow of people through the various facilities. It is essential that airport and port authorities should plan for and provide adequate facilities — as regards adequate space and systems for the flow of people — to enable immigration checks to be carried out quickly and efficiently. This should be an obligation in legislation and should be provided as part of the provision of all port and airport facilities, by the port and airport authorities concerned. Immigration requirements, including the provision of adequate facilities, should be a fundamental element of the design and development of airports and ports, as for example customs requirements currently are.

Under Customs legislation all ports and airports must be approved by the Revenue Commissioners for customs purposes. The approvals are issued by the Commissioners to each airport/port following an examination of the application and the relevant facilities. Where accommodation is required by Customs to discharge their functions, the Commissioners have in the past required the provision of this as part of the terms of approval. The legislation underpinning the approval of Customs airports are the Customs & Excise (Aircraft) Regulations 1964, as amended by the Customs & Excise (Aircraft) (Amendment) Regulations 1967 — Regulation 6 is the relevant regulation. This approach will be considered further in the preparation of the Immigration and Residence Bill.

**The possibility of exit controls**

It is sometimes suggested that proper immigration controls can not be effected without a system of exit controls to complement entry controls. It is argued that it is only through such exit controls that the departure of persons from the State after their period of legal stay can be verified. Such a system operates, for example, in Australia.
The use of exit controls is in fact quite limited internationally. Even at the external borders of the Schengen area, where exit controls are in principle operating, they do not exist universally. Exit controls are secondary to entry controls.

The UK has operated exit controls in the past but has ceased doing so in recent years. The existence of the CTA with the UK also has implications for the operation of exit controls. If it were necessary to exempt those travelling to the UK from such controls, it would seriously reduce the effectiveness of the system if introduced in Ireland. The operation of exit controls would be disruptive of travel and would also place significant demands on resources. It would seem that the introduction of such controls would not enhance the immigration system at present. However, there should be a provision in legislation for exit controls to be implemented, even on a temporary or selective basis, if necessary for immigration control purposes.
6. Entry to the State — general principles

Key Proposals

Short term visits (up to 3 months)

- The existing system of checking applications for entry from short term visitors through the visa application process and at points of entry to the State is a practical and pragmatic approach and should continue.

- A requirement for financial guarantees as an additional safeguard in certain cases should be provided for.

- The possibility of non-visa-required nationals being able to apply for a form of advance clearance before travel should be considered.

Longer term entry (over 3 months)

- The Minister, and where necessary in consultation with other Ministers, should have the power to prescribe schemes for longer term admission to the State for a range of purposes. These should be clearly set out in secondary legislation or other form and be publicly available.

- The Minister should have the power to regulate entry through such schemes: for example, by setting quotas and by introducing points systems for assessing applications.

- The possibility of non-visa-required nationals being able to apply for a form of advance clearance before travel should be considered.

Introduction

The Irish economy is a small open economy which has thrived on promoting international links. Many international corporations operate out of Ireland. The tourism industry is hugely important to the economy. The ease of access of non-nationals to Ireland is an important factor in many industries in Ireland, including in particular tourism. It is essential that our immigration system facilitates the movement of persons who have legitimate business in Ireland. They should be given easy entry to the State and must not be subject to unreasonable delays or bureaucracy in their dealings with the immigration system.

Travel to Ireland can be short term for a variety of purposes (such as tourism, business etc.) or longer term for purposes of work, study etc. In this document a distinction will be drawn between visits of up to 3 months, which we will regard as short-term visits, and those of over 3 months which we will consider as longer-term. In this chapter we will consider general
issues concerning entry to Ireland which will apply to all persons travelling here, regardless of the duration of the visit. In relation to longer term visits, the following chapters will deal separately with admission for the main types of longer term visit — economic migration, study migration, family reunification and migration of non-economically active persons.

Ireland currently has one of the most open systems of legal migration in Europe. Non-nationals are facilitated in travelling to Ireland for a range of purposes, primarily for work and study. Pre-clearance of applications for entry to Ireland for these purposes are formalised in the case of visa required nationals. In the case of labour migrants a form of pre-clearance is also undertaken in the work permit or working visa/work authorisation systems. In attempting to minimise the disruption caused to travellers, it is reasonable that more onerous checks should be carried out on people who seek to enter the State for longer term purposes, than would be the case in relation to short term visitors.

I. Short term visits

Less exhaustive checks and controls should be implemented in the case of persons who are short-term entrants to Ireland than would be the case for persons seeking to come for longer periods. The current system has a very light touch as regards entrants for periods of less than three months. This is as it should be.

Short term entry can be for a range of purposes including:

- Tourism,
- Visits to family and friends,
- Commercial business,
- Official business,
- To provide services,
- To attend conferences,
- Sports,
- Entertainment,
- To sit examinations.

While the vast majority of visitors for these purposes are legitimate and should be facilitated, there are those who seek to exploit the ease with which entry can be gained for such purposes. There have been a number of high profile cases where persons have entered the State for ostensibly innocent and legitimate purposes (such as to attend or to participate in a sporting or cultural event) and have subsequently attempted to remain in the State afterwards or have attempted to enter the UK by abusing the Common Travel Area arrangements.

Current system regarding short term entry (90 days or less)

A visa-required national is required to apply for a visa, even for a short visit. In general, a non-EEA national who wishes to enter the State for a short stay must be able to satisfy the visa officer (where a visa is required) and the immigration officer on arrival at the frontiers of the State, as regards:
the purpose of his/her travel by way of relevant original documentation;

that he/she has sufficient funds to maintain him/herself for the duration of the proposed stay;

confirmation of accommodation;

evidence of an obligation to return to the country of permanent residence.

There are certain categories of visit which will have additional requirements, the main ones being as follows:

- **Visit** — if coming to visit a person, details of the relationship must be supplied.
- **Business** — evidence of business in country of origin.
- **Service Provision** — proof of qualification to provide the service in question
- **Attending a conference** — evidence of relevance of conference, i.e. subject matter should fit the person’s profile.
- **Medical treatment** — evidence of private medical insurance/sufficient funds to pay for private treatment and letter from doctor in country of origin evidencing need for treatment.

**European Union practice**

European Union activity in the area of entry conditions has primarily focused on entry for the purposes of longer term residence. The general conditions for short term entry for periods not exceeding three months are covered in Article 5 of the Schengen Convention. The conditions are that the person seeking entry must:

- possess a valid document or documents authorising him/her to cross the border;
- possess a valid visa, if required;
- produce if necessary, documents justifying the purpose and conditions of the intended stay and have sufficient means of subsistence, both for the period of intended stay and for return;
- not be a person for whom an alert has been issued for the purposes of refusing entry;
- not be considered a threat to public policy, national security or the international relations (of any Schengen State).

**Issues and proposals**

The current system whereby short term visitors are checked either in the visa application process and/or at the point of entry to the State appears to be a practical and pragmatic way for dealing with such cases. New legislation should set out the basis for such checks. It will be necessary for much of the detail of the requirements and checks to be set out in secondary legislation or in practice manuals and information provided to customers. To try to impose more comprehensive checking in advance of travel would be time consuming and disruptive for the visitors concerned, who in the most part are welcome and valued visitors to the State. Also, it would not be an optimum use of limited immigration staff resources.
In many cases decisions to travel for short term purposes may be taken at short notice and may require a quick response from the immigration authorities. While a small minority of applications are likely to be abusive or fraudulent, the approach should be that attempted abuses will continue to be dealt with by taking appropriate responses to potential problems as they arise. It is essential that the immigration system and staff involved should learn from experience and use this experience to identify potential future threats in a focused way and, where available, based on intelligence. The sharing of information and experience with immigration services internationally can yield substantial benefits in this area.

A further question that arises is whether there should be a possibility for non-visa-required nationals to obtain some form of pre-clearance in advance of travel so that they could reduce the risk of their being refused entry on arrival at the frontiers of the State. This issue also applies to longer term migrants and will be considered in the next section.

II. Longer term entry

Background

Persons who seek to enter the State for longer term purposes (i.e. for over 3 months) include those coming for:

- employment and self-employment,
- study,
- family reunification, and
- non-economic purposes (such as retirement or long-term holidays).

These major areas of admission are dealt with separately in chapters 7 to 10 following. In those chapters details are provided of the current systems and requirements of people seeking to migrate for these purposes. This chapter will focus on the general principles which should apply in dealing with applications for longer term entry. The findings of the IOM's international study in the relevant areas are also outlined in the following chapters, as are relevant details of the public consultation on immigration policy.

European Union Initiatives

There are a number of developments at European Union level in this area which may provide a model for Irish developments. European Union activity in the area of entry conditions has primarily focused on entry for the purposes of longer term residence.

The Commission initiatives in this area have included Directives in relation to:

- Family reunification;
- Long term residents;
- Victims of trafficking;
- Employment and self-employment;
- Study, unremunerated training and voluntary activity; and
- Research.
Proposed system

Applications for longer term residence in Ireland, should be subject to a greater level of scrutiny than applications for short term visits. This may require more background documentation and evidence of purpose to be supplied. It will take a greater length of time in examining these applications.

It is essential, from the point of view of customer service and efficient use of resources, that there is a clear system for making applications for the purposes concerned, and that what is required from applicants is clear. The areas concerned are areas in which a number of public service bodies may be involved and it is desirable that the procedures should be clear as to which body is responsible for what process and that, to the greatest extent possible, the entire application process is streamlined and simplified for the applicant.

From the point of view of new legislation, what is being considered is that the Minister should have a general power to prescribe schemes for the admission of non-nationals to the State for a range of purposes and to set conditions and prescribe application procedures for such schemes. Any schemes can be time limited and subject to revision or cancellation. In some cases such schemes may require consultation with other relevant Ministers. Details of the operation of any schemes made should be publicly available.

The Minister, in consultation with other appropriate Ministers, should also have a power to set quotas for the numbers of persons to whom schemes should apply and to set out criteria for the selection of persons from among applicants. There should be a general provision in the legislation to allow, for example, the introduction of points systems for the selection of persons. The legislation should also allow the use of lotteries or time bounded schemes, where applications may only be accepted during a particular time period. Provision should be made for fees to be charged for the handling of applications made under any of the schemes concerned.

There should be a general requirement for applications to be admitted to Ireland to fulfil certain conditions, such as: to be made on the application forms provided; to provide all information required; to provide valid identity documentation; and to be accompanied by the relevant fee. In some cases there may be a requirement to show that the applicant (or a sponsor in Ireland) has sufficient resources to be self-sufficient while in Ireland; to provide evidence of sickness insurance; to provide details of health checks; and to provide proof of good character from his/her country of origin. A requirement for financial guarantees as an additional safeguard in certain cases should be provided for.
Should pre-clearance be applied to non-visa required nationals?

A person from a visa required country issued an Irish visa will arrive at an Irish immigration control point with the knowledge that the Irish authorities have examined their request to travel to Ireland and have been satisfied with the case made — though, of course, issuance of a visa does not guarantee entry. However, the question arises as to whether a person from a non-visa required country should also be in a position to obtain, through a pre-clearance procedure, some level of certainty that he/she will be admitted.

Such pre-clearance is currently available, to some extent, in the labour migration system, where the application for a work permit or a work authorisation will provide a level of assurance (and an official document) to the prospective migrant. On arrival at the immigration check at the frontier, the existence of the work permit or work authorisation will be a factor taken into account by the immigration officer in deciding whether to admit the person. An equivalent situation does not arise in the case of, for example, a student who is travelling to a college in Ireland. While the student may have a letter of acceptance from the college, which can be shown to the Immigration officer, there is no advance clearance with the immigration authorities. Consideration should be given to whether some form of pre-clearance arrangements could apply in areas other than labour migration. This may not necessarily be directly with the immigration authorities but with some official body in Ireland. The manner in which information on such cases would be obtained and shared should be considered further.
7. Admission for the purposes of work, self-employment and research

Key Proposals

Employment

• A range of approaches to economic migration is required — there is no single best solution. There is a need for co-ordination of legislation relating to economic migration and the Immigration and Residence Bill. Legislation should provide powers for the Minister (or the Minister for Enterprise, Trade and Employment, as appropriate) to set out in secondary legislation schemes for economic migration.

• The development of the Immigration and Residence Bill to be undertaken in conjunction with the development of employment legislation being brought forward by the Department of Enterprise, Trade & Employment.

• Streamlining and simplification of the current administrative systems should be considered.

• A permanent migration system, with a primary focus on attracting skilled people to Ireland, could be considered which would select people as potential future citizens, not just workers.

• A fast-track scheme of temporary skilled labour migration should be considered based on sponsorship by the employers.

• Employer sanctions should be strengthened. Consideration should be given to, for example, barring employers who have been in breach of immigration or employment law from bringing non-national workers to Ireland.

Self-employment

• The Minister should have the power to set out in secondary legislation schemes for entry for self-employment purposes.

• A possible scheme should be considered for individuals with innovative business ideas but without capital.

• Penalties should be set for individuals who start businesses without the relevant permission.

Researchers

• A scheme for the admission of researchers should be set out in secondary legislation. It should facilitate and support the attraction of international researchers to Ireland.
I. Admission for the purpose of work

Background

The growth of the Irish economy in recent years has resulted in significant numbers of non-nationals being required to fill vacancies in both the skilled and unskilled areas of the economy. This has been with the aim of meeting skills shortages and assisting competitiveness.

A non-national wishing to work in Ireland requires the permission of the Minister for Enterprise, Trade and Employment under the Employment Permits Act 2003. In general they are required to be in possession of a work permit or a working visa/work authorisation, but certain categories of person are exempt from this requirement:

- the spouse of an Irish national;
- the dependant of an EEA national who is exercising the right of residence under the EC Treaty;
- persons who have been granted refugee status in Ireland;
- persons who have been granted temporary permission to reside in the State on humanitarian grounds or as the parent of an Irish born child.

The main schemes under which non-nationals are currently admitted to the State for the purpose of work are:

- the work permit scheme, and
- the working visa and work authorisation scheme.

Work permit scheme

The Minister for Enterprise, Trade and Employment has the primary role in developing economic migration policy and the work permit scheme is currently administered by his Department. Obtaining a work permit requires an employer to identify a vacancy which he/she has been unable to fill from within the EEA, and a non-EEA national capable of filling the vacancy. This is obliged by requiring employers to advertise with FÁS before making a work permit application. The work permit is issued to the employer in respect of the non-EEA national and the employee cannot change employer without a second employer obtaining a work permit for the employee under normal circumstances. Where the worker concerned is of a nationality which requires a visa, a separate visa application must be made. Such applications are generally dealt with by the local Irish embassies and visas are readily issued to those who have obtained work permits.

Despite claims that this system gives rise to a system of “bonded labour”, in practice work permits have been granted readily permitting workers to move to new employers — some 3,500 in recent years. Permits are issued for a period of up to one year and may be renewed. During 2003 arrangements were introduced to involve FÁS in the process of confirming that vacancies could not be filled within the EEA. Since April 2003 some restrictions have been placed on the sectors in which work permits can be issued.

In recent years Ireland has had the most open economic migration system in Europe. The numbers of persons who were granted work permits in each year since 1999 were as follows:
<table>
<thead>
<tr>
<th>Year</th>
<th>New permits</th>
<th>Renewals</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>4,598</td>
<td>1,652</td>
<td>6,250</td>
</tr>
<tr>
<td>2000</td>
<td>15,735</td>
<td>2,271</td>
<td>18,006</td>
</tr>
<tr>
<td>2001</td>
<td>29,951</td>
<td>6,485</td>
<td>36,436</td>
</tr>
<tr>
<td>2002</td>
<td>23,859</td>
<td>16,602</td>
<td>40,461</td>
</tr>
<tr>
<td>2003</td>
<td>22,512</td>
<td>25,039</td>
<td>47,551</td>
</tr>
<tr>
<td>2004</td>
<td>10,885</td>
<td>23,346</td>
<td>34,231</td>
</tr>
</tbody>
</table>

While the number of new permits peaked in 2001, the number of renewals has been steadily increasing and the total number of permits issued reached an all-time high in 2003. People admitted through the work permit system have come from a wide range of countries, though the largest nationalities represented up to 2003 were among the ten new EU Member States (who joined on 1 May 2004). The freedom of movement rights granted to nationals of the new Member States accounts for the overall decrease in work permits issued in 2004. It is also noteworthy that the majority of people admitted through the work permit system have been in lower skilled sectors, in particular the agricultural labour and the hotel and catering sectors.

In light of the Government’s decision to open up the Irish labour market to nationals of the 10 new Member States with effect from 1 May 2004, the Department of Enterprise, Trade and Employment has tightened up considerably on the criteria for issuing permits, moving to a position where it is expected that they should be granted only for higher-skilled, higher-paid employment. It is expected that, in light of experience in recent years and in view of high unemployment in some EU Member States (particularly the new ones) that the bulk of Ireland’s overseas recruitment needs can be met from within the enlarged EU.

There is likely to be a ongoing requirement for labour migration for the continued development and growth of the economy. The Enterprise Strategy Group Report of July 2004 looked at the demographic changes which underpinned economic growth from 1993-2003 (first time entry into the labour market by school leavers and third level graduates, the pool of unemployed people available at the beginning of that period, increased female labour participation and net immigration). The report estimates that demand for new workers over the period up to 2010 could be in the region of 420,000 and it is clear that apart from immigration, other sources of additional labour supply are reducing. There will therefore be an ongoing requirement for significant immigration levels, particularly of people with higher level qualifications.

**Working visa/work authorisation scheme**

The working visa and work authorisation scheme is operated in practice by the Department of Foreign Affairs through Irish embassies and consulates abroad, but the overall policy in regard to the skills covered by the scheme has been a matter for the Department of Enterprise, Trade and Employment. Working visas are issued to visa-required nationals whereas work authorisations are issued to non-visa-required nationals. This scheme was introduced in 2000.
to address particular skills shortages that were identified in the labour market. The employees in question must hold qualifications as health professionals, construction and engineering professionals or IT professionals. The employees must also have a job offer, from an Irish employer, that is relevant to their qualifications. Almost 10,000 have been granted since mid-2000. These are issued for two years, are renewable, and the skilled employee can readily change employer within the sector specific to their visa/authorisation.

Other employment migration options

The Department of Enterprise, Trade and Employment also operates an intra-corporate transfer scheme which facilitates transfers to Ireland of senior management or exceptionally skilled personnel from companies that have a presence in a number of countries, including Ireland. The scheme was suspended in October 2002 due to widespread abuse. However, genuine applications have been facilitated since then on a case by case basis. Some 900 such transfers have been authorized since October 2002. The maximum period of such a transfer is four years.

Since 2000, non-nationals who are full-time students in Ireland have been allowed to access the labour market for up to 20 hours a week during term time and up to 40 hours per week during vacations. This was reviewed as part of the report on the internationalisation of Irish education services and it was announced that new arrangements would apply from 18 April 2005.

Employment Rights

The Department of Enterprise, Trade and Employment is also responsible for enforcement of employment rights legislation in the State and this applies fully to workers from overseas who are employed in Ireland. This is primarily by way of the Labour Inspectorate in the Department, which will investigate complaints from all aggrieved employees, regardless of nationality or origin. There is no separate inspectorate for foreign workers present in Ireland.

International study

The IOM study outlined the range of labour migration systems operating internationally, in particular those in the traditional countries of migration: Australia, New Zealand, Canada and the US. All of these countries operated permanent migration systems which involve annual ceilings or planning quotas for permanent admissions. However they all have substantial temporary admission programmes also in operation. Canada, Australia and New Zealand operate points systems which test factors such as education, skills, language ability and other characteristics which the country concerned sees as important from the point of view of successful economic and social integration. In the US system, permanent migration depends on an employer making an offer of employment which results in a system of checking (including demonstrating that no US worker can fill the post) which can be a lengthy process. In practice most permanent migrants to the US have already been present as temporary migrants. A question raised is whether a points system is better than one where an employer makes the decision as to the person’s suitability as a migrant.

The report concludes that Ireland needs to consider the full range of labour migration options already tried elsewhere, including a mix of employer-driven and Government regulated
approaches. There is a need for a flexible approach to attract skilled workers which will enable Ireland to compete internationally for such workers. This will involve granting favourable residence conditions to these people, such as the elimination of market testing and granting work access to family members. The distinction between permanent and temporary migration will often blur in this area as people chose the faster temporary migration routes for first entry and subsequently apply for permanent migration.

The area of unskilled migration is one which is more controversial internationally and poses more potential problems, such as the scope for long term unemployment or social problems. Such migration is not encouraged in most countries or it is limited, such as the use of seasonal admission only, and limits on family reunification.

The role of sanctions in policing the labour migration system is also set out. As well as a clear system of legal migration for labour purposes, there is a need to ensure that illegal migration is not encouraged.

**Public consultation**

A large number of submissions called for labour market driven skills based immigration. It was felt by many that Ireland urgently requires high skilled immigrant labour to sustain economic growth. Several contributors expressed the opinion that low skilled immigration should be limited as this could cause problems in the event of an economic slowdown. There were also several contributions on the subject of work permits, calling for them to be issued to the individual immigrant rather than the employer.

**EU initiatives**

In 1994 the Council adopted non-legally binding resolutions on the admission of third country nationals for the purposes of employment and self employed activity. However, following the mandate of the Tampere European Council of October 1999, the Commission produced in July 2001 a proposal for a directive on the conditions of entry and residence of third-country nationals for the purposes of paid employment and self-employed economic activities. The proposal was drafted following a comparative study of Member States policies and procedures for admission in this area. The study indicated that there was a wide variation in practices among the Member States.

The proposed Directive aimed to lay down common definitions, criteria and procedures for admitting third country nationals for employment or self-employed economic activities, subject to an “economic needs test” and a “beneficial effects test”. The proposal did not oblige any Member State to admit any particular number or category of third country nationals.

Access of third-country nationals to Member States’ labour markets is a highly sensitive issue in most Member States. Because of the Council’s concerns with the proposal the Commission is re-examining it. The Commission produced a Green Paper on economic migration in January 2005 which is intended to stimulate a debate on this subject.
The United Nations Convention on the Protection of the Rights of all Migrant Workers and Members of their Families

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families entered into force on 1 July 2003. The Convention defines those rights which should apply to certain categories of migrant workers and their families, including frontier workers who reside in a neighbouring state; seasonal workers; seafarers employed on vessels registered in a state other than their own; workers on offshore installations which are under the jurisdiction of a state other than their own; itinerant workers; migrants employed for a specific project; and self-employed workers.

The Convention also imposes a series of obligations on States parties in the interest of promoting “sound, equitable, humane and lawful conditions” for the international migration of workers and members of their families. These requirements include the establishment of policies on migration; the exchange of information with other States parties; the provision of information to employers, workers and their organisations on policies, laws and regulations; and assistance to migrant workers and their families.

Ireland is not a signatory to this Convention. The convention on migrant workers has been open for signature and ratification since December 1990 but, to date, only 27 states have ratified it. No European Union member state has as yet signed or ratified the convention, nor has any indicated an intention to do so.

The convention on the rights of migrant workers has been examined by several Government Departments. It would appear that in order for Ireland to ratify the convention, significant changes would have to be made across a wide range of existing legislation, including legislation addressing employment, social welfare provision, education, taxation and electoral law. These changes would also have implications for our relations with our EU partners, none of whom has signed or ratified the convention, and possibly for the operation of the common travel area between Ireland and the UK. There are no plans at present to introduce the changes in the areas above which would be necessary before Ireland could ratify or consider signing the convention.

Moreover, the convention on the rights of migrant workers has not acquired universal recognition as a standard for the protection of the human rights of migrant workers. It should also be noted that the rights of migrant workers and their families are already comprehensively protected under existing national legislation and under the Irish Constitution. In addition, the rights of migrant workers and their families are addressed by Ireland’s commitments under international human rights instruments to which the State is already a party. These international instruments include, for example, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Issues and proposals

In general terms what is needed is a labour migration system which:

- is transparent and rational;
- involves clear procedures, and
has regard for the domestic labour market situation.

However, it is clear from international experience that there is no single ideal approach to labour migration, but that a range of approaches to cover different categories of entrant may be necessary. Indeed, with international competition for skilled workers, it is likely that as new schemes are introduced in competitor countries, it will be necessary to change the system in Ireland. The future system should comprise a suite of possibilities for different types of workers and employers to use as appropriate depending on the circumstances. The overall system must, however, be easy to understand and be accessible and responsive to needs.

Economic migration policy is a matter for the Minister for Enterprise, Trade and Employment and the Immigration and Residence legislation should be fully consistent with Employment Permit legislation. The relative roles of the Minister for Justice, Equality and Law Reform and of the Minister for Enterprise Trade and Employment will have to be set out in primary legislation. Legislation should provide for schemes of economic migration to be set out in secondary legislation. There will be a need for consultation between both Ministers in the making of such schemes.

The Department of Enterprise, Trade and Employment is currently preparing new legislation on the work permit system. This legislation and the Immigration & Residence Bill must be compatible with each other.

Administrative arrangements

A complicating factor within the current economic migration system, from a customer service point of view, is the involvement of a number of State bodies in the system of admission. The Department of Foreign Affairs is involved in working visa/work authorisation applications and in visa applications generally. The Department of Enterprise, Trade and Employment is involved in the issuing of work permits and intra-company transfer concessions. The Department of Justice, Equality and Law Reform is responsible for considering certain visa applications, but also for the operation, through the GNIB, of border controls. From the customer service point of view arguments can be made for administrative streamlining and simplification of the current system. In simplifying the system for the applicant, there are institutional issues to be addressed. These will be discussed further in chapter 14.

A permanent migration system?

It is anticipated that in future the demand for labour from outside the EEA will be mainly in the high skills area. The Department of Enterprise, Trade and Employment has been encouraging employers with demands for low skilled labour to seek to meet their needs within the expanded EU. In those circumstances consideration should be given to introducing a more structured system of selection of such high skilled workers.

In order to make Ireland an attractive destination we need to be able to offer more than simply a temporary status to them. The idea of a permanent migration or “green card” system has been suggested by commentators in the past. It is worth considering the development of a system which has the potential of offering the possibility of permanent migration status to such workers and their families.
Consideration should be given to whether the process of such permanent migration should be started by a job offer in Ireland, or whether a more general system of assessing skills needs in the economy should be used. In the latter system a person wishing to migrate to Ireland would have to show, among other things, that he/she had the particular skills required. There could be a points system which would give numerical ratings to various factors including skills, education, knowledge of English/Irish, age, etc. and which would be used to rate applications. The system should be able to include quotas on the total numbers to be included and also on the numbers of particular skills to be included. The use of “lottery” type arrangements to short list applications should also be envisaged in the event of large numbers of applications.

A successful applicant could then be free to work in Ireland with no ties to any particular employer. Another question to be asked is whether the person should even be required to work in the sector of expertise — the monitoring of which could be cumbersome — or should that be left as a matter for the individual, and the market, to decide. It will be essential that the procedures to validate the skills of the persons concerned are effective and the input of State bodies in the industrial development and education areas would be necessary.

An example of how the renewal of permission could operate would be as follows. The offer made under the permanent migration system could be for two years initially. It would in the normal course be renewable with minimal formalities. There should be an option at the end of the two years for the State not to renew permission if, for example, the person had been involved in criminal activity. If at any point it becomes clear that the status was fraudulently obtained or the details supplied had been false, it should be possible to withdraw the status. The renewal of permission after two years could be for a period of three years, at which point the person would be eligible for long term resident status (see Chapter 11). Indeed, at that point he/she could apply to be naturalised as an Irish citizen.

A permanent migration system, if introduced, should be a system to select potential future citizens and not just a process of selecting workers. It is likely that the procedures for vetting and selection of applicants under such a system would take longer than the time taken currently in the work permit and visa systems. In order to get experience of the working of such a system and for future policy development in the area, a pilot scheme should be introduced. One possibility is that such a system should supersede the current working visa/work authorisation scheme.

**Fast-track or sponsorship scheme**

It is inevitable that even with a permanent migration system, there will be a continuing need for a faster system for bringing in skilled workers which employers may need to fill specific vacancies. A scheme (or schemes) for fast-track access should be envisaged in the new system. It should be open to persons brought in under such fast-track schemes to apply while legally in Ireland for the permanent migration scheme.

Any fast-track scheme should apply to skilled workers only. In order to limit it to those employers who are in real need of filling such vacancies, it can be argued that it should be a relatively expensive alternative to the permanent migration scheme, involving a substantial fee. Such a scheme should allow for temporary admission only — it should not be a backdoor system to avoid the more rigorous permanent migration assessment system. There should also be an undertaking of financial responsibility by the employer that if there was a problem
(such as the person overstaying after his/her permission lapses, or becoming dependent on social welfare payments) any cost incurred by the State would be met by the employer who brought the person through the fast-track scheme. This could be along the lines of the guarantees by sponsors of visa applicants discussed in chapter 4.

**Other categories**

Legislation should also provide a power for the relevant Minister, where necessary in consultation with other Ministers, to establish in secondary legislation schemes for legal migration for a range of other purposes or types of activity. These could include, for example, au pairs, entertainers, artists, writers and ministers of religion.

**Employer sanctions**

In providing for revised procedures for legal migration, and improved customer service in the area, it is also necessary to ensure that there are adequate powers of enforcement. Employer sanctions were provided for in the Employment Permits Act 2003. New legislation may need to deal with issues relating to this area. For example, there could be consideration of the possibility of barring employers who have previously been in breach of immigration law (such as employing persons without a permit) or of employment law (including mistreatment of non-national workers) from bringing non-national workers to Ireland. These issues will be considered further with the Department of Enterprise, Trade and Employment.

### II. Admission for the purpose of self employment

**The current business permission system**

In order to establish and engage in business in the State, non-EEA nationals generally are required to obtain the permission of the Minister for Justice, Equality and Law Reform. There are exemptions from this requirement for those who are legally resident in Ireland for a range of reasons (broadly the same as outlined earlier in the chapter in the case of employment). In practice, the main areas in which business permission applications have been received in recent years were in the following sectors:

- ethnic restaurants,
- information technology,
- artists/writers,
- chiropractors, and
- translators.

When granted, permission is initially for a period of twelve months with the possibility of a longer period being granted upon renewal.

The criteria to be met in order to obtain business permission are as follows:

- the proposed business must result in the transfer to the State of a minimum capital of €300,000;
- employment must be created for at least two EEA nationals in a new project or employment maintained in an existing business;
the proposed business must add to the commercial activity and competitiveness of the State;

the proposed business must be a viable trading concern and provide the applicant with sufficient income to support him/herself and any dependants without seeking public funds or paid employment for which a work permit would be required;

the applicant must hold a valid passport or national identity document and must be of good character.

Some exceptions to these criteria which apply are:

- where the applicant has been legally resident in this State for at least five years in an employed capacity and has not been in breach of the Immigration Laws during this time;
- where the Minister is satisfied that the application is justified within the terms of the European Council Resolution relating to the limitations on the admission of third-country nationals to the territory of the Member States for the purpose of pursuing activities as self-employed persons (1994). In particular, permission may be granted where the person’s proposed business will add value or contribute significantly to economic activity in Ireland including through the provision of highly specialised services which are in short supply;
- where the applicant is seeking to exercise a right of establishment under an Association Agreement between the EU and a relevant State;
- in the case of writers, artists and crafts persons.

In general applications for business permission should be made while the applicant is outside the State, but may also be made where the person is legally resident for other purposes. The Supreme Court in its judgement in the cases of Gonescu and Sava in 2003 found that in the case of those seeking to establish businesses under Association Agreements, the State was entitled to require that applications be submitted from the applicants’ countries of origin.

**EU proposals**

The issue of entry and residence of third country nationals for the purpose of self-employment was addressed in the European Commission proposal for a Directive on entry and residence for employment or self-employment. It is also part of the consultation process launched by the recent Commission green paper on economic migration.

**Issues and proposals**

The Immigration and Residence Bill should give the power to the Minister to establish in secondary legislation schemes for the purpose of self employment. A scheme along the broad lines of the current business permission scheme would be the main scheme. Possible additional schemes could include a limited system of admission for individuals with innovative business ideas, but without the necessary capital. Applications could be subject to additional approval from the Minister for Enterprise, Trade and Employment and the State industrial agencies as regards the merits of the proposals being put forward.
There is anecdotal evidence that some people are operating businesses in Ireland without obtaining the Minister’s permission. The legislation should underline the need for such permission and provide penalties for operating without such permission. There is a need for co-ordination between public services bodies dealing with the issue of company formation to ensure that the requirements of business permission are being complied with by those seeking to establish companies in Ireland. For example, the Companies Registration Office should ensure that non-nationals who are seeking to register companies in Ireland do in fact have business permission from the Minister. There is also a need for the Revenue Commissioners to consider this issue in their dealings with companies. The interrelationships between immigration legislation and company legislation will need to be considered.

III. Admission of researchers

Introduction

A particular category of worker which Ireland and many other countries worldwide are trying to attract is researchers. Research is essential to the further development of the Irish economy. Researchers are generally highly mobile individuals and there is intense competition internationally for them. In order to allow Ireland to compete successfully in this sector it is necessary that the system for the admission of researchers to Ireland should facilitate their entry.

Increasing research capacity is a key element of Ireland’s industrial policy. In order to anchor foreign multinationals in Ireland there is a need to move from a purely manufacturing base to embedding their research and development in Ireland. The Department of Enterprise, Trade and Employment estimates Ireland will have a shortfall of 4,000 researchers between now and 2010. The admission of foreign researchers will be an important factor in addressing that shortfall.

A number of Government Departments have an interest in the area of research, primarily the Departments of Enterprise, Trade and Employment, and of Education and Science. The involvement of these Departments and relevant State bodies will be necessary in the development of immigration policy as it relates to research. In addition other Departments have an interest in specific areas of research activity, including the Departments of Communications, Marine and Natural Resources, Agriculture and Food, and Environment, Heritage, and Local Government.

Current position in Ireland

In developing research in Ireland, Science Foundation Ireland (SFI) is central to Ireland’s goal of becoming a global knowledge based economy. Through strategic investments in the people, ideas and partnerships essential to outstanding research in strategic areas, SFI aims to help build in Ireland research of globally recognised excellence and nationally significant importance. The overall mission of SFI is to build and strengthen scientific engineering research and its infrastructure in the areas of greatest strategic value and benefit to Ireland’s long term competitiveness and development. SFI programmes include the attraction and funding of world class researchers (Investigators/ Fellows) and the continued development of Centres for Science, Engineering and Technology.
Recent changes to the work permits procedure give greater ease of access to employment under specified schemes and facilities to non-EEA national academics and researchers in certain third level institutions working on SFI programmes. The new arrangements do not require the employer in question to advertise the job with FAS in advance of making a work permit application. The work permit must be issued for a member of academic staff, senior university staff, visiting staff, targeted research staff or the holder of a fellowship. There were approximately 200 work permits issued in 2003 by the Department of Enterprise, Trade and Employment under the title of researcher/academic with SFI.

**EU proposals**

In the area of research, the European Council of Lisbon in 2000 set the European Union the objective of becoming the most competitive and dynamic knowledge based economy in the world through an overall strategy aimed at meeting the needs of the information society and of research development. The creation of a “European Research Area” was recognised by the Council of Lisbon as an essential element in this strategy. One of the preferred instruments for achieving this goal is support for the mobility of researchers.

In March 2004 the European Commission launched a proposal for a Council Directive on a specific procedure for admitting third-country nationals for the purposes of scientific research. The Directive was accompanied by two Recommendations aimed at simplifying the procedures for entry and mobility for highly skilled and qualified researchers within the EU. These Recommendations aim to assist the admission of researchers before the implementation of the Directive thereby helping to achieve the Lisbon targets by 2010.

The main features of the proposed directive include:

- A role for the research organisations in the procedures leading to the issue of a residence permit for the researcher;
- Division of roles between research organisations and immigration authorities although it must be emphasised that the procedure will not impinge on the powers of the immigration authorities;
- Minimum requirements of a post graduate degree to qualify as a researcher under the terms of the Directive;
- Mobility of researchers within the European Union;
- Simplified, streamlined procedures for researchers applying for residence permits.

Ireland has opted to participate in the proposed Directive. A general approach on the proposals was agreed during 2004 and they are expected to be formally adopted soon.

**Issues and proposals**

It is clear that there is a need for Ireland to be able to compete successfully to attract world-class researchers. The legislation should provide a power for the Minister (or the Minister for Enterprise, Trade and Employment, as appropriate) to set out in secondary legislation schemes for the admission of researchers. There will be a need for input from a number of other Government Departments in this area. The system should recognise the importance of researchers in the development of the economy and the international competition which
exists for them. What will be required is a system which can deal with applications from researchers in a timely manner and which provides favourable conditions to them. The developments in the proposed European Directive in this area will have to be taken into account.

**Encouraging a brain drain?**

In dealing with the issue of migration of skilled researchers, as with skilled workers, a related issue is that of the potential brain drain in the countries of origin of the workers concerned. There is a question also as to whether the departure of skilled workers or researchers is in fact a loss to the countries concerned as the earnings of these workers abroad and their remittances back to their home countries may have a significant beneficial effect there. These are not issues that are to be considered in each individual case but are to be considered in the development of policy in the area generally. They relate as much to the areas of development assistance policy and economic policy as they do to immigration policy. The fact is that there is international competition for these workers and that developments in Ireland alone will not change the systems currently in place internationally.
8. Admission for the purpose of study

**Key Proposals**

- The immigration system should support the education sector in attracting overseas students to Ireland, while also safeguarding the integrity of the immigration system.

- Future arrangements for the admission of non-national students will be determined by the arrangements which arise from the implementation of the Report on the Internationalisation of Irish Education services.

- In the proposed new regulatory framework there will be scope for streamlined procedures for the handling of applications from approved educational institutions.

- The implementation of the short term measures proposed in the Internationalisation report (access to employment and the renewal of short term courses) should limit the scope for abuses within the system and reduce the attractions for those who seek to circumvent immigration controls in the labour market.

- The question of whether students should be entitled to move between educational institutions during the period of their approved courses should be considered.

- Consideration should be given to whether new educational institutions should be precluded from recruiting outside the EEA for an initial period after they have been established.

- Consideration should be given to increased co-operation with schools to monitor the attendance of students. It should be possible to withdraw recognition or cease granting visas in respect of schools with low attendance rates or high drop out or early transfer rates or which have given rise to overstayers.

**Current position**

There is a significant level of migration to Ireland for study purposes — at present there are some 28,000 non-EEA students registered with the Garda National Immigration Bureau. They are attending a wide variety of institutions ranging from second level schools, to private English language schools, to third level institutions. The Department of Education and
Science estimates that there were 6,712 non-EEA students in post-primary schools in 2003-2004. At post-leaving certificate level there were nearly 1,500 students from outside the EU.

At present non-national students apply to be admitted to an educational institution. Once accepted they either a) apply for a visa if of a visa-required nationality, or b) if not visa required, simply present themselves at an immigration check on arrival in Ireland.

Persons entering the State for the purpose of study must be able to provide the following:

- confirmation from school/college of enrolment on course;
- evidence that the course fee has been paid in full;
- evidence that he/she has sufficient funds to maintain him/herself for the duration of the proposed stay;
- proof of sufficient level of English for the course being studied.

The main checks carried out on students seeking to study in Ireland are those carried out by the educational institutions which attract non-national students. These checks may be very limited, in many cases involving no direct contact between the institutions and the student (for example where agents are used in certain overseas markets). The checks undertaken by the State are through the visa system (for visa required nationals) or at the point where the student is seeking to enter the State and must pass an immigration control point. The Advisory Council for English Language Schools (ACELS) has a role in the regulation of English language schools.

As regards second level education, the current system permits unaccompanied children who are non-EEA nationals to come to Ireland for the purposes of second level education only where they propose to attend fee-paying schools. It seeks to ensure that they will not be a financial burden on the State during their studies. The system does not provide for such children to come to Ireland to avail of free second level education.

**Importance of student migration to the economy**

The international education services sector is one of the fastest growing business sectors in the world. In particular, there has been a huge increase in the demand for English language courses and Ireland is currently enjoying considerable growth in this sector. Some 200,000 persons travelled to the State in 2003 in order to study English, contributing an estimated €300 million to the economy. The bulk of these students are from within the EU and are subject to minimal immigration formalities. Approximately 7% of students currently in third level education in Ireland are overseas students. The resulting earnings are estimated to be in the region of €140 million per annum. There is considerable scope for further development in this sector in particular. In addition to the direct benefit to the education sector, there are also resulting benefits in the tourism industry.

**Abuses of student migration**

While the majority of students and educational establishments are genuine, there has been experience of immigration abuses in the education sector where, for example, persons have been admitted as students who have different real intentions for their stay in Ireland, often
to work. Some educational institutions have taken advantage of the situation of non-national students by providing sub-standard services and exploiting the vulnerable situation of students who may be far from home. There have been examples of students who complain about the service being provided to them by the education providers being threatened with deportation. In the absence of national monitoring of the education sector, the Garda National Immigration Bureau has been involved in investigating abuses in this sector. As a result a number of institutions are no longer permitted to recruit overseas students and a number of prosecutions are being instigated.

There is growing evidence that the student visa system is being abused by persons whose real purpose of entering the State is to work and who are seeking to circumvent normal immigration or employment criteria. A significant contributory factor to the increase in this abuse is the concession made in 2000 which allowed full-time students to work for up to 20 hours per week. There is also concern regarding the problem of “overstayers”, persons who remain in the State illegally after the completion of their studies.

In the further development and expansion of the international education market in Ireland, the issue of abuse must be addressed. While it is accepted that no system can prevent abuse entirely, proper regulation of the industry and the educational institutions along with a more thorough screening and selection of students should minimise the scope for abuse. This was a major issue considered in a recent report on the Internationalisation of Irish Education Services.

**Report on the Internationalisation of Irish Education Services**

During 2003 the Government established an interdepartmental group to consider: the most effective way of promoting Irish education internationally; the promotion of a “Quality Mark” for providers of education to foreign students; and other issues including the possibility of a single agency for promoting Ireland as a centre of educational excellence. The report of the Group was published in November 2004. The main recommendations are set out below.

**Promoting Ireland**

The report recommends the establishment of a dedicated body — Education Ireland — to co-ordinate the promotion of Irish education abroad and develop policy in this regard is considered essential. It is recommended that this body, should be established on a statutory basis. It should have responsibility for awarding a quality mark, for the operation of a code of conduct for the pastoral care of international students and for the certification of English language (EFL) schools.

**Quality Assurance**

Quality assurance is a key element in promoting Irish education abroad and should cover not only academic standards but also support services, e.g. orientation, accommodation, health and welfare services. Care must be taken to ensure that a high level of quality assurance is maintained. This may be done by using a quality mark and by developing codes of practice with provision made for the monitoring of same.
Visa, Immigration and Working Arrangements

The report states that an efficient and effective visa system is vital to the growth of this market and supports the proposals of the Department of Justice, Equality and Law Reform and the Department of Foreign Affairs for improvement in this area. The group recommends that the scope for abuse of the system be minimised and to assist in this recommends that access to the labour market be confined to students on full-time courses of at least one year leading to a qualification recognised by the Minister for Education & Science.

The implementation of the proposals of the working group will provide a significant opportunity to improve the operation of the student migration system. In this regard the Minister for Justice, Equality and Law Reform announced in December 2004 new arrangements in relation to access to work by students to take effect from 18 April 2005. The Department of Education and Science is compiling a register of providers and courses which satisfy the criteria in this area.

International study

The IOM study noted the growth in student mobility internationally and noted the importance of this export industry in many countries. It referred to OECD research in the area which dealt with factors which could increase student mobility (such as more transparent procedures for recognition of foreign qualifications and simplified conditions for admission of student migrants). It also referred to concerns of countries of origin about the risk of a brain drain, and looked at how this could be addressed — by ensuring an adequate rate of return of qualified people.

The study also looked at systems used internationally for the regulation of the foreign education industry. These were normally carried out at the level of the individual student, as part of the visa processing or pre-clearance system, requiring evidence of course acceptance, ability to pay fees and sometimes health checks. While in the past the checking of students after their arrival has tended to be minimal in most countries, this situation has changed since the event of 11 September 2001. Up to that time there was a view that the monetary and other benefits to colleges and universities of foreign students outweighed the interest in regulating the industry. Since then there has been a recognition of the security threats which the student visa system can pose if not properly regulated. The US has introduced a system of tracking students after their arrival. In the UK there has been increased checking in the education sector, with checks of English language schools to eliminate bogus operations. In Australia a highly regulated system has developed in response to perceived abuses of the system. There are regular meetings between the immigration and education authorities and industry bodies to monitor and review the system.

EU proposals on Study and Research

In October 2002 the Commission presented a proposal for a Directive on the conditions of entry and residence of third-country nationals for the purposes of studies, vocational training and voluntary service. This Directive was politically agreed at Council in March 2004 under the Irish Presidency and has been formally adopted.
The Directive stipulates the conditions (such as qualification for academic courses, duration of stay, possession of adequate resources and possession of health insurance) which must be fulfilled by third country nationals wishing to enter and reside in a Member State as a student, unremunerated vocational trainee or volunteer worker. The Directive also outlines the rights which those individuals may enjoy (limited access to the labour market, right to enter and reside etc.) while resident in the Member State as well as the common procedures which Member States must adopt in processing applications. Ireland had not opted to participate in this Directive. In practice the provisions of this Directive would result in a more formalised system of application for students who wish to enter Ireland.

**Issues and proposals**

The immigration system should support the education sector in attracting overseas students to Ireland. It must also safeguard the integrity of the immigration system and deal firmly with students or schools which seek to abuse the immigration system or circumvent immigration controls. There should be strengthened co-operation between the immigration authorities and the education providers to ensure that appropriate service standards are provided and that quality controls are implemented.

Future arrangements for the admission of non-national student students will be determined by the arrangements which arise from the implementation of the internationalisation report. The visa and registration processes will be greatly simplified by the existence of a list of approved educational institutions with a Quality Mark awarded by Education Ireland. In the proposed new regulatory framework there will be scope for streamlined procedures for the handling of applications from approved educational institutions. There will be no obligation to deal with applications in respect of non-approved institutions. The new system should also enable the GNIB to adopt a particular focus on investigations of suspected abuses, rather than the current broader role of checking the bone fides of a wide range of institutions.

The implementation of the short term measures proposed in the Internationalisation report (access to employment and the renewal of short term courses) should limit the scope for abuses within the system and will reduce the attractions for those who seek to circumvent immigration controls in the labour market.

There have been complaints of “poaching” of overseas students by schools which offer reduced price courses to students who have been attracted to Ireland by another institution. The original recruiter argues that the costs of marketing which they have undertaken should not be used to the benefit of another institution. The question of whether students should be entitled to move between educational institutions during the period of their approved courses should be considered. The circumstances in which such transfers are or are not acceptable should be set out.

Another question is whether new educational institutions should be precluded from recruiting outside of the EEA, or from visa required countries, during their period of initial operation. This would help in addressing the issue of schools which establish for the sole purpose of marketing to visa-required nationalities. This can be done by schools of limited educational merit because, in the case of certain nationalities, the receipt of a visa has a value far in excess of (and often independent of) the value of the educational course. A measure
which could be considered would be non-acceptance of visa applications from such schools for, say, the first two years after they have been established.

Consideration should be given to increased co-operation with schools to monitor the attendance of students, for example requiring schools to report where a student has unacceptable absences. It should be possible to withdraw recognition of, or cease accepting visa applications in respect of schools which have an unacceptably low level of attendance of students, a high drop out rate, a high rate of transfer to other schools before the completion of courses or which have given rise to a significant level of overstayers.

There are shortcomings in the current situation regarding non-visa required nationals, as it leaves a degree of uncertainty for the applicant as to whether they will be admitted or not. Nor does it give the authorities an opportunity to properly consider the circumstances of the applicant prior to his/her arrival in Ireland. However, a system requiring advanced checking of the applicant by the authorities would have resource implications and would introduce an additional layer of work into the system. There needs to be a careful consideration of the advantages of the additional certainty involved versus the potential cost and delay which might arise.

As regards second level education, the Department of Education and Science estimates that some 80% of the cost of second level schools is publicly funded — even in fee-paying schools. The subsidy of such education raises issues about the policy of admitting non-EEA national children to enter the State, unaccompanied by their parents, even to attend fee-paying schools. It could be argued that the State should receive a payment from such students in recognition of the economic cost of providing such education. Another issue concerns the responsibility for, and the wellbeing of, non-national children who are not in boarding school and are being cared for by persons other than parents/legal guardians. The Report on the Internationalisation of Irish Education Services recommends that the Department of Education and Science should carry out a more detailed examination in the secondary education area with particular regard to the potential for expansion in the numbers of overseas pupils, the potential costs arising and the appropriate level of fee that would be required to meet the costs.
9. Admission for the purpose of family reunification

Key Proposals

Family reunification

- Family reunification provisions to be set out in an accessible and transparent fashion in secondary legislation or practice instructions.

- A non-national entitled to reside in Ireland on a long term or permanent basis should be entitled to apply to be joined by his/her spouse and minor unmarried children where the family will be economically viable in the State, subject to public policy and security issues.

- The admission of family members in other cases should be covered by schemes made by the Minister.

- The issue of non-marital partnerships and same sex relationships will be considered and provision could be made for schemes to deal with these in accordance with the treatment of such relationships in Irish law generally.

- A sponsorship scheme to allow unmarried children over 18 to join their family members with long term or permanent residence in Ireland is to be considered.

- Other circumstances to be covered in schemes to be made by the Minister include: admission of fiancé(e)s of persons resident in Ireland, foreign adoptions and the situation of family members in the event of the death of head of a family, marriage breakdown or in the event of domestic violence.

- Consideration is to be given as to how abuses of family reunification, including marriages of convenience, can be dealt with. Sanctions should be provided.

Children

- There should be a general requirement for proof that unaccompanied children seeking to travel to Ireland are travelling with their parents’ or guardian’s consent.

- To combat child trafficking, there should be provision for appropriate action to be taken to protect children where there are suspicions about the nature of the relationship of a non-national child to the adults accompanying him/her in entering the State.

- The compulsory registration of all non-national children resident in Ireland is to be considered.
Introduction

In the context of increasing migratory influxes in Europe, family reunification has emerged in the last fifteen years as an ever more important issue. It is also a controversial one, since it calls upon the challenge of balancing the need to ensure respect for fundamental humanitarian values with that of protecting national borders, state sovereignty and the provision of public services.

As immigration is a relatively recent phenomenon in Ireland, the demand for family reunification has not reached the level of significance that is presently being experienced in Europe, Australia, New Zealand and the United States. However, the demand is showing signs of intensifying and family reunification has the potential to become a major source of migration into Ireland. The debate on this issue is already well developed. What should be acknowledged at the outset is that people who enter under family reunification programmes constitute a secondary flow of migration which follows those in the primary flow who enter for the purpose of work, study, asylum etc. Therefore, family reunification policy should be developed within the framework of an overall migration policy.

International practice in the field of family reunification is at its most advanced in the traditional immigrant nations such as Australia, New Zealand, Canada, the United States and the United Kingdom. Although they have varied systems, the common thread through all their structures is that family reunification is only available to migrants who are established permanently or are likely to settle permanently. Permanent residents are almost always people on skilled employment permissions who have been admitted in the context of an overall immigration and labour policy designed to contribute to the host nation’s prosperity. Facilitating family reunification assists the individuals concerned to integrate and settle into their host society. It is also viewed as being part of the competitive “package” on offer to attract those with the desired skills.

As well as considering current practice both in Ireland and internationally in this area, we also need to consider the provisions of the Constitution and of relevant International conventions so as to ensure that our future practices are in conformity with our obligations in this area and reflect best practice.

Present position

Non-EEA nationals who are legally resident in Ireland may be entitled to have members of their family join them, as follows:

- a person granted refugee status in Ireland may apply for family reunification under Section 18 of the Refugee Act 1996. Under Section 18(3) such permission must, save in very exceptional cases, be granted to immediate family members of a refugee, (i.e. spouse, minor children and, if the refugee is an unmarried minor, his/her parents) upon verification by the Refugee Applications Commissioner of the authenticity of the relationship. Applications for family reunification may also be made for dependent members of a refugee’s family under Section 18(4). Dependent member of the family means any grandparent, parent, brother, sister, child, grandchild, ward or guardian of the refugee who is dependent on the refugee or is suffering from a mental or physical disability to
such an extent that it is not reasonable for him or her to maintain himself/herself fully. Such applications may be granted at the Minister’s discretion;

- a non-EEA national who is working in the State on an employment permit may apply for family reunification (spouse, minor child) on condition that he/she has been working here for at least 12 months (3 months for certain skilled workers) and is likely to remain so for a similar period, e.g. the work permit has been renewed. He/she must be in a position to support family members without recourse to public funds.

- Where the non-EEA national (and his/her family members) does not require a visa he/she may be joined immediately by family members provided he/she is in a position to support them without recourse to public funds.

The provisions which apply to non-EEA nationals who are family members of an Irish or EEA national resident in Ireland include the following:

- the non-national spouse of an Irish national who wishes to join his/her spouse in Ireland is required to show evidence of the marriage;

- the non-EEA national family members of an EEA national who is exercising free movement rights in the State are entitled to join the EEA national here.

**Provisions of the Irish Constitution**

The family recognised and protected in Articles 41 and 42 of the Constitution is the family based on marriage. Immigration practice in relation to family reunification has in general been based on this definition of family. While in practice other types of family unit exist in Ireland, there is no single legal definition which is currently used. Non-nationals in other types of family situations (such as unmarried partnerships and same-sex relationships) may have their relationships recognised in the laws of their country of origin. There is currently no mechanism for these relationships to be recognised in Irish law. How such relationships are to be treated for immigration purposes has to be considered in the context of wider public policy issues. There would be an anomaly if our immigration system recognised such relationships for family reunification purposes, but other areas of the public service (such as the revenue and social welfare authorities) did not.

A High Court case which considered the definition of family was the Olenczuk case in 2002 where a question was whether grandparents should be considered as part of the Constitution’s definition of family. The Court found that the Constitutional provisions extended only to a family based on marriage.

The All-Party Oireachtas Committee on the Constitution is currently examining the Articles of the Constitution dealing with the family and sought submissions on the issues by the end of January 2005.

**International study**

The IOM study points out that for some years family reunification has been the chief form of legal immigration of third-country nationals into EU Member States, accounting
for almost three fifths of immigration in most states. While not dealing with the issue of family reunification as a specific issue, it deals with issues relating to it.

In Australia there is a family stream of migration where migrants are selected on the basis of family relationship to a sponsor in Australia using a test of the balance of family to establish how strong the links are between the parent and the sponsoring relative in Australia. Priority is given to re-uniting immediate family with children (particularly those under 18 years but also considering children up to age 25). Other close relatives are considered subject to limits on numbers. The Australian system also provides for spouses, fiancé(e)s and same sex partners, subject to limitations on the numbers who can be sponsored in a person’s lifetime (two). Those in non-marital relationships have to show a relationship of more than twelve months duration at the time of application.

In Canada there is a family class migration which concerns family members (spouse, common-law partner, child or parent) of a Canadian citizen or a permanent resident in Canada. Same-sex relationships are also covered.

In New Zealand there is a family sponsored stream of migration which accounts for around one third of approvals for permanent residence. It covers dependent children aged up to 24, grandparents or legal guardians where parents are deceased and it may include married siblings or adult children and their dependents. Sponsors are responsible for accommodation and financial support for the first two years and legal action can be taken to recover costs from sponsors who fail to honour their obligations.

The IOM report points out that family reunification can become an open door to entry of lower skilled or unskilled persons and that increasingly states are using a test of “balance of family” to determine whether family ties are greater in another country, as well as more stringent tests of self-sustainability.

The IOM report also examined how a range of countries dealt with the issue of marriage of one of their nationals to a non-national. The report found that all countries have developed structured procedures which may involve, for example, a limited or conditional visa or residence permit being given to the non-national spouse, subject to an interview and evidence of sufficient funds. In addition checks are carried out after one or two years to ensure that the marriage is ongoing. The report refers to particular problems which occurred in Australia where exploitation of marriage, marriages of convenience and serial marriages had led to restrictions being placed on the number of spouses who may be sponsored by one person.

**Family reunification in the United Kingdom**

The UK’s provisions in relation to family reunification were examined. Under the UK’s immigration rules a non-EU resident may apply to be joined in the UK by their spouse, fiancé (or fiancée) unmarried partner (either heterosexual or homosexual) and/or the minor dependent children of both partners.

In order to qualify for family reunification, the ‘sponsor’ in question must be aged 18 or over. The sponsor must also either have legal residence in the UK with no time limit on their stay or, if they are emigrating to the UK, they should be entering with an
authorisation that has the possibility of acquiring permission to reside with no time limit on their stay. (Most work related authorisations allow their holders to apply for permanent residence once they have settled in the UK — the exceptions are authorisations designed specifically for short term temporary workers such as seasonal work permits, working holiday visas, etc.) The latter condition allows relatives to accompany the sponsor migrant from when they first enter the UK. This differs from many EU States which impose a minimum period of legal residence on migrants before they can apply to be joined by their family.

The conditions which attach to each category of relative are as follows;

**Spouse:** The sponsor must show that they are legally married; they intend to live together permanently as man and wife; they can support themselves and their dependents without help from public funds; they have adequate accommodation where they and their dependents can live without help from public funds; and he or she is not under 16.

**Fiancé/Fiancée:** A migrant may be joined by a fiancé(e) if the sponsor can show that they plan to marry within a reasonable time (usually six months); they plan to live together permanently after they have married; they have met each other; that they have adequate accommodation without help from public funds and that the fiancé(e) and any dependents can be supported without working or having to get help from public funds.

**Unmarried Partners:** The unmarried partner of a migrant can apply to join their migrant partner as long as they fulfil much the same conditions as a spouse. The relationship may be a heterosexual or a homosexual one.

**Children:** In order for migrants to bring their children to the UK they must be able to show that they are settled in the UK legally with no time limit on their stay; that they have adequate accommodation where they and their dependents can live without help from public funds; and that they are the child’s parent.

**Situation of partners following bereavement or experiencing domestic violence:** Spouses and unmarried partners may apply to remain in the UK, following the death of the person they were admitted to join. A person who is the victim of domestic violence may also apply to remain in the UK independent of the spouse or partner.

**Parents, grandparents and other dependent relatives:** Parents or grandparents aged 65 or over can apply to join a person settled in the UK. In exceptional circumstances those under 65 may be admitted. In exceptional compassionate circumstances the son, daughter, sister, brother, uncle or aunt may also join in particular where there is financial dependency.

In early 2004 the UK took action to address problems which it was experiencing in relation to bogus marriages and announced proposals, on which it was consulting with registrars, to restrict authorisation for marriages involving foreign nationals to specialist register offices closely supported by the Immigration Service.

The recent publication from the UK Home Office, *Controlling our Borders: Making migration work for Britain (Feb 2005)*, details that ending the phenomenon of “chain migration” will be an element of future UK immigration strategy. Chain migration is the practice whereby those who have settled on a family reunion basis can immediately sponsor further family members.
Public consultation

In the public consultation on immigration policy several contributors expressed support for family reunification rights for migrants. There was support for uniform family reunification rights for all categories of legal immigrants. Some called for spouses of legally resident immigrants to have labour market access. Several contributors called for reunification rights for un-married couples, in particular those in same sex relationships.

EU developments

In September 2003 Council Directive 2003/86/EC on Family Reunification was formally adopted by the Council. The Directive establishes common rules of Community law relating to the right to family reunification. The Directive grants third-country nationals the right to be joined by eligible members of their family subject to certain conditions. The family members who are eligible for reunification under the terms of the directive are:

- the sponsor’s spouse; and
- minor children of the sponsor or his/her spouse including legally adopted children and children for whom the sponsor or spouse has legal custody.

Member States also have the option of extending reunification rights to:

- parents of the sponsor or his or her spouse. Such relatives should be dependent upon the sponsor and/or spouse and not enjoy proper family support in the country of origin;
- unmarried adult children of the sponsor who are unable to provide for themselves on account of their state of health;
- unmarried partner (including homosexual partner) of the sponsor and associated minor children.

The minimum requirement for the “sponsor” is that he/she possesses a resident permit of validity of one year or more and has a reasonable prospect of obtaining the right of permanent residence. However, Member States have the discretion to place further qualification conditions on the sponsor which include:

1. evidence of accommodation which would be regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force in the Member State concerned;
2. evidence of health insurance which covers the normal level of risk in the Member State;
3. evidence of stable resources which are sufficient to maintain the family unit without recourse to public funds;
4. Member States may require third country nationals to comply with integration measures in accordance with national law;
5. Member States may require the sponsor to have resided lawfully in their territory for a period not exceeding two years.
The Directive also provides for a derogation whereby Member States may restrict family reunification to children under the age of 15. This option can only be implemented if it exists in a Member State’s legislation at the time of transposition of the Directive. This is a controversial provision which the European Parliament is challenging in the European Court of Justice.

The Directive specifies the conditions for entry and residence of the family members and includes an option for Member States to require family members to comply with their integration measures. The Directive also confers rights on family members in areas such as access to the labour market and access to education.

Ireland, like the UK, has not opted into this Directive, but has the option of participating in future under Article 4 of the fourth Protocol to the Treaty of Amsterdam.

**International Conventions**

The European Convention on Human Rights and the Convention on the Rights of the Child, to which Ireland is party, address the issue of the right to family life. Neither of these conventions confers the right to migrate on individuals. A state is not in breach of its obligations under these agreements if a migrant has the freedom to leave the territory and return to his/her family in their country of origin. For individuals who cannot return to their country of origin and have been granted asylum in Ireland, section 18 of the Refugee Act 1996 grants generous family reunification provisions.

The UN Convention on the Protection of Rights of all Migrant Workers and Members of their Families requires participating States to provide for the migrant worker to be accompanied by his/her spouse or partner and their minor dependent children. The convention also requires that participating States “on humanitarian grounds, shall favourably consider granting equal treatment to other family members of migrant workers”. Ireland, in common with all other EU Member States has not ratified this convention, and is therefore not bound by its provisions. Ireland’s rationale for not ratifying this Convention was outlined in chapter 7.

**Issues and proposals relating to family members**

The family reunification provisions in Irish immigration law and administrative practice need to be set out in an accessible and transparent fashion. However, because of the wide variety of situations which must be addressed, it would be preferable for these situations to be addressed in secondary legislation or practice instructions, rather than in primary legislation. The following is a range of situations which will have to be addressed and possible approaches which are being considered for dealing with them.

**Long term residents**

It is considered that more favourable conditions for family reunification should apply in the case of a non-national entitled to reside in Ireland on a long term or permanent basis, than would be the case for shorter-term residents. They should have a right to apply to be joined by his/her spouse and minor unmarried children where the family will be economically
viable in the State. Clearly there should be checking to ensure that marriages are valid and subsisting. Issues of public policy and security should also be taken into consideration.

Such a resident in Ireland should also be able to apply to be joined, in certain circumstances, by other dependent family members. Schemes should be drawn up setting out the conditions under which admission may be granted to different categories of family members and different categories of sponsors in Ireland. The legislation should provide the power to make such schemes. The schemes could provide that conditions could be placed on their admission, such as that they should have sufficient resources not to require access to public funds during their stay.

**Short term residents**

In the case of non-nationals resident in Ireland on a short term basis, it is proposed to provide for the making of schemes which would allow entry of spouses and unmarried children under 18 within a reasonable period, subject to their having sufficient resources so that they should not require access to public funds during their stay in Ireland.

**Family sponsorship**

Consideration will be given to the development of a sponsorship scheme which would allow unmarried children over 18 to join their family members in Ireland where those family members acting as sponsors are long term or permanently resident in Ireland.

**Other situations and the position of family members**

In general the residence of a migrant’s family members will be linked to that of the migrant. However, there are circumstances which will have to be taken into account where the link between the residence of the migrant and of his/her family members must be separated. Situations which will have to be catered for, or considered, include:

- where the non-national head of a family in Ireland dies — to provide security of residence for the spouse and children and other family members resident in Ireland;
- situations of marriage breakdown to give security to persons who have broken their family connection which had ensured their entitlement to residence in Ireland; and
- situations of domestic violence to ensure that adequate security is given to those who may be victims of such situations — so as to ensure that victims’ fear of loss of residence in Ireland does not discourage them from taking actions, such as reporting their situation to Gardaí or to health service personnel.

**Non-marital relationships**

The issue of non-marital partnerships and same sex relationships will also have to be considered in preparing the legislation. At the present stage of development of the Irish law generally in this area, it is proposed that the Minister will be enabled to bring in schemes which may comprehend such relationships in the future.

**Other situations**

The Minister should have the power to make schemes and administrative rules in relation to the handling of a wide range of other situations. These include:
- the admission of fiancé(e)s of persons resident in Ireland,
- the admission of children who are adopted abroad by parents resident in Ireland,
- the approach to proxy marriages (where one or both spouses do not attend the marriage ceremony but are represented by a proxy) and where the scope for abuse is higher than in the case of other marriages,
- the approach to polygamous marriages.

The legislation should also try to ensure that family reunification is not subject to abuse by persons claiming to have relationships, which in fact do not exist, or arranging marriages of convenience for the purpose of circumventing immigration controls. There should be sanctions against persons found participating in such activities.

**Proposals relating to children**

In the proposals relating to family reunification the legislation should provide a more transparent system for the admission of children to Ireland as part of family units. There are a number of other ways in which the new legislation should improve the situation of children.

Internationally in recent years there has been growth in the trafficking of women and children, often for the purposes of sexual exploitation. A comprehensive framework for the treatment of unaccompanied minors in Ireland has operated successfully in Ireland in recent years, involving a multi-disciplinary and public service-wide approach.

There has also been increasing movements of minors for educational purposes, for medical treatment and for holidays and respite care. These developments are welcome and are reflective of the caring nature of many people in Irish society. However to ensure that these schemes are not abused by persons without the interest of the children in mind, rigorous checking is required in cases of applications for minors to come to Ireland unaccompanied. This will also be the case if the children are travelling alone or with persons other than their parents. In these cases there should be a clear requirement for proof to be given that the child is travelling with the parent’s or guardian’s consent.

**Registration of children**

Another measure which is being considered is the compulsory registration of non-national children resident in Ireland. At present only those aged 16 or over are required to register. Requiring all children to be registered will improve the protection of such children as it will mean that there is an official record of their presence in Ireland, where they are resident and what adult is responsible for them. This information could be made available to health and education authorities to ensure that these children are being educated and are receiving necessary medical treatment, such as vaccinations. The existence of such records will also help to ensure that non-national children resident in Ireland are not victims of trafficking and are not subject to abuse.
10. Admission of non-economically active persons

Key Proposals

- Primary legislation should allow the Minister to specify, in secondary legislation, schemes for persons seeking to migrate to Ireland for non-economic purposes.
- Persons benefiting from these schemes should not be able to engage in economic activity in Ireland, must have a specified minimum level of resources and must be able to subsist without recourse to public funds.
- Relevant Government Departments should consider the basis on which persons admitted as non-economically active migrants can be excluded from entitlements to public services.

Introduction

The category of non-economically active migrants covers a diverse group of people who may choose to immigrate to Ireland for a variety of reasons. This would include:

- People retiring to Ireland;
- People coming to Ireland for (long term) medical treatment;
- Foreign nationals who own property for personal use (e.g. holiday homes);
- Long term tourists;
- Volunteer workers (unremunerated charity workers etc.);
- Foreign nationals who are coming to live in Ireland on a temporary basis to complete a specified project for which they may not receive remuneration while in resident in Ireland. (e.g. an author writing a literary work or a musician making a recording).

The above list contains just a few examples of the category and is by no means comprehensive. The common characteristic, however, is that the foreign nationals in question have independent means and will be residing in Ireland on a permanent, temporary or occasional basis without seeking employment or self employment in the State. The challenge for the Irish immigration system is to develop assessment criteria for foreign nationals in such cases and to implement appropriate procedures which will facilitate residency in Ireland for successful candidates.

Current Situation

At present there is no specific scheme for non-economically active migrants from outside the EEA to come to Ireland and no specific set of rights and conditions of entry. Applications are
dealt with on a case by case basis. An existing model which is of interest in relation to this
category is that which applies to non-economically active EU citizens in Council Directive
90/364/EEC.


The Council Directive provides for the right of residence of an EU citizen in a second Member State where he/she does not enjoy such a right under other provisions of Community law. It deals with persons who are not economically active. EU citizens may exercise this right provided that they fulfil the following conditions:

- They and their families are covered by health insurance in respect of all risks in the host Member State;
- They have sufficient resources to avoid becoming a burden on the social assistance system of the host Member State during their period of residence. These resources shall be judged sufficient where they are higher than the level of resources below which the host State would grant social assistance or social pensions to its own citizens.

In residing in a second Member State, such individuals may also be accompanied by their spouse and dependent children and parents.

- This Directive has been transposed into Irish legislation in the European Communities (right of residence for non-economically active persons) Regulations 1997.

**EU initiatives**

Arising from the Amsterdam Treaty and the resulting Tampere Conclusions, the European Commission had intended to produce a proposal governing the admission of third-country nationals for other purposes not provided for in the other proposals. However, apart from students, trainees and volunteers, it was felt there was a relatively low number of people falling into the above category. Consequently it was decided that this category could be dealt with adequately by the Member States’ domestic legislation at the current stage of approximation of Community immigration legislation.

As a result of this decision, the only community legislative instrument that deals with non-economic migrants is the Council Directive on the admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service. In its treatment of unremunerated trainees and volunteers the Directive sets out the specific conditions for entry for those categories.

Unremunerated trainees must:

- Have signed a training agreement, approved if necessary by the relevant authority in the Member State.
- Provide evidence of sufficient resources to sustain them during their stay, and
- Receive basic language training if required.
Volunteers must:

- Be of the required age range as set by the Member State concerned,
- Supply an agreement with the relevant volunteer organisation giving details of the nature of the work and the resources provided to cover travel and subsistence during the duration of their stay, and
- Provide evidence that the volunteer organisation accepts full responsibility for the volunteer during their stay regarding accommodation, subsistence and insurance.

Residence permits issued to trainees and volunteers have a maximum duration of one year, extendable only in exceptional cases.

**Schemes in the United Kingdom**

Although the United Kingdom does not have a broad ranging scheme to cover all unremunerated migrants it does have specific facilities for retired persons of independent means and also for writers, composers and artists.

The requirements for retired persons of independent means are as follows:

- The person must be at least 60 years old;
- Has access to a disposable income of not less than £25,000 per annum;
- Is capable and willing to maintain and accommodate himself and any dependents indefinitely in the UK from his/her own resources without taking employment, without assistance from another individual and without having recourse to public funds;
- Can demonstrate a close connection with the United Kingdom;
- Intends to make the UK his/her main home; and
- Possesses a valid UK entry clearance authorisation if required (i.e. a visa)

Persons admitted under this scheme are permitted to remain subject to a condition prohibiting employment for a period of 4 years. Such persons are also permitted to be accompanied by their spouse provided they are legally married and intend to live together as a married couple. The resource requirements and employment restrictions outlined above apply to the spouse also. Retired persons of independent means may also be accompanied by unmarried dependent minor children.

The requirements for artists, composers and writers seeking to reside in the United Kingdom are as follows:

- The individual must have established himself/herself outside of the UK as a writer, composer or artist primarily engaged in producing original work which has been published (other than exclusively in newspapers or magazines) performed or exhibited for its literary, musical or artistic merit;
- Does not intend to work except as related to his self employment as a writer, composer or artist;
• Has for the preceding year been able to maintain and accommodate himself and any dependents from his/her own funds without working except as a writer, composer or artist; and
• Will be able to accommodate himself/herself and any dependents from his own resources without working except as a writer, composer or artist and without recourse to public funds.

Persons admitted under this scheme may be admitted to the UK for a period not exceeding 12 months subject to conditions limiting their employment. Extensions to this period may be granted up to a maximum of three years. Similar conditions apply to persons seeking leave to enter the UK as a spouse or unmarried minor dependent child of a composer, artist or writer.

The UK system is geared towards those creative artists who may earn income from their artistic work during their residence in the United Kingdom. However, elements of the UK system could be applied to non-economic temporary migration, which would be relevant to Ireland.

Medical treatment

A particular category of non-economic migration concerns non-EEA nationals seeking to travel to Ireland for the purposes of medical treatment. There appears to be an increasing number of such applications being dealt with by visa officers. At present such cases are considered on a case by case basis.

Applications for medical treatment are often in respect of minors who require medical treatment and where it has been agreed with a sponsor in Ireland to provide such treatment. The sponsor may be a medical professional, but often is not. The persons may also apply to be accompanied by another person for the duration of their stay. A particular group within this area are organisations dealing with Chernobyl children.

There are many issues arising in relation to the handling of these medical treatment cases. There are particular requirements where the non-national concerned is a minor: a requirement for parental (or a guardian’s) agreement for the child to travel to Ireland; the need for a person in Ireland to act on the child’s behalf, for example in relation to giving consent for surgery, etc. There may also be requirements for the registration of the child with the appropriate health board, in accordance with the Children Act.

In relation to all medical treatment cases there are issues which need to be addressed, such as whether it is appropriate for the person to be brought to Ireland for treatment. While it may be a humanitarian act for an Irish person to sponsor a non-national to come to Ireland for medical treatment, there are issues which need to be considered such as:

• the selection process involved — who should take decisions about the relative needs of the person relative to others in a similar situation? — is it acceptable that individuals can take it upon themselves to offer the medical services of the Irish State to a non-national, or should the State have an input into this process (either through the Department of Health and Children or the Department of Foreign Affairs as part of its overseas aid programmes)?;
should the full cost of the treatment be met by the sponsor or will the State in practice be required to cover the bulk of the costs involved in the treatment (this could arise if a doctor offers his/her services free — there may be costs of accommodation, nursing, etc which have to be met by the State);

will the person concerned and any carers travelling become a financial burden on the State (such as in the social welfare or education systems) during their stay in Ireland, particularly if this is for a prolonged period?

General policy and procedures need to be established for the handling of such cases, having regard to the potential cost to the Irish taxpayer of such acts. There are issues of health service policy to be considered such as whether non-nationals should be brought to Ireland to benefit from Irish health services at a time when there are waiting lists for many procedures in Irish hospitals and, indeed, Irish patients are being sent abroad for certain treatments. If persons are to be admitted, how many should be admitted for what treatments and how should they be selected? It is necessary that immigration staff (in the visa system and at border control points) should be clear about the circumstances in which a person should be granted entry for medical treatment.

There are examples of structured schemes in relation to migration for medical purposes in other jurisdictions. What should be provided in the Immigration and Residence Bill is a power for the Minister to introduce, by secondary legislation, a scheme for the entry of persons for medical purposes. It should clearly set out the policy and procedures to be followed. Consultation with relevant Ministers — in this case the Minister for Health and Children — would be envisaged before such a scheme was introduced.

A related issue concerns retired foreign nationals who seek to join their family members in Ireland. If resident in Ireland, on reaching 70 years of age they become entitled to a medical card, regardless of any commitment they may have made on entering the State to be self-sufficient and not to become a burden on the State. The existence of such entitlements is a potential strong attraction for such persons to seek to come to Ireland. An issue arising is whether persons admitted on the basis of self sufficiency should subsequently gain entitlements to State services which may involve substantial public State expenditure.

**Issues and proposals**

What is apparent is that there is a myriad of reasons as to why someone would wish to migrate to Ireland and not be economically active. The legislation should provide a power for the Minister to set out schemes in secondary legislation which would cover the main categories of potential entrant. To establish an individual scheme for each category in primary legislation would be unwieldy and inflexible. However, the primary legislation should enable the Minister to establish schemes to allow admission to people who are economically self-sufficient and who would have no entitlements to access public services or the labour market. In general a person seeking permanent residence as a non-economic migrant should be required to show connections with Ireland.

The qualification criteria to apply in such schemes should be specified in secondary legislation. Secondary legislation should also specify details such as: the minimum level of resources required, the duration of permitted residence and whether extension/renewal is
possible. Such schemes should also allow for flexibility in setting the period of residence which would depend on a migrant’s reason for coming to Ireland. For example:

**Permanent** — persons (including retired persons) of independent means who own residences in Ireland, etc.

**Temporary** — volunteers, persons availing of medical treatment, tourists, artists, composers, writers etc.

In the case of non-economically active persons, family reunification, where permitted, should in general be restricted to spouses and unmarried minor dependent children, and should be subject to the same economic conditions as the ‘sponsor’.

The manner in which a person who is admitted as a non-economically active migrant would be excluded from benefits, such as in the health and social welfare systems, should be considered with the relevant Departments, bearing in mind the model of the 1997 regulations applying to EU nationals.
11. Residence status and residence permits

Key Proposals

• The Immigration and Residence Bill should provide a clear basis for a new system of residence permits for non-EEA nationals resident in Ireland.

• The residence permit should clearly indicate the holder’s status in Ireland and should be necessary to establish entitlements and gain access to public services by non-EEA nationals.

• The residence permit will be evidence of the holder’s permission to remain in Ireland. The possibility of issuing residence permits in certain circumstances to people in advance of arrival in Ireland should be considered.

• Legislation should provide for the sharing of residence data within the public service in Ireland. In certain circumstances, the possibility of sharing residence data internationally should be provided for.

• Legislation should provide the Minister the power to revoke residence permits in certain specified circumstances e.g. where false/forged documents have been provided as part of the application, where the individual is convicted of a serious offence resulting in them being considered a threat to public order or national security.

• The scope for change of immigration status of persons while remaining in Ireland should be clarified in secondary legislation.

• A new category of long term resident status should be introduced for persons resident in the State for more than 5 years. This status should be recognised for entitlement purposes across the public service.

• The format of residence permits should be in accordance with EU Regulations and should include biometric features.

• Charges should be introduced for residence permits to fund administrative costs and system developments.

• The possibility should be considered of the residence permit being acceptable as a re-entry visa also containing, in certain circumstances, permission to work.

• Developments on residence permits will be co-ordinated with developments on the proposed public service cards.

• The system of issuing Irish travel documents to non-nationals other than refugees should be restricted to exceptional cases only.
The current Irish system

At present, legally resident non-EEA nationals who have entered the State with the intention of residing in Ireland for a period of more than three months must register with the Garda Síochána. On registration, permission to reside in the State is granted and a registration card is issued. The registration card is a plastic card with a chip and a digitised photograph and contains a range of security features. It is generally issued to the customer on the day of registration and details the nature of the person’s status in the State. There is currently no charge for registration.

In general, permission is granted for an initial period of one year unless the duration of the proposed stay is shorter. When a person presents for registration the documents required differ according to the type of permission sought but, in general, it is necessary to provide a valid passport, evidence of sufficient finances and documentation relating to the purpose of stay. Permission may be renewed subject to the person continuing to fulfil the conditions pertaining to the type of permission sought. Permission to reside in the State may be refused or withdrawn if persons do not satisfy requirements.

Persons residing in the Dublin area register with the Registration Officer at the Garda National Immigration Bureau (GNIB) and those residing outside of the Dublin area register with the Registration Officer in the local Superintendent’s Office. Some categories of persons are exempt from registration and are as follows:

- a person seeking asylum (who is subject to a registration system in the Office of the Refugee Applications Commissioner);
- a minor under 16 years of age;
- a non-national born in Ireland; and
- a non-national seaman not resident in the State whose ship remains at port in the State and who does not land in the State for discharge.

The registration system which is operated by the GNIB is computerised and is accessible to immigration officers at all major ports and airports and to other members of the Garda Síochána at certain locations throughout the State. The system also obtains computerised information from systems in other areas of the public service including: the Repatriation Unit of the Department of Justice, Equality and Law Reform, the Office of the Refugee Applications Commissioner, the work permit section of the Department of Enterprise, Trade and Employment and the visa office in the Department of Foreign Affairs.

Following registration the person is required to inform his/her registration officer if:

- his/her circumstances change, e.g. change of job or address;
- he/she moves to another Garda district;
- he/she is going to be absent from his/her residence for a continuous period of more than one month.

There is currently no provision in Irish immigration legislation for a status of long-term resident. However, non-EEA nationals who have resided legally in the State for a period of at least 8 years may apply for permission to reside without condition as to time. Such applications are considered on an individual basis.
International study

The IOM study showed that there is no single system of residence permits operating internationally which represents “best practice”. The systems operating in each country represent an evolution over time of what best suits the particular requirements of the country concerned. In each country there are different forms of residence titles. In all countries a residence permit is required if the person’s stay is for a period of three months or more. The example of France is quoted where a residence permit and a work permit is combined in a single document. This is a system which potentially can result in streamlined administrative procedures.

In some countries the residence permit is issued in advance of the person’s arrival in the country and can be used as a visa; in others it is only issued after the person arrives. In most countries in order to obtain a residence permit, the person is required to present proof of accommodation and a health certificate. Some countries require that the person give evidence that they do not have a criminal record and some require proof of knowledge of the national language.

Temporary residence permits are normally issued to a person on his/her first arrival in the country and may be issued for periods ranging from three months to two years. Some countries do not allow a temporary permit to be extended while the person is still resident — he/she must first leave the country and apply from abroad. Other countries do permit some change from temporary to permanent status while in the country, in certain circumstances.

Permanent residence permits are not usually issued to a person on his/her first application. Permanent residence normally requires a period of legal residence, the duration of which varies between countries (from 2 years in Finland to 8 years in Germany). In some countries a permanent residence permit can exempt the holder from work permit requirements.

European Union initiatives

The primary initiative on residency status at European Union level has been the Council Directive on the status of third country nationals who are long term residents. The Commission presented this instrument to Council in April 2001 and, following extensive debate, the Directive was formally adopted by the Council on 25 November 2003.

The Directive grants specified rights to third country nationals who have been legally resident in a Member State for a period of five years. These rights include equal treatment with EU nationals in the areas of access to the labour market, social housing, publicly funded education, social welfare and public health services. The Directive also provides for greater protection against expulsion for those granted long term resident status, and outlines the conditions under which those enjoying long term status may reside in a second Member State. Ireland has not opted into this Directive, nor has the UK. Because of freedom of movement rights conveyed on those with long term status, participation in this Directive could have implications for the Common Travel Area arrangements with the UK.

There are a range of European Union initiatives which have implications for residence — including Directives and proposals for Directives on family reunification, admission for
study, research and employment. These have been detailed in earlier chapters. Other
European Union initiatives relating to residence have dealt with the format of residence
documentation. A uniform format for visas, with common security features and technical
specifications, has been in place since 1995. On 13 June 2002, Regulation (EC) 1030/2002
laying down a uniform format for residence permits for third country nationals was adopted
by Council.

In the aftermath of 11 September 2001 the Justice and Home Affairs Council as well as the
European Council emphasised the necessity for the European Union to take action to improve
document security in order to detect persons trying to use forged official documents to gain
entry to the European Union. As a result, the Commission has presented to Council a
proposal on the modification of Regulation (EC) 1030/2002 laying down a uniform format
for residence permits (as well as a similar proposal in relation to the format of visas). The
new proposal requires Member States to integrate biometric identifiers into residence permits.
The proposals provide for the mandatory storage of the facial image as a primary identifier
and fingerprints as the secondary identifier. The Council agreed a general approach on these
proposals in November 2003 but adoption of the Regulation must await the opinion of the
European Parliament.

The deadlines set in relation to the regulation regarding the uniform format for residence
permits for third country nationals are as follows:

- integration of the photograph to be implemented no later than 3 June 2005.
- storage of the facial image to be implemented no later than two years after the
  adoption of the relevant technical measures.
- storage of the two fingerprint images to be implemented no later than three years
  after the adoption of the relevant technical measures.

Ireland has exercised its option to participate in the Regulations and therefore Irish residence
permits must comply with the uniform technical specification.

**Issues and proposals**

**A new system of residence permits**

In the Immigration and Residence Bill it is intended to provide a legal basis for a new system
of residence permits. It is intended to have a system which is as simple and transparent as
possible. In the first instance the terminology to be used in this area should be simplified
from the current system in order to make it more understandable and to conform to common
international usage. The card issued to a non-national signifying that permission to remain
should be called a “residence permit” rather than the current “certificate of registration”.

The outline of the system to be provided for in the legislation is as follows:

- a non-national intending to reside in Ireland for more than 3 months must obtain
  “permission to remain” in the State before the expiry of his/her “permission to
  enter” (which was granted at the point where the person entered the State).
- the granting of “permission to remain” by an Immigration Officer may be subject to
  conditions as regards duration, purpose, access to public services, reporting etc.
an Immigration Officer may refuse to grant permission to remain or may refuse to renew it or withdraw/revoke it and may cancel the residence permit and request its return for stated reasons (including fraud, changes of circumstances so that the person no longer satisfies the conditions, issues of public policy or public security).

- the permission to remain will be evidenced by the issue of a “residence permit”. This permit should indicate the purpose for which it was issued and the period of validity.

The legislation will set out the principles under which the immigration officer is to operate in relation to the issuing of residence permits and the granting of permission to remain. It is intended that the residence permit will be a document which will clearly indicate the holder’s status in Ireland and that it will be used by other public service bodies in Ireland to determine the holder’s entitlements to services.

**Advance issue of residence permits?**

From the point of view of customer service, there is a question as to whether a residence permit could be issued to a person before he/she travels to Ireland, thereby eliminating the need to apply for a visa and to seek permission to enter on arrival at the borders of the State. The legislation should provide for such a possibility, but it is unlikely that such a system would be possible in practice in the short term. It would require a degree of advance checking of individual circumstances that would be difficult to undertake outside the State given the limited resources which it is possible for Ireland to deploy overseas for this purpose. The checking of individual circumstances will more likely have to be undertaken in the State. However, the possibility of this system being used on a pilot basis at some locations abroad or in relation to particular types of applications should be considered.

An issue that will arise in future will be the inclusion of biometric data on the residence permit, which will require the physical presence of the applicant in order to take a fingerprint. This is an issue that will arise also in relation to visas and the technical solution which is arrived at will also have implications for the issuing of residence permits, including the possibility of their being issued abroad.

**Registration system**

There have been significant developments in the area of registration in recent years in the form of the Garda National Immigration Bureau’s award-winning system which produces certificates of registration for over 100,000 non-EEA nationals per year. This sophisticated system is at the leading edge of such systems worldwide. The new legislation should provide a new legal basis for this system and for the use of the data contained in it. There will also be a need to ensure that the ability of this system to share data on non-EEA nationals with other public service bodies in Ireland is maintained and enhanced.

In sharing data this system will improve service to legally resident non-EEA nationals by ensuring that public service providers are aware of the legal status of the persons concerned when they seek to access services. It will also enhance enforcement of immigration law as it will ensure that those persons who do not have a legal entitlement to be in the State do not get access to services to which they are not entitled. The legislation will ensure that appropriate safeguards for data protection are in place. Such developments will require significant investment in information and communications technology. It is intended that the
development of such a system should be done on a self-funded basis by charging for the
issuing of residence permits.

In collecting and handling information on foreign nationals resident in Ireland, all public
bodies are subject to data protection legislation: the Data Protection Act 1988 and the Data
Protection (Amendment) Act 2003 and the collected data protection Regulations (under the
1988 Act). Under the legislation, organisations collecting data are required, among other
things, to keep data only for one or more specified lawful purposes, to process it only in
ways compatible with the purposes for which it was initially collected, and to keep it safe
and secure. The sharing of data on non-nationals between Government Department and other
public service bodies is currently possible under existing legislative provisions and this
should be continued in the new legislation.

In certain circumstances, the sharing of certain residence data internationally should also be
possible so that the interests of the State are protected, while taking adequate account of the
confidence of personal data and data protection concerns. In particular, the sharing of
data with the UK can help safeguard and improve the operation of the Common Travel Area
— ensuring that people who are not permitted in one State do not use entry to the other
State for the purpose of circumventing immigration controls.

**Change of status**

Should persons who are permitted to enter the State for one reason be allowed to change
their status while still in the State? In immigration systems worldwide the issue of change of
status is difficult as it is closely associated with potential abuses. At one end of the spectrum
is would not be acceptable to have a situation where people coming to Ireland as tourists
were allowed to change their status to workers while remaining in the State. However, it
may be acceptable for those who come to Ireland to study at third level institutions to remain
in Ireland as workers after graduating if their skills are in areas which are needed in the
State. A person who enters for a purpose such as economically independent activity should
not be entitled to change status, e.g. to a worker. In general the opportunities for change of
status of a person who is temporarily resident in the State should be limited while the person
is still resident in the State. Such applications for change of status should normally be made
from outside the State. In practice it should be left to the Minister to determine in what
circumstances change of status by a person resident in the State may be permitted.

**Long term resident status**

At present there is no separate secure status of “long term resident” or “permanent resident”
in the Irish immigration system. While a person could after a period of time obtain permission
to remain “without condition as to time” this still left some uncertainty as to the entitlements
associated with it. There has been criticism that the only secure long term status which a
non-national could obtain in Ireland is by way of naturalisation, a step which many may not
wish to take as it could break links with the person’s country of origin.

Having looked at the current situation and developments internationally, it is proposed that
a new status of “Long Term Resident” should be introduced in the Immigration and
Residence Bill. What is being considered is a new status whereby a person who has been
resident in the State legally for a period of five years could apply for Long Term Resident
status. The model which would be followed is that contained in the European Council Directive on the Status of Long Term Residents.

The entitlements of Long Term Resident status would be greater than those of short-term or temporary residents and would in many respects be similar to those given to Irish citizens. This Long Term Resident status should be recognised by other public service providers as granting a high level of entitlements to the holders. Such persons would also have a greater protection against removal from the State, which would only be possible in limited stated circumstances.

In view of the European Directive, the period of residence to apply should be a minimum of 5 years. Long Term Residence status is not a status which should be conferred automatically on persons who have been more than 5 years legally resident in the State — they should have to apply for it and satisfy particular conditions. The period for the acquisition of this status should not include periods where the person has been admitted for the purposes of study or has been an asylum seeker.

**Format of residence permits**

In the Immigration and Residence Bill there should be a power for the Minister to set out, in secondary legislation, the form of the residence permit, bearing in mind the uniform formats approved by the European Union. Residence permits should include digital facial images and fingerprint data. Secondary legislation should also set out the categories of residence permits which may be granted to non-national residents and the conditions which apply to them. This will be of assistance to the residents themselves, in clarifying the conditions of their stay and their entitlements. It will also be of use to other public service bodies in their dealings with the holders of residence permits. It would be envisaged that the entitlements of non-national residents in other Departments’ legislation should be tied to their residence status.

**Charges for the issuing of residence permits**

The State must provide the administrative resources and computer systems necessary to deal with the issuing of residence permits. The provision of high security residence documents is also an expensive process. The practice internationally is to charge for the issuing of residence permits. It is therefore proposed that there should be a charge for the issuing of residence permits so that revenue can be provided to fund the operation and development of the system. Related to this is the need for quality customer service. The development of the GNIB registration system since 2001 has resulted in a much improved system with improved facilities for customers in the Burgh Quay office in Dublin and extended opening hours there. This has also improved the service available countrywide. The charges payable for the issue of residence permits should be set out in secondary legislation.

**Combined residence and work permits and visas?**

Consideration is being given to the introduction of a system whereby a single administrative process will result in a person seeking to work in Ireland being granted authorisation which will permit him/her to arrive at the borders of the State and seek entry (by way of a visa) and to reside and work here (a residence permit which may in some circumstances incorporate the permission to work). The administrative arrangements are dealt with in chapter 14. Consideration is also being given to the use of the residence permit as a re-entry visa, as
discussed in chapter 4. Such changes to streamline administrative processes are in the best interests of customers and will also ensure efficient use of resources within the immigration system. The Immigration and Residence Bill should make provision for such developments.

**Link with proposals for an Irish public service card**

There will be a need to link developments on residence permits in the immigration area with the proposed developments on public service card technology which are currently being undertaken by the Department of Social and Family Affairs. This will also take account of developments in the UK as regards identity cards. The high technology approach to residence permits which will be adopted based on the current GNIB registration system should ensure a smooth linkage with plans in this area. It will be essential to ensure that issues of residence status contained in residence permits can seamlessly transfer into the area of entitlements in other areas of the public service and ensure that the holders of residence permits are given easy access to the services to which they are entitled.

**Irish travel documents for non-nationals resident in Ireland**

There currently exists a system for the issuing of Irish travel documents to non-nationals resident in Ireland where they are not in a position, through no fault on their own part, to obtain travel documents from the authorities of their countries of origin. Such a system is understandable in the case of refugees, where a document is issued as provided for in the Geneva Convention. However, in the case of other non-nationals, the need for such a system is less understandable, though emergency situations may require it, particularly in the case of asylum seekers. There are however fears that people may use these documents to establish a new identity abroad and this would be a matter of serious concern. The legislation should provide for the issue of Irish travel documents to non-nationals only in exceptional circumstances, to be set out in secondary legislation. The documents issued should be for short durations only. The fees charged should be higher than those charged for national travel documents, so as to discourage persons seeking these documents as a cheaper alternative to their national documents. Secondary legislation should set out the form of the documents to be used and the fees to be charged.
12. Monitoring and compliance

Key Proposals

- There is a need for co-operation and co-ordination across the public service to ensure that access to public services by persons illegally in the State is limited to emergency services so as not to encourage illegal immigration.

- There is a need to consider whether additional provisions are needed in the Immigration Bill to allow the Gardaí to deal effectively with the use of forged and fraudulent documents within the immigration system.

- The introduction of biometric identifiers in immigration documentation in Ireland (visa and residence permits) should take place as soon as possible.

- Existing legislative provisions on the issue of trafficking and smuggling should be examined to see whether they can be strengthened. The position of victims of trafficking should be safeguarded with a view to assisting them and getting their co-operation in the prosecution of perpetrators.

Introduction

The enforcement of immigration legislation and procedures is a crucial element of any immigration system. The objective of enforcement procedures is to protect the interests and welfare of both citizens and legal migrants. All immigration regimes experience threats to their integrity from a tiny minority of citizens and foreign nationals seeking to exploit them for illegal gain. However, if appropriate monitoring and compliance procedures are not in place, there can be very serious consequences for society. Illegal immigration into the underground economy can affect the economy and the labour market and will often lead to exploitation of illegal migrant workers by unscrupulous employers. Immigration procedures can also be exploited by fugitive criminals and by human traffickers. Human trafficking is a particularly insidious crime often forcing women and children into the sex industry. Sometimes, such as in the tragic events of 11 September 2001 in the US, the consequences of weaknesses in immigration procedures can be catastrophic.

Most states operate a broad range of measures to enforce immigration procedures. These include:

- extensive powers for immigration officers to refuse entry to migrants, arrest and detain persons, search property and vehicles and to seize vehicles and property;

- carrier liability legislation/procedures;
• mandatory registration procedures;
• inclusion of biometric identifiers in identity and travel documents to authenticate a person’s identity;
• penalties for use of false documents;
• posting of airline liaison officers in third countries;
• sharing of information between agencies and states.

The underlying principle of all monitoring and compliance procedures is that migrants must have some form of government permission to remain in the territory of the State. Without it they may be liable to arrest, detention and expulsion. The procedures also need to detect and deter individuals attempting to gain permission to remain in the State on false pretences, such as using false documents. Ultimately it must be possible to remove from the State a person who is illegally present. This is dealt with in detail in chapter 13.

**Summary of current Irish position**

At present, monitoring and compliance procedures in the Irish immigration system have been outlined in a number of Acts of the Oireachtas. The Aliens Act 1935 and the Immigration Act 2004 are the basis of the main Irish immigration procedures and they confer the following powers:

**Aliens Act 1935**

• An alien shall be bound by the laws of the State.
• The Minister may, by order, in respect of all aliens or aliens of a particular nationality/class or a particular alien
  — prohibit landing in or entry into the State and impose restrictions and conditions in respect of same;
  — prohibit departure from the State and impose restrictions and conditions in respect of same;
  — specify a particular place of residence;
  — require compliance regarding registration, change of abode, travelling, employment, occupation and other like matters.
• In the case of a contravention of an aliens order made under the Act, the Court may impose a fine and/or imprisonment.
• A Justice of the District Court may issue a search warrant which authorises a Garda or Gardaí to enter and search the place specified in the warrant and to search, interrogate and arrest person(s) found in such place.
• The Minister may grant or refuse a licence for a change of name by an alien and may, at any time, revoke such a licence.

**Immigration Act 2004**

• The Minister may appoint immigration officers.
The Minister may, with the consent of the Minister for Health and Children, appoint medical inspectors.

An immigration officer or a medical inspector appointed has the power to enter or board any vessel and to detain and examine any person arriving at or leaving any port in the State, believed to be a non-national.

The master of a ship arriving at an Irish port may detain any non-national coming from outside of the State until he/she is examined or landed for examination.

An immigration officer may request the master of a ship to detain any non-national who has been refused permission to enter the State.

An immigration officer or a Garda may require a non-national to make a declaration regarding the conveyance of documents and their production. The officer or Garda may search any such non-national and his/her luggage in this regard and may examine and confiscate any documents.

A Garda may arrest without warrant, a person whom he/she believes to have committed an offence under the Act (other than Section 10) or under Section 2(1) of the Employment Permits Act 2003.

The Minister may require that a non-national without permission to remain in the State reside in a particular district and/or report at specified intervals to an immigration officer or Garda.

A judge of the District Court may issue a warrant on the sworn information of a Garda not below the rank of a sergeant, for entry, search and seizure. A Garda acting in accordance with such a warrant may require any person found at that place to provide his/her name and address.

The above legislation provides for the appointment of immigration officers who have extensive powers of arrest, detention and search. This body of legislation has been supplemented by the Illegal Immigrants (Trafficking) Act 2000 which confers powers on members of an Garda Síochána investigating human trafficking offences. Another important piece of enforcement legislation is the Immigration Act 2003 which provides for a system of penalties for carriers transporting undocumented third-country nationals into the State. These Acts provide for the following:

**Illegal Immigrants (Trafficking Act) 2000**

- A Garda can detain a vehicle suspected of having been used in the commission or the facilitating of the commission of trafficking along with its equipment, fittings and furnishings for a period not exceeding 48 hours. Under certain circumstances, permission may be sought from the Court to extend this period for up to a maximum of two years.

- Where the Court orders that a vehicle, its equipment, fittings and furnishings or part thereof is to be forfeited to the State, a Garda can seize and detain the vehicle.

- A Garda named on a search warrant issued by the Court shall be authorised to enter the premises concerned, alone or with other persons as may be necessary, to search it and to seize anything that is believed to relate to the offence.
A Garda acting in accordance with a warrant can require any person found at the
premises to give his/her name and address. A Garda can arrest without warrant
any such person who obstructs or attempts to obstruct the Garda acting in
accordance with the search warrant, who fails or refuses to comply or who gives
false or misleading information.

**Immigration Act 2003**

- A Carrier transporting passengers into the State from a place outside of the Common
  Travel Area must ensure that those passengers are presented to an immigration
  officer for examination upon arrival in the State.
- A Carrier must comply with directions given to him/her by an immigration officer,
  including furnishing a list of all passengers and crew members.
- It is an offence for a Carrier to transport a non-national passenger who does not
  have appropriate travel documents, visas or transit visas.
- It is an offence for a Carrier to transport covert passengers whose names do not
  appear on the passenger manifest.
- Any carrier found guilty of an offence shall be liable to a fine of €1500 per offence.
  Failure to pay this fine within 28 days will result in prosecution which, if the carrier
  is found guilty, will result in a fine of €3000 per offence.

**European Union Initiatives**

European initiatives in the area of enforcement and compliance with immigration procedures
and combating illegal immigration have focused on building upon the relevant provisions of
the Schengen acquis and incorporating them into Community legislation.

the Convention implementing the Schengen Agreement incorporates a system of carrier
liability into European law. The Directive commits participating States to establishing
maximum and minimum penalties (minimum of €3,000, maximum of €5,000) for carriers who
transport undocumented migrants into the Member States. Member States are also obliged
to implement the necessary measures to require carriers to return third country national
passengers who are refused entry. In cases where the refused passenger cannot be returned
immediately, the responsible carrier must bear the costs of the stay and return of the third
country national in question. The European Union has also adopted legislation on the mutual
participating States have agreed to recognise and enforce (under certain conditions)
deportation orders that have been issued in other Member States. Ireland is participating in
both of these measures.

The European Union has also pursued several initiatives in the area of data sharing and co-
operation. These include a Council Decision establishing a secure web based information
and co-ordination network for Member States’ migration management services (ICONET); a
Directive on the Obligation of Carriers to communicate passenger data; and Council
Regulation EC/377/2004 on the creation of an immigration liaison officers’ network.
Issues and proposals

Access to public services

Access to public services by illegal immigrants can act as an attraction for illegal immigration. There is a need for co-operation and co-ordination across the public service to ensure that access to public services by persons illegally in the State is limited to emergency services so as not to encourage illegal immigration.

Forgery and Fraud

Forgery and fraud are commonplace in cases involving illegal immigration. As a consequence, national administrations invest heavily in methods to protect the integrity of immigration documents and in equipment for the detection of fraudulent documents. Fraud is not just confined to travel documents. Foreign nationals may provide false information on applications for entry and residence or may enter into bogus marriages in order to gain immigration status.

The Criminal Justice (Theft and Fraud Offences) Act 2001 defines the offences and penalties that comprise fraud and forgery. Section 7 of the Act states that persons obtaining services by deception are guilty of an offence and are liable, upon conviction, to a term of up to five years in prison. Sections 25 to 31 of the Act state that the offence of forgery constitutes persons using a “false instrument” with the intention of inducing another person to accept it as genuine and to acquire services thereof. It is also an offence to copy such false instruments and to possess such false instruments with the intention of using them in deception for acquiring services. All such offences are punishable, upon conviction, with a fine and a prison sentence of up to ten years.

In the Act the definition of a false instrument includes:

- a passport or document which can be used instead of a passport;
- a document issued by or on behalf of a Minister of the Government and permitting or authorising a person to enter or remain (whether temporarily or permanently) in the State or enter employment therein;
- a Registration certificate issued under Article 11 (1) (e) (i) of the Aliens Order 1946 (S.I. No. 395 of 1946);
- a certified copy, issued by or on behalf of an tArd-Chláraitheor, of an entry in any register of births, stillbirths, marriages or deaths or in the Adopted Children Register.

There is a need to consider whether additional provisions are needed in the Immigration Bill to allow the Gardaí to deal effectively with the use of forged and fraudulent documents within the immigration system.

Biometrics

The incorporation of biometrics in travel documents has been under consideration in the International Civil Aviation Organisation (ICAO) since 1997 as a means of making passports and visas much more resistant to forgery or counterfeiting and of providing greater security against identity fraud. In May 2003, the ICAO agreed the technical specifications for incorporating biometrics in travel documents. They agreed that the common biometric
identifier will be shape-of-face and that the biometric information will be stored in microchips embedded in the passport booklet.

The issue of biometrics in travel documents was given added impetus by the Enhanced Border Security Act, which was enacted by the U.S. Government following the terrorist attacks of 11 September 2001. One of the provisions of this Act requires countries that are members of the Visa Waiver Programme, which includes Ireland, to introduce biometrics into their passports as a condition of remaining in that Programme.

The Department of Foreign Affairs is currently developing a new Irish passport. The new passport will contain a polycarbonate (plastic) data page which will be capable of incorporating a biometric chip. The Government has agreed in principle to the introduction of passports containing biometric information.

Work has also progressed at EU level on the incorporation of biometric identifiers into travel documents. The Thessaloniki conclusions of June 2003 called for a coherent approach in the EU on biometric identifiers or biometric data, which would result in harmonised solutions for documents for third country nationals, EU citizens’ passports and information systems (VIS and SIS II). On foot of this, the Commission produced amended proposals for incorporating biometrics into the existing regulations on a uniform format for visas and residence permits. There has been agreement on a general approach on these proposals. The Council has also agreed on proposals on incorporating biometric identifiers on EU citizens’ passports.

The introduction of biometric identifiers in immigration documentation in Ireland (visa and residence permits) should take place as soon as possible with a view to securing these documents and eliminating potential abuses.

**Trafficking in Human Beings/Smuggling of Migrants and sexual exploitation**

The United Nations Convention against Transnational Organised Crime (Palermo Convention) together with the additional Protocol against the smuggling of migrants by land, air and sea and the Protocol to prevent, suppress and punish trafficking in persons, especially women and children were developed to promote international co-operation in preventing and combating such crimes more effectively. To this end, the Convention standardises terminology and definitions thus creating a common basis for co-ordination of national legislation and policy. Ireland is at present preparing legislation to comply with the Framework Decision on combating trafficking in persons for the purpose of sexual and labour exploitation and the Framework Decision combating the sexual exploitation of children and child pornography. This legislation will take account of the more wide ranging Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the UN Convention against organised crime.

**Protocol against the smuggling of migrants by land, air and sea** — “Smuggling of Migrants” is defined as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.” The Protocol provides for the combating of smuggling by the prevention, investigation and prosecution of offences and by promoting international co-operation. It also seeks to protect the human rights and other such interests of smuggled migrants. State parties are required under the Protocol to criminalise the smuggling of
migrants including illegal entry/residence and the procurement, provision, possession or production of a fraudulent travel document. It further encourages the penalisation of commercial carriers who are found to be complicit or negligent in the smuggling of migrants.

**Protocol to prevent, suppress and punish trafficking in persons, especially women and children** — “Trafficking in persons” is defined as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” The basic purpose of this Protocol is to prevent and combat trafficking in persons and it provides for criminal offences, control and co-operation measures against such trafficking. It also requires that some steps are taken to protect and assist trafficked persons both in general and in the event that they provide evidence or assistance to law enforcement. States should co-operate in the identification of traffickers and trafficked persons and should share information about the methods of offenders and the training of investigators and enforcement and victim-support personnel. The implementation and strengthening of border controls is also a requirement.

Existing legislative provisions on the issue of trafficking and smuggling should be examined to see whether they can be strengthened. The position of victims of trafficking should be safeguarded with a view to assisting them and getting their co-operation in the prosecution of perpetrators.
13. Removals

Key Proposals

- The legislation should provide for two mechanisms for removing persons from the State — a removals process and a more serious deportation process.

- The removals process for persons with no legal basis for being in the State should be along the lines of the current process for removing a person who has been refused leave to land.

- A single procedure for consideration of protection claims should be introduced. The removals procedure should apply to those with failed claims for protection.

- In general a removal should not preclude a person applying to return to Ireland but the Minister should have the power, in certain circumstances, to require a removed person to remain outside the State for a period of time.

- Persons who could not be subject to the removals process are, for example, persons who are dependents of Irish or EU nationals, parents of Irish citizen children and failed asylum seekers with an alternative legal basis for remaining in the State.

- A deportation process along the lines of the current process should be provided for. The Minister should be able to provide for different periods of exclusion depending on circumstances.

- Consideration should be given to the automatic conversion of a removal order into a deportation order if the person has not complied with it within a set period of time.

- Any provision for legislation that reviews removals cases should not in general have suspensive effect.

- The legislation should make provision for voluntary return schemes.

- Persons who seek to return to the State within a certain period of time after deportation should be required to repay the cost of deportation before being admitted.

Background

The State’s powers to remove persons who are non-nationals is a fundamental element of State sovereignty and is in the interest of the common good. This has been long recognised in Irish and international law. At present there are two different processes for the removal of non-nationals from the State each with its own distinct features: deportation and removal following refusal of leave to land. There are clear differences between the two.
A deportation order is signed by the Minister. Its consequences are grave. It requires the deportee to remain outside the State for ever, irrespective of the circumstances giving rise to its making. As a result, the deportation process is characterised by the formality that would be expected of a process of such gravity.

A removal decision, on the other hand, can (subject to the necessary safeguards) be made by an officer of the Minister and such a decision does not prohibit the future re-entry to the State of the removed person.

Both processes are by statute subject to the prohibitions on refoulement (sending to a place of persecution, torture etc.) set out at section 5 of the Refugee Act 1996 and section 4 of the Criminal Justice (UN Convention against Torture) Act 2000.

Removal under Irish law at present

The removal process, as set out at section 5 of the Immigration Act 2003, can only be invoked within three months of the arrival of a non-national in the State. It applies to non-nationals who have been refused admission to the State (e.g. on the basis of insufficient funds to support oneself, lack of proper documentation, no employment permit, intention to abuse UK/Irish Common Travel Area arrangements). It also applies to a non-national who evades immigration controls or who enters other than through an approved port. The person may be arrested and detained for the purposes of the removal and arrangements made straightaway for departure.

Deportation

The present deportation process contained in the Immigration Act 1999 follows on the Supreme Court’s judgement in the Laurentiu case in 1999. It is a fair process but in practice it is time-consuming and resource-intensive and is inadequate to deal in a timely and efficient fashion with the volume of potential deportation cases presenting. These include the cases of persons who presented themselves as refugees but were found not to be by the refugee determination process (in the region of 90% of the total number of asylum applicants whose cases are finalised in any one year). In addition there are persons who had entered the State legally but have overstayed their legal permission. There are also people who are illegally present in the State having entered without permission and unknown to the authorities.

The deportation process is set out at section 3 of the Immigration Act 1999 and can be applied to any non-national in the State whose enforced departure is being contemplated. Failed asylum-seekers may be removed only by means of the deportation process. The potential deportee is notified of the proposal to deport and invited to make (within 3 weeks) representations as to why the deportation should not proceed. All of the papers available to the Minister (including representations made and, in the case of a failed asylum applicant, the file generated during the independent asylum processes) must then be considered by reference to a wide range of matters including the personal, family and domestic circumstances of the person, employment record and prospects, duration in and connection with the State, humanitarian considerations, national security and the common good, before a deportation order can be made. The Minister also takes into account section 5 of the Refugee Act 1996 and Section 4 of the Criminal Justice (UN Convention against Torture) Act 2000.
Once the order is made, failure to observe the order or to co-operate with arrangements made for departure may result in detention with a view to securing departure.

**International study**

The IOM study examined removal systems in a number of countries and these showed a number of common features. Some countries (such as the UK and Canada) have systems which include two possible processes: a less serious removal process (administrative removal in the UK, departure orders in Canada) and a more serious deportation process which involves exclusion for a period of years or even permanently. In the US persons who have been illegally resident cannot re-enter the US for a period of between 3 and 10 years, depending on the duration of illegal residence. In the Australian system illegally resident non-nationals are automatically subject to immediate detention and removal, with no need for deportation to be formally considered. In the Canadian system if a person subject to departure does not leave within 30 days and confirm the departure with the authorities, the departure order becomes a “deemed deportation” order which involves permanent exclusion from Canada.

**Public consultation**

A number of submissions to the public consultation process on immigration policy addressed the issue of deportation. Several contributors stated that immigrants in breach of the law should be liable to deportation. One contributor called for the safeguards of the European Convention on Human Rights to be applied to deportation procedures (which they already are).

**Need for a fair and efficient removals process**

It is necessary as part of the new legislation to identify a means for the efficient removal from the State of those who have no legal basis for being in the State, including those with a claim for protection that has proven groundless. In the current situation similar decision making processes are involved in both the removals and deportation procedures. While the quality of decision-making must be equally rigorous and fair in both processes, it should be possible for less cumbersome procedures to be used to ensure efficient and effective removals.

The operation of immigration controls internationally is dependent on an effective removals process. Such a process is also essential to protect the integrity of protection determination systems. All states have in place systems designed to control the entry of non-nationals into their territories based on criteria generally related to the security and economic well-being of the state. Control of entry necessarily includes a process for the summary removal of those arriving in the state who do not meet those criteria. In many cases the removals systems are similar to those in place in Ireland in the case of persons refused leave to land.

International experience is that national asylum systems are frequently used as a means of circumventing normal immigration controls and of securing entry to or stay in a state which would otherwise be unavailable to those who do not meet the normal requirements for immigration to a state. Ireland’s experience is no different: of the asylum applications made in the State, about 90% determined in any one year are rejected. States must in keeping with
their international protection obligations (including the prohibition on refoulement) maintain systems designed to ensure that those in need of protection will be able to obtain it, and resort to a variety of strategies to ensure that the scope for abuse of their systems by those without protection needs is minimised.

**A single procedure for protection**

The introduction of a single procedure where all protection needs are examined “up front” and a single decision made is one possible way of streamlining the deportation process. At the present time protection grounds other than those leading to a declaration of refugee status are considered by the Minister in the context of the deportation process. It is arguable that this approach has inherent disadvantages in both efficiency and protection terms. A single procedure or “one stop shop” for protection needs is operated by the majority of EU Member States and a range of advantages, many of which relate to the efficiency and integrity of the protection process, have been identified as follows:

- Increased speed and efficiency of the procedure which aids integration of those granted status and removal of those rejected.
- Savings in terms of time and resources — a single integrated interview and assessment of each case saves time and resources and helps tackle administrative problems such as movement of files.
- Reduced possibility for protection related issues being raised at removal stage thereby delaying removal — removal authorities can act in the knowledge that there are no outstanding protection considerations to be dealt with.
- Asylum applicants themselves benefit from the simpler and more transparent application procedure — applicants cannot be expected to be aware in advance of whether their claim meets all the elements of the 1951 Geneva Convention definition or the grounds for some other form of protection. Furthermore, one inclusive procedure would encourage the applicant to present his or her case in a comprehensive manner thereby avoiding the need to reformulate his or her history to meet different criteria applied in sequential procedures.
- More positive public perception of protection systems due to the impression that there are a myriad of appeal opportunities being dispelled.

A number of developments at EU level are relevant to this issue. In particular, Council Directive 2004/83/EC on the minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (the Qualification Directive) was adopted on 29 April 2004 with a transposition deadline 10 October 2006 [OJ No. L 304/12]

In summary, the Qualification Directive sets out the eligibility criteria for both refugee status and for subsidiary protection in the EU and the entitlements of those persons who qualify for that protection.

The form of refugee status protection provided in the Directive to be adopted is essentially the same as provided under the 1951 Geneva Convention. Subsidiary protection is a form of international protection separate but complementary to refugee status granted to a third
A country national who is not a refugee but is otherwise in need of international protection. It is based on the protection principles set out in international human rights instruments such as the ECHR and the UN Convention against Torture and other Cruel, Inhuman and Degrading Treatment and the International Covenant on Civil and Political Rights.

In addition, a period of consultation and debate to be led by the European Commission aimed at identifying what Member States need to do to arrive at a single procedure will commence in early 2005. This stems from the Commission Communication entitled “A More Efficient Common European Asylum System; the Single Procedure as the Next Step” published on 15 July 2004. Depending on the outcome of this “preparatory phase” the Commission may introduce Community legislation on this issue.

A distinct subsidiary protection system does not exist in the State at present. The introduction of such a regime as required by the Asylum Qualification Directive will necessitate some changes to our current protection system and the benefits to be gained from a reorganisation of our determination system for processing protection claims into a single procedure will need to be considered in this context. The consultation and debate at EU level will provide an opportunity to learn how other Member States operate a single procedure and the benefits or otherwise of the introduction of such a system in the State.

In the Irish system a single procedure would most likely involve all protection issues being determined in a unified process. While, in accordance with the asylum Qualification Directive, the determination system would consider, firstly, whether an applicant qualifies for refugee status, the Refugee Applications Commissioner would investigate each claim by reference not only to the Convention refugee definition at section 2 of the 1996 Act, but also to the subsidiary protection definition in the Qualification Directive. A person recognised as having a non-refugee protection need would get, in effect, the same benefits in the State as a Convention refugee following this unified process. The issue of *refoulement* would be fully settled, and failed asylum seekers could accordingly be removed from the State (subject to there being no substantial delay between the protection decision and the removal).

**Possible streamlined removal process**

It is proposed that a person who does not have permission to enter or remain in the State, or who has had such permission revoked, or who has overstayed his/her permission, should be subject to a removals process along the lines of the current process for removal after the refusal of leave to land. The removal from the State should not preclude the person from seeking to return to the State through legal means in the future, though of course the person’s record of non-compliance with immigration requirements may be taken into account in making decisions on a future application.

It is also proposed that the process for dealing with a failed applicant for protection (whether refugee or subsidiary) following a single procedure should also be along the lines of that for removing a person who has been refused leave to land. There is no reason why a person who has claimed asylum or subsidiary protection and had the benefit of an efficient and fair set of mechanisms for addressing every aspect of the claimed protection needs, and who turns out not to need such protection, should be the subject of a longer removals process than a person who is refused permission to enter the State and who does not make such a claim.
The Minister should have the power in certain cases to require the person who is subject to removal to remain outside the State for a period of time, depending on the circumstances of the case. This could apply, for example, if the person had a criminal conviction in the State. The procedures to apply in such cases would need to be elaborated in the legislation.

It is considered that there are circumstances where a person should not be subject to the process of summary removal outlined above. These include the following:

- a person who is the dependent family member of an EU national (usually by marriage),
- a person who is the parent of an Irish-born citizen child, or
- a failed asylum claimant who has a continuing pre-existing permission to remain in the State on some other basis (such as a work permit or business permission).

The present deportation process under section 3 of the Immigration Act 1999 provides a framework for consideration of the question of removal from the State in these circumstances. Possible amendments to this process should be examined in the development of the Immigration and Residence Bill. A person who is to be the subject of a removal should be given a short period of time after notification of removal within which to demonstrate that he/she comes within one of these categories. The administrative arrangements for the making of removals orders should be set out in the legislation with the possibility that some details may be set out in secondary legislation.

There should also be the possibility for the Minister to vary the period of exclusion involved in a deportation order, depending on circumstances. At present exclusion is permanent (although the Minister does have the power to revoke deportation orders). This may not be appropriate in all cases. It should be considered whether the Minister should have power to make schemes under secondary legislation, which could set out circumstances where less onerous exclusion terms are involved.

The implications of these proposals are that the removal of a person illegally present in the State should be virtually automatic (except in the special cases mentioned). There should be no opportunity for such persons to make a case for staying on in the State on grounds of health, poverty, education or other factors. If the person wishes to return to the State he/she should apply to do so from outside.

If the individual in question has not complied with a removal order within the set period then the possibility of a removal order being converted automatically into a deportation order, without the need for the process of considering the case under section 3 of the Immigration Act 1999, should also be considered. This could have significant effect in encouraging compliance with the less serious removals order.

**Review procedures**

Any provision for legislation that reviews removals cases should not in general have suspensive effect. To do otherwise is to risk circumvention of immigration controls by people who seek to enter or remain in the State while their appeals or reviews are being considered.
Voluntary return

For a number of years the State has been operating a number of voluntary return options to asylum seekers and persons illegally in the State. The IOM has been involved in the operation of a number of programmes which have provided assistance to persons returning to their countries of origin and, in some cases, assistance in reintegrating there. The Immigration and Residence Bill should provide formally for such schemes, recognising the importance of voluntary return in allowing persons a dignified option to return.

Repayment of return costs

The process of deporting a person involves a lot of resources and time and is costly to the Irish taxpayer. There is a case to be made for requiring a person who has been subject to deportation and who wishes to return to Ireland, to repay the cost to the State before he/she is allowed to return. This obligation could be limited to a period of years after the deportation. The legislation should provide the power for the Minister to introduce such a system through secondary legislation. This should have the effect of encouraging people to comply voluntarily with removals or deportation orders.

A person who has availed of assisted voluntary return and who wishes to return to Ireland soon after his/her departure should also be required to repay the cost. This would discourage abuse of voluntary return assistance.
14. Administration and Delivery of Services

Key Proposals

- The legislation should contain any provisions necessary for the reorganisation of immigration, asylum and citizenship services in the Irish Naturalisation and Immigration Service (INIS).
- User charges will play an important role in providing resources to the INIS to develop service-based initiatives.
- The roles and functions of immigration officers should be set out in legislation.
- The legislation should set out the powers of the Minister to appoint immigration officers and to suspend or revoke such appointments, and the procedures to be followed.
- Legislation should provide the Minister with power to give instructions to immigration officers and for the development of a body of immigration instructions, or manual, which should in general be publicly available.
- The role of a senior immigration officer in reviewing decisions should be set out.
- The legislation should provide powers for immigration officers to undertake necessary functions outside the State and to co-operate in international operations.

Background

The current immigration system in Ireland involves a number of bodies dealing directly with the admission of migrants and a greater number dealing with migrants after they have arrived in Ireland.

Those bodies dealing with the admission of migrants include:

- the Department of Justice, Equality and Law Reform, (immigration policy generally, visa policy and processing, leave to remain, and security issues),
- the Department of Foreign Affairs (visa processing and issuance),
- the Department of Enterprise, Trade and Employment (work permit issuance and labour immigration policy generally), and
- the Garda National Immigration Bureau (border controls, registration of non-nationals and deportation, anti-trafficking measures and investigations).
While the respective roles of these bodies are clear to those involved in the administration of the system, and there is close co-operation and ongoing liaison between the bodies, it can sometimes be difficult for customers to understand the divisions of responsibilities. For example there is some overlap in the process of applying for a work permit and a visa. Also, the distinction between applications for working visas (which go to the Department of Foreign Affairs) and work permits (which go to the Department of Enterprise, Trade and Employment) may not be immediately clear to potential applicants.

In addition a range of other Departments and bodies are involved in providing services to non-nationals as part of the provision of services to customers generally — such as the Department of Social and Family Affairs, the Revenue Commissioners, and the Departments of Education & Science, Health & Children and Environment, Heritage and Local Government.

Existing immigration legislation makes no reference to the nature or structure of immigration services but does set out functions and powers of immigration officers. This has been most recently restated in the Immigration Act 2004. This and previous legislation sets out the roles of the Minister, of immigration officers and of Gardaí.

**International study**

The IOM examined the models of administrative structures used in the immigration field internationally and found a wide diversity of systems. The UK immigration service is in the Immigration and Nationality Directorate which is part of the Home Office. Elsewhere in the EU immigration services are generally part of the Justice, Interior or Migration Ministries, though police forces are in many cases responsible for border control and enforcement functions.

In Australia the Department of Immigration, Multicultural and Indigenous Affairs (DIMIA) is responsible for the full range of services concerning the admission and status of migrants. In Canada this range of services is the responsibility of a centralised body: Citizenship and Immigration Canada (CIC). In both Australia and Canada the services also have responsibility for the integration of migrants. In the US immigration is a matter for the Department of Homeland Security (which now incorporates the former Immigration and Naturalisation Service (INS)), though visas remain a matter for the State Department. The study concludes that, regardless of the administrative arrangement, immigration issues require a “whole of government” approach because of the range of issues to be addressed.

The report also mentions the importance of appropriate data collection to ensure quick and efficient immigration services. It also notes the importance of being able to crosscheck data in order to protect the immigration system and other areas of impact in the public service. The value of research based on this data is also noted, for example, to assist in targeting resources and focusing activity to respond to developing trends.

**Public consultation on immigration policy**

The public consultation on immigration policy asked for submissions on what administrative arrangements would efficiently co-ordinate the various Departmental functions and interests. Several contributors called for the Department of Justice, Equality and Law Reform to have
sole responsibility for the immigration system. Several contributions called for one single immigration authority. There were also suggestions for a national observatory to deal with labour migration issues, and a policy forum to examine appropriate levels of immigration.

**EU proposals**

EU proposals on immigration policy have generally left it to Member States to decide how they organise their immigration services. However, policies which may have some implications for the delivery of services include the following:

*European Border Management Agency*: the Agency which begins operations in 2005 will co-ordinate the management of external borders.

*Immigration liaison officer network*: participation in this will require international co-operation and sharing of information.

*Co-operation in visa issuance*: proposals to establish a combined EU visa office in third countries will not involve Ireland or the UK, but may provide an opportunity for visa service improvement in the areas concerned if Ireland can be associated in some way with the developments.

*Visa Information System (VIS)*: the development of a system sharing information between Member States on visa applications will provide for improved security in visa issuance. While not participating directly in the proposals, Ireland will consider how it can be associated with these developments.

*Proposed Directive on economic migration*: the original Commission proposal envisaged the issuance of a combined residence and work permit. Implicit in this would be closer co-operation on issuance of work permits and residence permits.

*ARGO*: the programme providing funding for administrative co-operation between Member States services dealing with immigration, frontiers and asylum envisages greater administrative and operational co-operation between Member States.

It is essential that future immigration structures in Ireland are such that they can benefit from EU developments in these and other areas.

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

In March 2005 the Government approved the establishment, on a non-statutory basis in the Department of Justice, Equality and Law Reform, of a new Irish Naturalisation and Immigration Service (INIS) to oversee a single admission procedure. It was considered that there would be strong advantages in incorporating within one organisation, all functions and staff dealing with the admission of non-nationals to the State, ranging from applications to enter the State (including asylum applications), the management and processing of applications for legal residency in the State for whatever purpose, the naturalisation process and the enforcement elements of this framework.

In relation to the work permit function, arrangements will proceed on the basis of a virtual link between the systems in the Department of Enterprise, Trade and Employment and in the INIS. The economic migration policy function will remain in the Department of Enterprise, Trade and Employment. This approach will be reviewed within 2 years.
relation to visas, the INIS will take over the management of all visa operations in Dublin. Staff of the Department of Foreign Affairs will continue to deal with visa applications in most Irish embassies and consular offices abroad.

When the new arrangements are in place the two agencies responsible for processing asylum applications, namely the Office of the Refugee Applications Commissioner (ORAC) and the Refugee Appeals Tribunal (RAT) will also report, within the framework of the Refugee Act 1996, through the Irish Naturalisation and Immigration Service to the Minister. It is also intended that similar reporting arrangements will apply to the Reception and Integration Agency which has responsibility for the reception and accommodation of asylum seekers and the resettlement of/integration of refugees.

It is intended to create within the new service an Immigrant Integration Unit to promote and co-ordinate social and organisational measures across the whole spectrum of Government, for the acceptance of lawful immigrants into Irish economic and cultural life.

**Role of information and communications technology**

There is a growing need for the sharing of information between Departments so as to ensure that the co-ordinated “whole of government” approach to immigration matters is successfully implemented. The system in the INIS will have to be developed so that all functions are combined in related databases and that there is full sharing of information on all cases within the immigration service and with other relevant Departments. This would provide for more informed decision making and will meet key objectives in streamlining customer service and enhancing the State’s capacity to combat fraud and abuse.

There are currently proposals in a number of the areas concerned for new and improved computer systems. These include the proposed visa system being developed in conjunction with the Department of Foreign Affairs, the works permits system in the Department of Enterprise, Trade and Employment and the development of the information technology infrastructure in the asylum area of the Department of Justice, Equality and Law Reform. Work is also at a preliminary stage in developing the second stage of the asylum IT project which will be a new immigration and citizenship system which will seek to streamline the management of all information in the Department of Justice, Equality and Law Reform on non-nationals from their entry to the State to their departure from it, or to their becoming Irish citizens. In addition, tenders will shortly be invited to facilitate the expansion of the GNIB Registration System, to provide for the fingerprinting of all non-EEA nationals.

The INIS will maintain existing close links with the Garda National Immigration Bureau (GNIB), which will remain as a full part of the Garda Síochána. Its functions in relation to border control, registration, deportation and enforcement are capable of being delivered by the force in full co-operation with the INIS and with the Department of Enterprise, Trade and Employment in relation to abuses of the economic migration system.

In the wider public service, there will be links with databases such as those in Revenue and the Department of Social and Family Affairs so that appropriate data can be shared within the wider public service. This will improve the delivery of services to non-nationals by verifying their status within the system and will also assist in eliminating abuses of the system. These developments should be made in conjunction with the proposed developments
on public service cards. The use of biometric technology in this area should also be explored. The assignment of staff from other Departments to the INIS on a temporary basis to deal with issues of concern to them will be considered with a view to advancing the whole of government approach to immigration issues.

**Benefits of a new service**

The proposed new structure would have significant benefits from the point of view of customer service and the strengthening of the effectiveness and integrity of the State’s immigration system, specifically:

- a single contact point or “one stop shop” for applications for entry to the State — combining the current work permit and visa application processes,
- a clearer system involving more streamlined processes,
- improved sharing of information in linked systems should simplify decision making,
- improved service times as applications do not have to be submitted to a number of organisations, and
- improved control and enforcement mechanisms.

The concentration of the existing staff and the services currently delivered by a number of bodies into a single cohesive service will improve the scope for efficiencies and for improved use of existing resources in the areas concerned.

The benefits of the new Service should become clear from an early date and within a year there should be a significantly improved service with a much clearer customer focus and with revised organisational procedures and computer systems in place to deliver improved customer service and to strengthen enforcement mechanisms.

**Issues and proposals**

**Establishment of INIS**

There have been calls in the past for the creation of an “independent” immigration agency. What is clear from international experience is that no immigration service operates independently of Government. In the IOM’s international study, all immigration bodies examined operate either as a part of, or in the direct control of, the Ministers responsible for migration affairs. Immigration is a crucial function of the State in such sensitive areas as ensuring the economic and social wellbeing of the State and its people, and in the protection of the security of the State. It is considered therefore that immigration is a matter which must remain within the direct control of Ministers and of the Government.

The Government’s decision is to establish INIS on a non-statutory basis as an executive office within the Department of Justice, Equality and Law Reform. However, any necessary legislative changes which may be required will be considered in the development of the Immigration and Residence Bill.

**Charges for services**

The Service should be in a position to generate funding to allow for development of its
services. Non-nationals seeking entry to Ireland and obtaining immigration services should pay fees which reflect the costs of providing those services and also the significant benefits accruing to them. User charges will play an important role in providing the resources to develop service-based initiatives.

**Role of the Immigration Officer**

The legislation should contain a generic definition of an immigration officer. At present immigration officers are generally members of An Garda Síochána or officials of the Department of Justice, Equality and Law Reform. However, the legislation should permit the Minister to appoint others as immigration officers — such as customs officers and officials of other Government Departments, where appropriate. Indeed, with international co-operation in the area of immigration, there is a case for there being a power to make temporary appointments in the case of members of immigration services from abroad who are operating in Ireland on joint operations with their Irish counterparts.

The procedures for appointing immigration officers should be set out as well as those for suspending, withdrawing or revoking such an appointment. The powers of an immigration officer will be set out more broadly within the legislation as a whole, in relation to specific areas of activity such as border controls or removals.

The Minister should have the power to give instructions to immigration officers. This should be in writing, but should not need to be in the form of secondary legislation, except where that is specified in the primary legislation. These instructions combined would form an immigration officer's manual. This manual should be available publicly, though there may be instructions for dealing with, for example, security type cases or details of checks to be carried out, which should not be in the public domain.

There may also be a need for the designation of “Senior Immigration Officers” for the purposes of reviews or appeals of decisions.

**Review mechanisms**

A question to be addressed is whether reviews should be undertaken within the same work area as made the original decision, though at a higher level than the original decision maker (as is currently the case in relation to visa decisions); whether it should be done in a separate area of the organisation; or whether in certain cases it should be done by an independent or quasi-independent body. Another question is whether it is necessary to specify in legislation how, or by whom, the review is to be undertaken — it may be sufficient to state that certain decisions may be subject to review and to decide the review arrangements administratively.

The requirements of transparency and fair procedures indicate that there should be a process whereby persons aggrieved by adverse immigration decisions should have the opportunity to have those decisions looked at afresh. It has been suggested by some commentators that review mechanisms should operate by way of appeal to an independent body. However the nature of immigration is that it is ultimately a matter for the discretion of the Minister whether or not a non-national is permitted to enter or be in the State. In such circumstances, appeal to an independent body would be inappropriate.
It is likely that the approach in the Bill will be to provide in general for internal review mechanisms rather than independent appeal. The possibility of external appeal should be more limited. Legislation could set out the areas in relation to which an external appeal might be possible.

In review mechanisms, the fact that a review has been sought will not generally tend to stay the practical application in the meantime of the first-instance decision, in particular as regards entry to the State and refusal of entry. Seeking a review of a refusal of permission to enter the State should not as a rule serve to delay the return of the person to the point of embarkation.

**International co-operation and work outside Ireland**

The legislation should provide for Irish immigration officers and officials to work outside the State, for example to work as immigration liaison officers, airline or ferry liaison officers, escorts in removal or deportation cases, and to participate in international missions. This should allow Irish staff to participate in EU work in the area of border controls (such as with the European Border Management Agency), removals, and combating trafficking of human beings.