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Measuring Irregular Migration

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Ireland Country Brief on Irregular Migration Policy Context

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THE MIRREM PROJECT

MIRREM examines estimates and statistical indicators on the irregular migrant population in Europe as well as related policies, including the regularisation of migrants in irregular situations.

MIRREM analyses policies defining migrant irregularity, stakeholders' data needs and usage, and assesses existing estimates and statistical indicators on irregular migration in the countries under study and at the EU level. Using several coordinated pilots, the project develops new and innovative methods for measuring irregular migration and explores if and how these instruments can be applied in other socio-economic or institutional contexts. Based on a broad mapping of regularisation practices in the EU as well as detailed case studies, MIRREM will develop 'regularisation scenarios' to better understand conditions under which regularisation should be considered as a policy option. Together with expert groups that will be set up on irregular migration data and regularisation, respectively, the project will synthesise findings into a Handbook on data on irregular migration and a Handbook on pathways out of irregularity. The project's research covers 20 countries, including 12 EU countries and the United Kingdom. This Deliverable of 15 country briefs is developed as part of Work Package 3 Politics: Understanding Legal and Policy Contexts.

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KEYWORDS

Irregular migration; policy measures; pathways into and out of irregularity

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Ireland

This Brief provides an abridged overview of the national policy landscape on irregular migration in the country, based on a more extensive policy analysis. It also provides an overview of the main types of migrant irregularity that emerge and the pathways into and out of irregularity, including regularisations as relevant. Annexed to this Deliverable is also an overview of the mapped legal and policy frameworks.

1.1 POLICY PRIORITIES

- **Regularisation**

Since the early 2000s Ireland has undertaken targeted time-bound regularisation initiatives for discrete categories of irregular migrant. In 2022 Ireland implemented the Regularisation of Long-Term Undocumented Migrants Scheme, a broader regularisation scheme focused on long-term undocumented migrants and a related scheme for individuals who had been in the international protection process for at least 2 years prior to commencement of the scheme: the International Protection Process Regularisation Scheme 2022 was set up following the 2020 Day Report on the International Protection Process (Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process, 2020).

- **Reforming the international protection system**

Long-standing criticism of international protection applicants' living conditions and delays in processing their applications has generated efforts to reform the international protection application process, including two regularisation schemes aimed at long-stayers in the international protection system. The 2015 McMahon Report on improving the international protection process (Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, 2015) has led to up to 1000 individuals being granted leave to remain, while the International Protection Process Regularisation Scheme 2022, set up following the 2020 Day Report, has seen over 1,585 applicants granted permission to remain.

- **Addressing the situation of irregular migrant children**

The situation of children under the age of 16 who were born in Ireland to irregular migrant parents, or who came with or joined their irregular migrant parents in the

state, has led to civil society advocacy and political efforts to pass legislation to facilitate their acquisition of citizenship. There is particular concern for the former, whose irregularity stems from a constitutional referendum in 2004 that modified what had until then been an unqualified, universal *ius soli* system of allocation of Irish citizenship. Citizenship rights for children born in Ireland featured in the manifestos of three political parties in the 2020 general election.

1.2 OVERVIEW OF THE IRISH POLICY FRAMEWORK

See Annex 1 for an overview of the legal and policy frameworks mapped for this country.

1.2.1 Policy implementation measures

- **2022 Regularisation Schemes**

Since 2010 Ireland has operated a number of de facto regularisation measures. In 2022, Ireland implemented the Regularisation of Long-Term Undocumented Migrants Scheme that significantly reduced the size of the state's irregular migrant population. In parallel, the International Protection Process Regularisation Scheme provided an opportunity for regularisation of international protection applicants who had been waiting for at least two years for a decision on their protection application.

- **2018 Former International Student Regularisation Scheme**

This Scheme was open to irregular migrants who arrived to study in Ireland between 1 January 2005 and 31 December 2010 and subsequently became undocumented. The Scheme addressed the consequences of a rule change limiting formerly unlimited student visa permission to a maximum of 7 years (Sheridan, 2019, 125 - 126). The Scheme was prompted by the Supreme Court ruling in *Luximon & Balchand v. Minister for Justice*, exemplifying both the reactive nature of Irish policymaking on irregular migration and the tendency to provide pathways out of irregularity for persons who had formerly been lawfully present.

- **Reactivation Employment Permit (REP) Scheme**

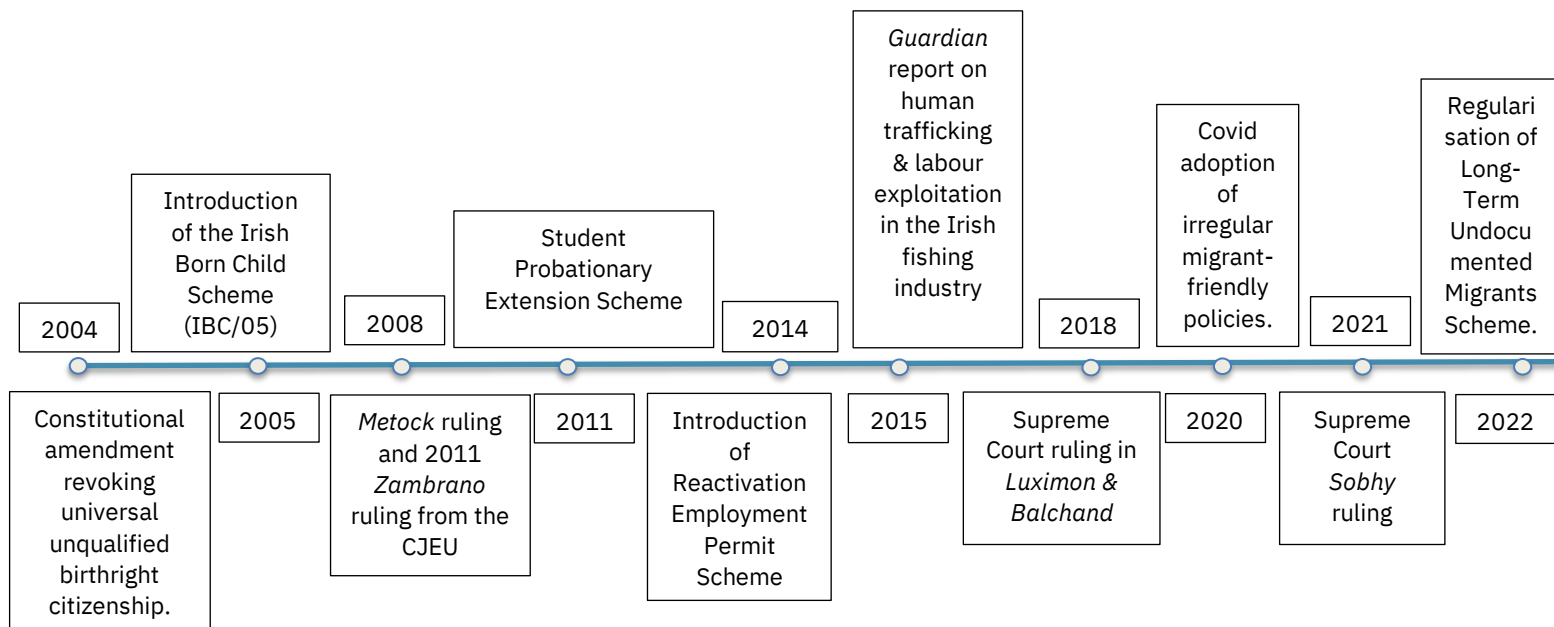
The REP Scheme, introduced in 2014, enables migrants who entered the state on a valid employment permit but who fell out of the system through no fault of their own, or who were exploited in the work place, to work legally again. As well as creating a pathway out of irregularity for its beneficiaries, the REP helps prevent illegal employment. However, only 27 REPs were granted between 2017-2022.

- **Atypical Working Scheme (AWS) for non-EEA Crew in the Irish Fishing Fleet**

In response to international media attention on exploitation of undocumented migrants within the Irish fishing industry (Lawrence et al., 2015), in 2015 the AWS for non-EEA workers in the Irish fishing industry was put in place to facilitate regularisation of such fishers. Restrictive eligibility criteria meant that only 152 individuals were granted permission to work for 12 months under the scheme.

- Pandemic-Era Measures to Prevent Entry into Irregularity**
 By automatically renewing residence permissions between 20 March 2020 and 15 January 2022, the state ensured people did not enter into an irregular situation and could continue to work and access services as required. Similarly, the COVID-19 Employment Permits System Contingency Arrangements 2020 meant that employment permit applications, and renewals of existing permits, were processed through a fully online process during the pandemic, thereby preventing some migrants from falling into irregularity.
- Pandemic-Era Measures Impacting Irregular Migrants**
 Pandemic Unemployment Payments for individuals who lost jobs as a result of the health emergency extended to undocumented migrants, thereby mitigating their exposure to financial uncertainty and consequent vulnerability to exploitation and trafficking (Cunniffe & Ayodele, 2022, 71). A de facto firewall policy was also introduced in 2020: the Department of Justice assured irregular migrants that during the pandemic if they accessed Department of Social Protection services or healthcare services, their details would not be shared with the Department of Justice.

1.2.2 Policy evolution: Main turning points



1.2.3 Policy impact

- **Increase in likelihood of irregular migration and risk of entry into irregularity**

The lack of legal channels for immigration to Ireland and the demands of the Irish labour market, and of immigrants wishing to join family in Ireland, leads to irregular migration. The difficulties faced by many lawfully present migrants in renewing or extending their lawful stay results in some migrants falling into irregularity.
- **Reduction in irregular migration via sham marriages**

Operation Vantage was established in 2015 by the Garda National Immigration Bureau (GNIB) to investigate irregular migration and abuse of EU free movement rights through marriages of convenience. It reportedly led to a significant reduction in the number of foreign couples seeking to marry in Ireland and, in 2018, the deportation of almost 200 irregular migrants (Brady, 2018; MacNamee, 2017).
- **Detection of irregular entry across the land border with Northern Ireland**

Operation Sonnet, set up to combat immigration abuses within the Common Travel Area (CTA), resulted in 774 people being refused “leave to land” along the land border with Northern Ireland during 2015-2017. Of these, 20 people claimed asylum, while the remaining 754 were removed from the state (*Seanad Éireann Debate (25th Seanad)*, 2018). As Irish and British citizens may travel passport-free within the CTA and across the land border between Northern Ireland and the Republic, checks conducted as part of Operation Sonnet have given rise to concerns about racial profiling (McKinney, 2019).
- **Reduction in number of international protection applicants likely to remain in Ireland in an irregular status**

The McMahon Report on Improving the International Protection Process saw around 1,000 individuals granted leave to remain by 2017, many of whom would have otherwise fallen into irregularity. Similarly, the International Protection Process Regularisation Scheme 2022, set up following the Day Report, has seen over 1,585 applicants granted permission to remain, some of whom may have fallen into irregularity in the state in the absence of such an initiative.
- **Reduction in Size of Irregular Migrant Population**

The Regularisation of Long-Term Undocumented Migrants Scheme 2022 is likely to have resulted in regularisation of up to half of Ireland’s estimated 15,000-17,000 irregular migrants.

1.2.4 Policy Challenges in Addressing Migrant Irregularity

- Low Rate of Enforcement of Deportation Orders**
 Stakeholder interviews indicate that Ireland “is not a state that aggressively pursues people who are undocumented in the country”, at least partly due to the “huge resourcing issue” plaguing the Irish immigration system.
- Inefficient operation of the Irish immigration system**
 Interviews with stakeholders paint a picture of a system plagued by delays, time-consuming processes, a lack of digitalisation and lack of joined-up thinking and processes in the Department of Justice, which is responsible for immigration through the Immigration Service Delivery (ISD) and Garda National Immigration Bureau (GNIB). This increases the risk of falling into irregularity, and extends the time migrants remain in irregularity awaiting the outcome of applications for status.
- Lack of effective routes out of irregularity**
 Most regularisation initiatives implemented by Ireland have been time-bound. The primary permanent mechanism for transitioning out of irregularity is through engagement with the deportation process under section 3 of the Immigration Act 1999. This is a discretionary, onerous, paper-based process that may result in a deportation order, thereby disincentivising irregular migrants from engaging with this process and leading them instead to remain in Ireland in an irregular status.

Table 1: Relevant Irish institutions

Sr. No.	Institution/ Department	Responsibilities	Web link
1.	Workplace Relations Commission	Main tasks include inspection of employment rights compliance, information provision, processing of employment agency licences. Along with An Garda Síochána (the Irish national police service), it is the main national institution with responsibility for identification of illegally employed non-EU nationals.	Link (EN)
2.	IOM	IOM Ireland coordinates the Irregular Voluntary Assisted Return and Reintegration Programme (IVARRP) and Voluntary Assisted Return and Reintegration Programme (VARRP)	Link (EN)
3.	Department of Justice	Responsible for border control, visas, residence permissions, international protection, deportation, citizenship. Its migration management responsibilities are carried out by the Immigration Service Delivery (ISD) and Garda National Immigration Bureau (GNIB).	Link (EN)

4.	Immigration Service Delivery (ISD)	ISD, formerly the Irish Naturalisation and Immigration Service (INIS), is an executive office of the Department of Justice. It is responsible for the administrative functions of the Minister for Justice in the areas of: immigration; visa; international protection; citizenship matters. It provides frontline immigration services. For example, applications to the 2022 Regularisation Scheme were made electronically through the ISD online portal.	Link (EN)
5.	Repatriation Division of ISD	Its Case Processing Unit considers and decides upon cases of failed asylum seekers or persons found illegally in the State who were served a notification of intention to deport under section 3 of the Immigration Act 1999 and requests under section 3(11) to revoke a deportation order. Its Arrangements Unit makes practical arrangements to effect deportations, in close cooperation with the GNIB.	Link (EN)
6.	Border Management Unit (BMU)	The BMU Manages entry through Dublin Airport.	Link (EN)
7.	The Garda National Immigration Bureau (GNIB)	The GNIB is an office of An Garda Síochána . It is responsible for all Garda matters that relate to immigration on a national basis such as border control; registration of immigration permission outside of Dublin (registration of immigration permission for people living in Dublin is operated by ISD); granting permission to remain; deportations and investigations (irregular immigration and human trafficking).	Link (EN)
8.	The Human Trafficking Investigation and Coordination Unit	Part of GNIB. Investigates human trafficking cases.	Link (EN)
9.	The International Protection Office (IPO)	Operates under ISD with responsibility for processing asylum applications and appeals. Responsible for processing applications to the International Protection Process Regularisation Scheme 2022.	Link (EN)
10.	Department of Enterprise, Trade	Responsible for issuing employment permits, including the reactivation employment permit.	Link (EN)

	and Employment (DETE)		
11.	Economic Migration Policy Inter-Departmental Group	<p>Convened to oversee a 2018 Review of Economic Migration Policy, has remained in place to oversee implementation of the recommendations of the review and to monitor the guiding principles and operation of the regime on an ongoing basis.</p> <p>It oversees the twice-yearly review process, and provides cross-sectoral expertise which enables decisions to be made in respect of skills and labour issues.</p>	Link (EN)

1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN IRELAND: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY

Table 2: Categories of migrant irregularity in Ireland

Most relevant categories of migrants in an irregular situation	Description (who does this category apply to, what conditions may lead to this category, and what are the implications of being in such a situation)
Unlawfully present non-nationals (irregularly-staying migrants)	<p>Section 5 of the Immigration Act 2004 provides that, with the exception of asylum seekers and refugees, any non-national in the state without the necessary relevant permission is “for all purposes unlawfully present in the State”.</p> <p>This category applies, for example, to non-nationals refused permission to land due to lack of a necessary visa or employment permit; lack of valid documents establishing identification; being subject to a deportation order or exclusion order.</p> <p>Similarly, this category applies to persons who have legally entered but then stayed in Ireland beyond the allowed duration of their permitted stay or in contravention of other conditions attaching to their permission to be in the state.</p> <p>Penalties in Ireland for those guilty of an offence under the 2004 Act: a fine not exceeding €3000, imprisonment not exceeding 12 months, or both.</p> <p>Such non-nationals may be required to stay in a particular place, comply with reporting requirements, and surrender ID documents to facilitate their removal from the state.</p>

	<p>UK and EU citizens are not considered to be non-nationals for the purposes of the Immigration Act 2004 (as per sections 11 and 12), and are not required to register with immigration authorities.</p>
<p>Rejected international protection applicants</p>	<p>When international protection applicants are notified that their application has been unsuccessful, they are informed pursuant to section 48 of the International Protection Act 2015 that they have 5 days to confirm that they will voluntarily return to their country of origin. Section 51 provides for a deportation order to be issued in respect of unsuccessful applicants who do not accept the option of voluntary return. This is the point at which international protection applicants become irregular migrants, as reflected in the fact that deportation orders issued under section 51 of the International Protection Act 2015 are deemed to be deportation orders made under section 3 of the Immigration Act 1999.</p>
<p>Irregular Migrant Children under 16</p>	<p>Non-nationals born in Ireland, and non-nationals under 16, are exempted from the obligation under section 9(6) of the Immigration Act 2004 to register with the immigration authorities. This includes children born in Ireland to irregular migrant parents; immigrant children who travel with or join their irregular migrant parents in Ireland; immigrant children whose parents have entered into irregularity after an initial lawful stay in the state.</p> <p>Such children may encounter difficulties when they reach adulthood and seek to access tertiary level education or the labour market. Attempts to register with the immigration authorities will effectively bring their irregular status to the attention of the state.</p>
<p>Most relevant categories of migrants with a reasonable claim to a provisional status</p>	<p>Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)</p>
<p>Victims of trafficking</p>	<p>The Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking (March 2011) set out criteria for the recovery and reflection period and temporary residence for trafficking victims. They provide that an individual identified as a suspected victim of trafficking shall be granted permission to be in the state for 60 days for recovery and reflection. Where a person has severed all contact with the alleged perpetrators of the trafficking, and it is necessary to allow the suspected victim to assist authorities in an investigation or prosecution arising in relation to the trafficking, a temporary renewable residence permission valid for an initial 6 months will be granted.</p>

EU citizens from another EU MS without residence rights	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
<p>EU citizens who remain longer than 3 months in Ireland without employment and without sufficient resources to avoid becoming an unreasonable burden on the social assistance system; who pose a serious threat to public policy or public security.</p>	<p>Statutory Instrument 548/2015 European Communities (Free Movement of Persons) Regulations gives effect to the EU Citizens Directive (Directive 2004/38/EC). Regulation 20 empowers the Minister to issue a removal order for EU citizens and their family members no longer entitled to be in the state because they are not in compliance with the conditions of the Directive. This occurs, e.g., where an EU citizen resides longer than 3 months in the state but is unemployed and does not have sufficient resources to avoid becoming an unreasonable burden on the states' social assistance system. From 2012-2019, annual forced removals of EU citizens consistently numbered between 55-100. In 2020-2021, due to the pandemic, this fell to below 40 each year.</p>
<p>EU citizens who represent a danger for public policy or security because their personal conduct poses a genuine, present and sufficiently serious threat to a fundamental interest of society.</p>	<p>Such EU citizens may be issued with a removal order. However, a removal order may be issued in respect of an EU citizen who is a permanent resident in a host EU state only on serious grounds of public policy, or public security. When it comes to an EU citizen who has been living more than 10 years, a removal order may only be made on imperative grounds of public security.</p>

1.3.1 Pathways into and out of irregularity

- **Inadequate channels for legal migration**

Ireland's limited channels for legal migration mean that persons seeking to enter the country to join family or meet Irish labour market demands may not meet the criteria for family reunion or a work permit. They may therefore enter on a tourist visa (if such a visa is required for the individuals in question) and remain in the state on a long-term basis in an irregular situation.

- **Obstacles to extension or renewal of lawful permission to remain**
Under the Immigration Act 2004, immigration officers have a high degree of discretion in deciding whether to register or renew a person's immigration status. The conditions for renewal, such as not being an "undue burden on the State", are vague. Migrants who have received social welfare payments may be treated as failing to satisfy this condition, thereby having their renewal request denied and falling into irregularity if they fail to leave the state. Entry into irregularity is also a risk for those present on a specific permission like a student visa with no prospect of renewal or changing to a work permit, or for an individual on a work permit who leaves his employer due to exploitation, or whose permit expires before a new job can be found.
- **Section 3 of the Immigration Act 1999**
The primary route out of irregularity is through engagement with the deportation process under section 3 of the Immigration Act 1999. This is a discretionary, onerous, paper-based process that may result in a deportation order, thereby disincentivising irregular migrants from engaging with this process and leading them instead to remain in Ireland in an irregular status.
- **EU law pathways out of irregularity**
EU law sometimes operates to provide irregular migrants with a pathway out of irregularity. For example, the CJEU ruling in *Metock & Others v. Minister for Justice* in 2008 means that any EU citizen exercising free movement rights under Directive 2004/38 is entitled to be joined in the host state by their non-EU spouse irrespective of when and where the marriage took place and of how the non-EU spouse entered the host state. Similarly, the 2011 *Zambrano* ruling means that the non-EU parents of an EU citizen child are entitled to live and work in an EU member state if denial of such rights would require the EU citizen child to leave the territory of the EU.

1.3.2 Regularisation

- [2022, Regularisation of Long-Term Undocumented Migrants Scheme](#)
 - [2022, Regularisation of Long-Term Undocumented Migrants Scheme \(2\)](#)
Eligibility criteria:
 - Continuous undocumented residence for 4 years prior to 31 January 2022;
 - Good character;
 - Proof of identity;
 - Proof of each undocumented year of residence in the state;
 - payment of an application fee (€550 for an individual applicant and €700 for a family unit application).
 - [2022, International Protection Process Regularisation Scheme](#)
Eligibility criteria:
-

- Submission of application for international protection at least 2 years prior to the commencement of the scheme, i.e., before 7 February 2020.
- [2018, Former International Student Regularisation Scheme](#)
- [2018, Former International Student Regularisation Scheme \(2\)](#)

Eligibility criteria:

- arrival to study in Ireland between 1 January 2005 and 31 December 2010;
- not having held an alternative permission in the intervening period;
- no criminal record;
- payment of €700 application fee.

References

- Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process. (2020). Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process. <https://nascireland.org/sites/default/files/Report%20of%20the%20Advisory%20Group%20on%20the%20Provision%20of%20Support%20including%20Accommodation%20to%20Persons%20in%20the%20International%20Protection%20Process.pdf>
- Brady, T. (2018, June 20). Operation Vantage: Nationwide sham marriage investigation leads to 200 deportations. Irish Independent. <https://www.independent.ie/irish-news/operation-vantage-nationwide-sham-marriage-investigation-leads-to-200-deportations/37029433.html>
- CJEU, Zambrano, Case C-34/09 (CJEU March 8, 2011). <https://curia.europa.eu/juris/document/document.jsf?text=&docid=80236&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=6892524>
- Cunniffe, E., & Ayodele, O. (2022). Detection, identification and protection of third-country national victims of human trafficking in Ireland (Report 139; ESRI Research Series). ESRI and EMN Ireland. <https://doi.org/10.26504/rs139>
- Lawrence, F., McSweeney, E., Kelly, A., Heywood, M., Susman, D., Kelly, C., & Domokos, J. (2015, November 2). Revealed: Trafficked migrant workers abused in Irish fishing industry. The Guardian. <https://www.theguardian.com/global-development/2015/nov/02/revealed-trafficked-migrant-workers-abused-in-irish-fishing-industry>
- Luximon & Balchand v. Minister for Justice (2018).
- MacNamee, G. (2017, July 30). Number of foreign couples attempting to marry in Ireland drops 58% since new laws. The Journal. <https://www.thejournal.ie/sham-marriages-ireland-gang-3502733-Jul2017/>
- McKinney, C. J. (2019, September 19). Cross-border travellers face “racial profiling”, says human rights group. The Journal. <https://www.thejournal.ie/cross-border-immigration-racial-profiling-checks-4814767-Sep2019/>
- Metock & Others v. Minister for Justice (July 25, 2008).
- Seanad Éireann debate (25th Seanad) (2018). <https://www.oireachtas.ie/en/debates/debate/seanad/2018-01-31/3>
- Sheridan, A. (2019). Annual report on migration and asylum 2019: Ireland (ESRI Survey and Statistical Report Series). ESRI. <https://www.esri.ie/publications/annual-report-on-migration-and-asylum-2019-ireland>
- Sobhy v the Chief Appeals Officer, Minister for Employment Affairs and Social Protection and the Attorney General (2021).
- Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers. (2015). Final Report.

ANNEX 1: Policy and Legal Frameworks

Laws and policies on migrant irregularity

Sr. No.	Title of policy/law	Year	Description	Weblink to source
1	Immigration Act	1999	<p>Section 3 sets out the framework for the issuing of and revocation of deportation orders, and is therefore of particular importance for irregular migrants in Ireland. The limited pathways out of irregularity mean that Section 3 is an important de facto route to regularisation. Section 3(3) sets out the process for an individual, in respect of whom the Minister proposes to issue a deportation order, to make representations to the Minister as to why the deportation order should not be made. Section 3(11) empowers the Minister to revoke or amend a deportation order.</p> <p>Section 5 provides for the arrest and detention for up to a combined maximum period of 8 weeks of non-nationals for the purposes of effecting removal.</p>	Link (EN)

2	Irregular Voluntary Assisted Return and Reintegration Programme (IVARRP)	2001	<p>Under this IOM-coordinated programme, flights home are paid and, where required, the IOM will assist in securing travel documents and give assistance at the airport, both at departure and arrival. Persons availing of this programme can apply for reintegration assistance to start a business or enter further education or training when back in their country of origin. This takes the form of an 'in-kind' rather than cash payment. There is a separate IOM programme to assist voluntary return of unsuccessful applicants for international protection.</p>	Link (EN)
3	Immigration Act	2003	<p>Sections 2 and 3 provide for the punishment of those who bring to the state non-nationals without the necessary documentation required for entry to or transit through the state.</p> <p>Section 5 regulates the arrest, detention and removal from the state of persons refused leave to land who have been in the state for less than 3 months.</p> <p>Section 8 obliges public authorities to share with each other information concerning non-nationals for the purposes of administration of immigration law, whenever so requested.</p>	Link (EN)

4	Employment Permit Acts 2003 and 2006	2003 and 2006	<p>Non-EU nationals generally may not enter into employment in Ireland without holding a work permit. Employment permit holders can only work for the employer and in the occupation named on the permit. Under the 2003 and 2006 Acts it is an offence for both an employer and an employee to have a non-EEA national in employment without an appropriate employment permit. While illegal employment of non-EU nationals may be prosecuted as a breach of the Immigration Act 1999, it is more likely that a prosecution would occur under the Employment Permits Acts. Although the Workplace Relations Commission has the power to prosecute both employers and employees, they usually focus on the employer.</p>	Link (EN)
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5	Immigration Act	2004	<p>The Act provides the framework for lawful entry and residence in the State. Section 4(3) provides the grounds on which a non-national may be refused entry to the state, including for not holding a valid Irish visa, or for not being in possession of a valid employment permit in respect of the employment he or she intends to take up.</p> <p>Section 4(7) permits an individual to apply to renew or vary her immigration status, thereby, if successful, avoiding a fall into irregular status. In practice, the power under this section has been exercised to grant permission to irregular migrants who have never held an immigration permission.</p> <p>Section 5 provides that, with the exception of asylum seekers and refugees, any non-national in the state without the relevant permission is ‘for all purposes unlawfully present in the State’.</p> <p>Section 9(6) provides that there is no obligation for immigrant children under the age of 16, or non-nationals born in the state, to register with the immigration authorities (though every birth in Ireland must be registered with the authorities within 3 months of the birth, as per section 19 of the Civil Registration Act 2004).</p> <p>Section 11(2) provides that any non-national entering the state who does not comply with the obligation to present to an immigration officer, when requested to do so, their passport or equivalent document, and information, is guilty of an offence.</p>	Link (EN)
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6	Reactivation Employment Permit Scheme	2014	<p>The Reactivation Employment Permit (REP) Scheme enables to work legally again migrants who entered the state on a valid employment permit but who fell out of the system through no fault of their own or who were exploited in the work place. The Scheme allows the ISD and the Department of Enterprise (DETE) to collaborate and to determine, on a case by case basis, whether a person should be granted a pathway out of irregularity. The Minister for Justice first grants a person an immigration permission (a temporary Stamp 1 immigration permission) and a “Reactivation Employment Permit” letter in order to apply for a reactivation permit with the DETE.</p> <p>The initial two year validity of the REP is renewable for a further three years. Domestic workers are excluded from this Scheme.</p> <p>While the Scheme may operate to prevent or reduce irregular employment, long processing times may lead applicants to take up irregular work while awaiting the approval of their application.</p>	Link (EN)
				Link (EN)

7	Workplace Relations Act	2015	<p>Section 27 of the Workplace Relations Act 2015 sets out the entry and search powers of labour inspectors. An inspector may enter any place of work or premises they reasonably believe is being used as a place of employment of persons or used to keep documents relating to the employment of persons. Labour inspectors may not visit private residences unannounced.</p> <p>Section 35 of Act enables the Workplace Relations Commission (WRC) to enter into cooperation and data sharing agreements with official bodies, including foreign statutory bodies.</p>	Link (EN)
8	Statutory Instrument 548/2015 European Communities (Free Movement of Persons) Regulations	2015	<p>This piece of secondary legislation gives effect to the EU Citizens Directive (Directive 2004/38/EC). Regulation 20 empowers the Minister to issue a removal order in respect of EU citizens and their family members who are no longer entitled to be in the state because they are not in compliance with the conditions of the Directive. EU citizens are therefore not removed under the framework put in place by section 3 of the Immigration Act 1999. Unlike deportation orders under section 3, a removal order under the Regulations do not entail a re-entry ban.</p>	Link (EN)
9	Atypical Working Scheme for non-EEA Crew in the Irish Fishing Fleet.	2016 - 2023	<p>The Atypical Working Scheme (AWS), was developed by the Department of Justice and the Department of Enterprise, Trade and Employment (DETE) to facilitate short-term highly-</p>	Link (EN)

			<p>skilled employment that is not supported by current Employment Permit legislation. In response to concerns about high numbers of undocumented migrants employed in the Irish fishing industry and potential labour exploitation and human trafficking in 2015, the AWS was expanded to include non-EEA workers in the Irish fishing industry. Restrictive eligibility criteria meant that between Feb and June 2016, 152 individuals were granted permission to work 12 months under the Scheme. As of 1 July 2016, applications to the Scheme may only be made from outside the state, but those successfully regularised in 2016 could apply to renew their permission and to change their employer.</p> <p>The closure of the AWS for non-EEA seafarers on 31 December 2022 was accompanied by the possibility for holders of AWS permission valid on or after 1 January 2023 to apply for Stamp 4 immigration permission, time spent on which is reckonable for naturalisation applications.</p>	<p>Link (EN)</p> <p>Link (EN)</p>
10	Former International Student Regularisation Scheme	2018	<p>The Scheme, prompted by the Supreme Court ruling in Luximon and Balchand was open from 15 October 2018 until 20 January 2019 for online applications for regularisation from irregular migrants who lawfully arrived in Ireland between 1 January 2005 and 31 December 2010 for the specific purpose of study and subsequently became undocumented. The Scheme addressed the consequences of a rule change limiting formerly unlimited student visa permission to a maximum</p>	<p>Link (EN)</p> <p>Link (EN)</p>

			of 7 years. The Scheme regularised 2253 out of 3097 applicants.	
11	Regularisation of Long-Term Undocumented Migrants Scheme	2022	The Scheme, open from 31 January – 31 July 2022, granted a right to live and work for a renewable period of two years to applicants who satisfied the eligibility criteria. 6548 applications were submitted, in respect of 8311 individuals (5654 single applications and 894 family applications). As of 3 July 2023, 87% of applications have been processed: 4,617 (almost 71%) applications have been granted, 1002 (15%) applications have been refused, and 118 (almost 2%) applications have been withdrawn by the applicants for various reasons.	Link (EN)
				Link (EN)
12	International Protection Process Regularisation Scheme	2022	The Scheme, open for online applications from 7 February – 7 August 2022, granted successful applicants a two-year renewable permission to live and work in the state. The main criterion was for the applicant to have been in the international protection process for at least 2 years prior to the commencement of the scheme, ie, that she had applied for protection before 7 February 2020 and was still awaiting a first instance decision on 7 February 2022. 3244 applications were made to the Scheme. As of 1 June 2023, 1585 applicants had been granted permission under the scheme. During the Scheme, a further 1,102 applicants were granted an equivalent, or higher, immigration permission. This means that, by 1 June, 2023, some 2,687 persons who made an application under the Scheme, or more than 82% of all Scheme applicants, had been	Link (EN)

			<p>granted stamp 4 immigration permission, a two-year renewable permission that allows holders to work without an employment permit and is reckonable as residence for applications for citizenship.</p> <p>Some 472 applicants, or just over 14% of all Scheme applicants, had a refusal decision issued to them by 1 June, 2023, all of whom then had access to the Scheme's appeals process. By 1 June, 2023, some 84 applications, less than 3% of all Scheme applications, remained to be determined.</p>	
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Laws and policies indirectly impacting migrant irregularity

Sr. No.	Title of policy/law	Year	Description: How it relates to migrant irregularity	Weblink to source
1	Irish Nationality and Citizenship Act, as amended	1956	Children born in Ireland on or after 1 January 2005 only acquire Irish citizenship if at least one of the parents is an Irish or British citizen or, if neither Irish nor British, has been lawfully resident in Ireland for at least three years prior to the birth of the child.	Link (EN)
2	Health Care Act, as amended	1970	Section 45 provides for access to health care services for persons ordinarily resident in the state, thereby excluding irregular migrants.	Link (EN)
3	Illegal Immigrants (Trafficking) Act	2000	Section 2 criminalises smuggling – creates a framework for the punishment of persons who, for gain, facilitate entry to the state of 'an illegal immigrant' or a person who intends to seek asylum.	Link (EN)
4	Voluntary Assisted Return and Reintegration	2001	When applicants for international protection are notified that their application has been unsuccessful, they are informed pursuant to section	Link (EN)

	Programme (VARRP)		48 of the International Protection Act 2015 that they have 5 days to confirm that they will voluntarily return to their country of origin. This is effectively a tool for preventing individuals falling into irregularity. The Catherine Day report recommended that this period be increased to 30 days for unsuccessful international protection applicants.	Link (EN)
5	Social Welfare Consolidation Act, as amended	2005	A migrant worker must be 'habitually present' in the state in order to have access to various social welfare payments, including unemployment assistance; child benefit; carer's allowance; disability allowance; and one-parent family payment. Section 246(5) provides that a person who does not have a right to reside in the state is not habitually resident in the state. Section 246(7)(c) provides that an individual considered for deportation order under section 3(3) of the Immigration Act 1999 is not habitually resident. Exceptionally, however, section 201 allows officials of the Department of Social Protection to make a single payment to a person to meet an exceptional need.	Link (EN)
6	The Criminal Law (Human Trafficking) Act	2008	Criminalises trafficking of humans for exploitation.	Link (EN)

7	Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking and Second National Action Plan to Prevent and Combat Human Trafficking in Ireland	2011 and 2016	<p>Ireland currently gives effect to Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims through administrative arrangements. The Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking (March 2011) and Second National Action Plan to Prevent and Combat Human Trafficking in Ireland (October 2016) set out the criteria for the recovery and reflection period and temporary residence for trafficking victims. The Administrative Arrangements provide that an individual identified as a suspected victim of trafficking shall be granted permission to be in the state for 60 days for recovery and reflection. Where a person has severed all contact with the alleged perpetrators of the trafficking, and it is necessary for the purpose of allowing the suspected victim to assist authorities in relation to an investigation or prosecution arising in relation to the trafficking, a temporary renewable residence permission valid for an initial period of 6 months will be granted.</p>	Link (EN)
				Link (EN)
8	Housing Circular 41/2012	2012	To be eligible for social housing, generally migrants must have a legal right to remain in the state on a long-term basis.	Link (EN)
9	Civil Registration (Amendment) Act	2014	Gave new powers to a Registrar of Marriages to consider whether a marriage is one of convenience – where at least one of the parties to the marriage is at the time of entry into the marriage is a foreign national, and enters into the marriage solely for the purpose of securing an immigration advantage for at least one of the parties to the marriage – and on that	Link (EN)

			basis to notify the Department of Justice.	
10	International Protection Act	2015	The International Protection Act regulates the system for seeking international protection in Ireland and sets out the return procedures for unsuccessful applicants. Section 48 provides unsuccessful applicants for international protection with the option of voluntary return. Section 51 provides for a deportation order to be issued in respect of unsuccessful applicants who do not accept the option of voluntary return. This is the point at which international protection applicants become irregular migrants, as reflected in the fact that deportation orders issued under section 51 of the International Protection Act 2015 are deemed to be deportation orders made under section 3 of the Immigration Act 1999.	Link (EN)

11	McMahon Report on improving the international protection process	2015	<p>The Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, chaired by Bryan McMahon, issued its Final Report in June 2015. Amongst its 173 recommendations to improve the Irish system of international protection, it included the recommendation that persons who had been in the international protection system for 5 years or more should be granted the right to remain in the state regardless of whether they were awaiting final determination of their application or the implementation of a deportation order, with regularisation of the latter subject to certain conditions including the requirement that an individual had not been evading deportation, posed no threat to public order or national security and had not been involved in crime. In 2017, NGO Nasc characterised implementation of the recommendations concerning regularisation of persons more than five years in the system as incomplete, with an informal scheme leading to “a number” of deportation orders being revoked and a total of over 1000 applicants being granted leave to remain, a significant number short of the 3350 estimated to be eligible by the Working Group. Regularisation conducted following the McMahon Report recommendation will have prevented potentially up to 1000 individuals in the international protection system from falling into irregularity.</p>	Link (EN)
				Link (EN)

12	Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process (Day Report)	2020	To expedite the ending of the direct provision accommodation system for international protection applicants, to prevent the re-emergence of new backlogs, and to reduce the number of outstanding cases, the Day Report recommended the establishment of a one-off, simplified, case-processing approach applying to all applicants who will have been two years or more in the international protection system by the end of 2020.	Link (EN)
13	Information Regarding the Justice Sector COVID-19 Plans; Immigration Service Delivery: Impact of COVID-19 on Immigration and International Protection, FAQs; Rights of Undocumented Workers to access social welfare supports during COVID-19	2020	The Department of Justice published a notice on its website in March 2020 assuring irregular migrants that during the pandemic if they accessed Department of Social Protection services (social welfare benefits and other cash benefits such as Pandemic Unemployment Payment) or healthcare services, their details would not be shared with the Department of Justice. The same notice encouraged irregular migrants to come forward if they wished to regularise their situation, stressing that such cases are assessed and processed on a case-by-case basis.	Link (EN)
				Link (EN)
				Link (EN)
14	COVID-19 Employment Permits System Contingency Arrangements	2020	Employment permit applications, and renewals of existing permits, were processed through a fully online process during the pandemic, thereby preventing some migrants from falling into irregularity.	Link (EN)
15	Automatic renewal of Irish Residence Permits	20 March 2020 – 15 January 2022	Automatic renewal of residence permissions was introduced to ensure people did not enter into an irregular situation and could continue to work and access services as required.	Link (EN)

16	Immigration Guidelines for Victims of Domestic Violence	June 2022 (recent updates)	The Immigration Guidelines for Victims of Domestic Violence explain how a victim of domestic violence whose relationship has broken down can apply for independent immigration permission in his/her own right]. They allow lawfully resident victims of domestic violence who are dependent on the immigration status of their spouses/partners to acquire immigration status that is independent of the status of the perpetrator of violence. While this is not an avenue that is generally open to undocumented migrants, it is open to victims of domestic violence who were formerly lawfully present. The permission to remain granted to successful applicants puts them in the same migration status they had enjoyed as dependents, but consideration will be given to granting them permission to work where it is necessary to support themselves or lawfully resident family members.	Link (EN)
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