



Office of the
Refugee Applications Commissioner
Annual Report 2003





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Foreword by Refugee Applications Commissioner



I am pleased to present to the Minister for Justice, Equality and Law Reform the third report produced by the Office of the Refugee Applications Commissioner under section 7 of the Refugee Act, 1996.

This report provides an overview of the organisation's performance and progress during 2003. It outlines the operations of the Office and developments, legislative and otherwise, which impacted on its work during that period.

Of particular significance to the context and way in which we operate was the extensive amendment of the Refugee Act, contained in the Immigration Act, 2003. Implementation of the new provisions required considerable re-engineering of the determination process and staff training.

In terms of corporate governance, we reviewed and developed a three year strategy; finalised a 5-year corporate plan; and prepared our business plan for 2004 which incorporated a risk management component for the first time. All of these exercises involved extensive consultation and will assist in maximising the efficiency of the service we deliver.

Under a programme to enhance customer service we carried out our first customer survey; expanded the customer liaison panel; developed a new customer complaints procedure; and designed and launched our website, *www.orac.ie*.

During the year, the partnership process was introduced and indeed extended in the Office through the establishment of working groups by the Partnership Committee. The Partnership Committee has an important contribution to make in anticipating and managing change, promoting higher performance and creating a better workplace. This Office is committed to ensuring that the partnership process has a meaningful role in the organisation.

I thank the staff of my Office for their enthusiasm and professionalism which are reflected in the improved productivity of the Office. I would like to acknowledge the co-operation of the Department of Justice, Equality and Law Reform, the Refugee Appeals Tribunal, the Reception and Integration Agency, and other state agencies and organisations involved in the asylum process. I would particularly like to acknowledge the ongoing support and advice given by the United Nations High Commissioner for Refugees (UNHCR) Representation in Ireland.

A handwritten signature in black ink that reads "Berenice O'Neill". The signature is written in a cursive, flowing style.

Berenice O'Neill
Commissioner

Mission Statement

The mission statement of the Office of the Refugee Applications Commissioner in accordance with the Refugee Act, 1996 is

(i) *to investigate applications from persons seeking a declaration for refugee status and to issue appropriate recommendations to the Minister for Justice, Equality and Law Reform*

and

(ii) *to investigate applications by refugees to allow family members to enter and reside in the State and report to the Minister for Justice, Equality and Law Reform on such applications*

and in so doing, to provide a high quality service to our customers through the implementation of policies and procedures which are fair and open, treating all applicants with courtesy and sensitivity.

Who is an Asylum Seeker?

An asylum seeker is a person who seeks to be recognised as a refugee in accordance with the terms of the 1951 Geneva Convention relating to the status of refugees and the related 1967 Protocol, which provide the foundation for the system of protection of refugees generally.

Definition of a Refugee

The definition of a refugee in Irish law is "a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his or her former habitual residence, is unable or, owing to such fear, is unwilling to return to it...".



1

Introduction



Legal Framework

Under the Refugee Act, 1996 two independent statutory offices were established in November, 2000 to consider applications/appeals for refugee status and to make recommendations to the Minister on whether such status should be granted. These two offices are the Office of the Refugee Applications Commissioner (ORAC), which considers applications for a declaration as a refugee at first instance and the Refugee Appeals Tribunal which considers applications for a declaration at appeal stage.

The statutory functions of the Refugee Applications Commissioner are set out in the Refugee Act, 1996 as amended by the Immigration Act, 1999, the Illegal Immigrants (Trafficking) Act, 2000 and the Immigration Act, 2003. Throughout this report, the term "Refugee Act, 1996" means the "Refugee Act, 1996 (as amended)".

The Office also has regard to the following Statutory Instruments (S.I.) in the discharge of its business:

- S.I. No. 342 of 2000 – Refugee Act, 1996 (Appeals) Regulations, 2000.
- S.I. No. 343 of 2000 – Dublin Convention (Implementation) Order, 2000.
- S.I. No. 344 of 2000 – Refugee Act, 1996 (Places and Conditions of Detention) Regulations, 2000.
- S.I. No. 345 of 2000 – Refugee Act, 1996 (Application Form) Regulations, 2000.
- S.I. No. 346 of 2000 – Refugee Act, 1996 (Temporary Residence Certificate) Regulations, 2000.
- S.I. No. 415 of 2003 – Immigration Act, 2003 (Section 7) (Commencement) Order, 2003.
- S.I. No. 422 of 2003 – Refugee Act, 1996 (Safe Countries of Origin) Order, 2003.
- S.I. No. 423 of 2003 – Refugee Act, 1996 (Section 22) Order, 2003.



Core Functions of the Office of the Refugee Applications Commissioner

The Refugee Act, 1996 states that the Refugee Applications Commissioner shall be independent in the exercise of his or her functions. The functions of the Refugee Applications Commissioner, as required by the Refugee Act, 1996, are of a statutory and non-statutory nature. The key statutory responsibilities are:

- to investigate applications from those who seek a declaration for refugee status and to issue appropriate recommendations to the Minister for Justice, Equality and Law Reform on such applications, and
- to investigate applications by refugees to allow family members to enter and reside in the State and report to the Minister for Justice, Equality and Law Reform on such applications.

It is also the Commissioner's responsibility to issue Temporary Residence Certificates to asylum seekers; to comply with any Ministerial directives under the Act concerning the prioritisation of certain categories of applicant; to direct the presentation of the Commissioner's case to the Refugee Appeals Tribunal where recommendations made by the Commissioner are appealed to the Tribunal; and to furnish to the Refugee Appeals Tribunal, the Refugee Advisory Board, the Minister for Justice, Equality and Law Reform and the United Nations High Commissioner for Refugees (UNHCR), such information as they consider necessary for the purpose of their functions under the Act. While ultimately responsible for fulfilling these statutory functions under the Act, the Commissioner may delegate these functions to any member of his/her staff.

In addition, under section 8 of the Immigration Act, 2003, the Commissioner is required to exchange information, including personal information, with other Irish Government Departments and agencies for the purposes of the Refugee Act or for the administration of the law relating to the entry into and removal from the State of non-nationals. Information may also be requested by the Minister for Social and Family Affairs for the purposes of the Social Welfare Acts.

The Commissioner also has non-statutory functions. These include ensuring that all applications for asylum at first stage are treated and processed in a fair, courteous and efficient manner; issuing directives on the practical application of the Refugee Act, 1996 and procedures and standards of work; ensuring that adequate information on countries of origin of asylum seekers and international jurisprudence and practice in the area of asylum is available to fulfil the remit of the Office; participating in international fora on asylum related matters; staff performance, training and development; dealing with press queries; and preparation and management of the budget and business plan.

Strategic and Business Planning Process

As an initial step in developing the strategic and business planning process of the Office, a Framework Document was produced early in 2001.

In 2003, a Strategy Statement for the period 2004-2006 was developed in consultation with staff at all levels and the Partnership Committee. Presenting the framework within which the Office will operate up to the end of 2006, it sets out the goals and objectives of the Office, describes the strategies for their achievement and the performance indicators by which the strategies will be measured against the stated objectives.

Key Values of the Office

The key values that guide the work of the Office are:

- **Independence** – Independence of process and decision-making.
- **Fairness** – Fair procedures which are notified to asylum seekers.
- **Firmness** – Firmness in implementing statutory obligations.
- **Serving the key stakeholders** – Commitment to service to applicants and other stakeholders.
- **Commitment to staff** – Recognising that staff are the most valuable resource of the Office and fostering an environment in which they can work effectively and develop their potential for the benefit of the Office specifically, and their career generally.
- **Commitment to excellence** – Performing work to a standard that will ensure high quality and timely outputs.
- **Openness** – Communicating with asylum seekers, the Minister for Justice, Equality and Law Reform, UNHCR, Non-Governmental Organisations and the general public in a way which will instil confidence in the operation of the Office.
- **Efficiency in use of resources** – Ensuring efficiency in the use of available resources without compromising quality.

Funding and Staffing for the Office

The funding for the Office of the Refugee Applications Commissioner is provided by the State through the Department of Justice, Equality and Law Reform. The Act provides that "members of the staff of the Commissioner shall be Civil Servants within the meaning of the Civil Service Regulation Act, 1956".

The Act also provides that "The Commissioner may delegate to any members of the staff of the Commissioner any of his or her functions under this Act...". All staff (with the exception of the Service Officers and Service Attendants) working in the Office have been appointed authorised officers. New staff are designated authorised officers on appointment.

Organisational Management Structure

At the end of 2003 there were 274 staff working in the Office. An Organisation Chart is attached at Appendix 1.

Reporting Requirements

The reporting requirements for the Commissioner as set out in the Act are as follows:

- to submit a report to the Minister for Justice, Equality and Law Reform on his/her activities not later than 3 months after the end of each year. The Minister will lay a copy of the Annual Report before each House of the Oireachtas.
- to provide to the Minister, on an ongoing basis, all necessary information to enable him/her to discharge his/her ministerial accountability and responsibility in relation to the Office.
- to keep all proper and usual accounts of all monies received or expended and all such special accounts (if any) as the Minister may direct.
- to submit these accounts to the Comptroller and Auditor General for audit on a date specified by the Minister. A copy or extracts from these accounts, together with the report of the Comptroller and Auditor General will be furnished to the Minister who will bring both before each House of the Oireachtas.

(The Office of the Refugee Applications Commissioner receives an annual allocation of funds for which the Secretary General of the Department of Justice, Equality and Law Reform is the Accounting Officer and the accounts for ORAC are included in the annual Departmental accounts.)





2

Key Developments in 2003



Legislation

During 2003, ORAC implemented the extensive amendments to the Refugee Act, 1996 contained in the Immigration Act, 2003 (Appendix 5). Principal features of the amendments were the introduction of Ministerial 'prioritisation directives' and designation of certain countries as being 'safe countries of origin' by the Minister as well as measures designed to deal more effectively with non-participation by applicants. While implementation of those provisions necessitated considerable changes to the determination process, comprehensive preparation on the part of ORAC, in conjunction with the other relevant agencies, meant their introduction took place without setback.

Fall in Number of Applications for Asylum

The number of applications for asylum received by ORAC during 2003 was down 32% on 2002 (2003: 7900, 2002: 11634). There was an even more significant reduction in the number of withdrawn applications (2003: 1243, 2002: 6064), a development widely attributed to the Supreme Court decision whereby parents of an Irish born child do not automatically have a right to reside in the State. Prior to this decision many applicants withdrew their applications for asylum while pursuing an application to the Minister for leave to remain in the State on this basis. (There is no requirement to do so and some applicants pursued both.)

Cases Processed during 2003

The effect of the drop in applications was more than offset by the fall in withdrawn cases for much of 2003, leaving ORAC with more cases to process fully to completion. Nevertheless, the number of cases finalised during 2003 exceeded those received by more than 9% and by the end of the year the number of cases on hand had fallen to 4554, 10% less than it had been at the end of 2002 and 51% lower than at the establishment of the Office in November, 2000.



One of the effects of the legislative amendments has been that different processing times now apply for those cases which are subject to a Ministerial prioritisation directive and those which are not. By the end of 2003, more than 40% of all new cases were subject to a prioritisation directive and were typically issued with a decision in under 5-6 weeks of application. Those cases not subject to a prioritisation directive are, in the main, issued with a decision 8 months following application.

Dublin II Regulation and EURODAC

There were also a number of important developments during the year in respect of the arrangements in place to determine which EU member state is responsible for a particular asylum application. From 1 September, 2003 the Dublin II Regulation succeeded the Dublin Convention as the legal instrument covering these matters and ORAC was required to put in place arrangements to implement the new system.

In addition, since January, 2003, when EURODAC¹ came into effect, all fingerprints are transmitted daily to a central fingerprint database in Luxembourg. Comparisons are carried out immediately and the result relayed back electronically within 10-15 minutes. This greatly improved the operating efficiency, initially of the Dublin Convention and now the Dublin II Regulation.

¹ See Glossary.

A further development of note during the year was the implementation by ORAC of DublinNET, an EU-wide electronic communication system which streamlines the transmission of Dublin Regulation/Convention forms between member states and reduces processing times.

Customer Service

In 2003, ORAC took a number of steps to further enhance its customer service programme. It expanded its customer service liaison panel, undertook its first ever customer survey, devised a new customer complaints procedure and launched a website (www.orac.ie) which provides a new contact point through which information can be provided to the public and other organisations and also a feedback facility to the Office.

Partnership

In keeping with the modernisation agenda in *Sustaining Progress*, ORAC commenced the introduction of the partnership process in 2003. In that regard and in order to ensure the development of a sustainable and inclusive partnership process, a comprehensive programme of training was made available to staff.

The full Partnership Committee comprising 12 members, 4 from each of the staff, union and management pillars first met in September, 2003. With the purpose of progressing its work programme and extending the partnership process in ORAC, the Committee established two Working Groups: an Internal Communications Working Group and an Equality Working Group.

Corporate Developments

During 2003, ORAC further developed its business and strategic planning framework to improve clarity of organisational objectives, individual roles and measurement of organisational performance.

To assist in developing and focusing planning processes, ORAC with the support of the Centre for Management and Organisational Development (CMOD) carried out a detailed review of the organisation. The terms of reference of CMOD were "to provide assistance to ORAC to enable the Office to carry out an examination of... procedures, practices and structures in order to align resources to maximise efficiency and effectiveness". On completion of the review in September, a plan to implement CMOD's recommendations which incorporates a review process, was drawn up in consultation with staff and was reflected in business plans for 2004.

ORAC's business planning process has continued to evolve over the last few years. The main focus of business plans has been the achievement of the highest standards possible in all areas of the organisation within available resources. Risk management was introduced to the business planning process for the first time at the end of 2003. Risk management will become a critical part of ORAC's strategic planning and is intended to lead to sustainable improvements in the way we do business and deliver services.

Our business and strategic planning frameworks were further enhanced with the completion in 2003 of a 5 year Corporate Plan (2004-2008) and a 3 year Strategy Statement (2004-2006). The Plan is designed to enable ORAC to deliver quality refugee status determination through an organisation committed to continual improvement and where people are valued. It will be elaborated upon and implemented by strategies and business plans with progress reviewed in annual reports.



3

Initial Application Stage



Reception

The core business of the Office begins when a person enters the State requesting to be recognised as a refugee in accordance with the Refugee Act, 1996.

It is Reception Unit's responsibility to accept all applications and to complete an initial interview under section 8 of the Refugee Act, 1996. In 2003, the pattern of applicants seeking asylum in Ireland did not vary significantly from the previous year in so far as the majority of asylum applications were made in this Office (85%) rather than at a port of entry (13%). In 2003, the top 3 applicant countries were Nigeria, Romania and Democratic Republic of Congo. (In 2002, the top 3 applicant countries were Nigeria, Romania and Moldova).

When an application for a declaration for refugee status is received a number of distinct processes are involved. These include the applicant being:

- interviewed;
- fingerprinted;
- photographed;
- given a Temporary Residence Certificate; and
- provided with the necessary information governing the asylum process in Ireland.

The purpose of the initial interview, which is conducted with an interpreter, if required, is to try to establish the applicant's identity, nationality and country of origin, mode of transport and route travelled, reason for coming to Ireland, legal basis for entry into the State and other relevant details. As most applicants arrive undocumented it is not always possible to verify the details they supply. All applicants are given the opportunity to read all of the information that they have given at their interview to confirm its accuracy. As well as being given a copy of the record of their initial interview notes, applicants are also given the following documents: an information leaflet (where possible in a language they understand) explaining how the asylum process in Ireland operates; a questionnaire to complete in support of their application; a change of address form; a Customer Service Advice Leaflet and the Refugee Legal Service Information Leaflet.



Applicants are also informed of their right to consult a solicitor and/or the UNHCR. The Refugee Legal Service (which is independent from this Office) has an office located in the Reception area. Accommodation (on a full board basis) is arranged for applicants by the Reception and Integration Agency (RIA), which also has an office in the Reception area.

Fingerprinting

Section 9(A) of the Refugee Act, 1996 provides for the fingerprinting of asylum applicants over the age of 14 years by an authorised officer of this Office or an Immigration Officer. The 2003 amendments to the Refugee Act make provision for fingerprinting asylum applicants under the age of 14 years. (At the end of 2003 no ministerial order had been made to give effect to these powers.) The purpose of fingerprinting is to detect multiple applications in the State, and to facilitate in determining which Dublin Convention or Regulation² country is responsible for examining an asylum application. All applicants are informed orally and in writing at the time of making an asylum application that they will be fingerprinted.

In the period November, 2000 to 31 December, 2003, 31295 applicants have been fingerprinted. In that time, 50 multiple applicants with 5 dependants have been detected.

EURODAC

On 15 January, 2003, EURODAC came into effect. Since that date, all fingerprints are transmitted daily to a central fingerprint database in Luxembourg. Comparisons are carried out immediately and the result relayed back electronically within 10-15 minutes.

² See Chapter 4.



The EURODAC system only deals with fingerprints taken since it was established (i.e. fingerprints taken before that are not entered retrospectively). Since its implementation to 31 December, 2003, Ireland has transmitted 6197 asylum fingerprints to the Central Processing Unit in Luxembourg.

Out of the total, 157 applicants have been recorded as having applied for refugee status in other countries. The top 4 countries where applicants have been identified as having made previous asylum applications are: United Kingdom (95 applicants), France (15 applicants), Germany (10 applicants) and the Netherlands (9 applicants).

Volume of Business

The number of applications lodged during 2003 was 7900 and, although relatively high *per capita* in Western terms, was nonetheless significantly down on the previous three years (see Appendix 2).

There were approximately 15214 additional callers to the Reception Unit, an increase of approximately 50% on the 2002 figures. This increase can be attributed to an increase in the number of reissued Temporary Residence Certificates. In addition to processing new applications, a wide range of queries from asylum seekers are also dealt with by the Reception Unit, such as:

- applications to renew or replace Temporary Residence Certificates;
- withdrawals of application for a declaration for refugee status;
- enquiries about the right to work as an asylum seeker;
- notification of change of address;

- immigration enquiries;
- residency enquiries;
- notification of voluntary repatriation;
- applicants requesting return of documents;
- applicants lodging papers in relation to their asylum case;
- Refugee Appeals Tribunal enquiries;
- Reception and Integration Agency enquiries;
- parent or guardian with children who have arrived in the State;
- family reunification and related queries;
- the operation of the asylum process and related queries.

Withdrawal of Asylum Applications

A total of 1243 asylum applicants withdrew their asylum applications during 2003, compared with 6064 withdrawals in 2002. The reasons given for withdrawal from the asylum process varied from applicants relying on residency applications based on the parentage of Irish born children to voluntary repatriation and/or marriage to Irish or EU nationals. This reduction has been widely attributed to the Supreme Court decision whereby parents of an Irish born child do not automatically have a right to reside in the State.

Re-applications for Asylum

There were 417 re-applications for asylum during the year. Most of these (359) had previously withdrawn from the process when applying for permission to remain on the basis of parentage of an Irish born child.

Deemed Withdrawn Cases

The amendments to the Refugee Act in 2003 made it possible to more effectively process to conclusion asylum applicants who were not co-operating with the asylum process.³ A total of 1666 cases have been deemed withdrawn as a result of non co-operation with the asylum process during 2003, i.e. due to the non-provision of an address to the Commissioner or non-return of a questionnaire.

³ See Chapter 5.



4

Dublin Convention and Dublin II Regulation





On 1 September, 2003 the Dublin II Regulation⁴ succeeded the Dublin Convention⁵ as the instrument which provides the legal basis for determining which EU member state is responsible for examining an asylum application. All member states plus Norway and Iceland are subject to the new Regulation, with the exception of Denmark (the Dublin Convention remains in force between Denmark and the other member states).

During the course of 2003, ORAC's Dublin Unit was extensively involved in the implementation of the new Regulation, while continuing to process cases covered by the Convention.

How the Dublin Convention and the Dublin II Regulation Operate

Although the mechanics of the Convention and the Regulation differ in a number of important respects, the essential objective is unchanged. Both set out criteria for determining which member state is responsible for examining an asylum application. Applicants are guaranteed that one state will process their application, thereby preventing the creation of 'refugees in orbit', a situation which had pertained in Europe prior to the introduction of the Dublin Convention.

Under the Dublin Convention and now under the Dublin II Regulation, ORAC may, on the basis of the relevant criteria, request another state to accept responsibility for an asylum application and have it processed in that state. Similarly, ORAC receives requests from other states for the transfer of asylum applicants here.

The criteria governing which member state is responsible include, for example, where another member state had issued the applicant with a visa or work permit, or whether the applicant irregularly entered one member state prior to applying for asylum elsewhere in the EU or where an applicant had previously applied for asylum in another member state.

Once an asylum claim is lodged, Ireland has three months under the Dublin II Regulation (as opposed to six months under the Dublin Convention) from the date of application to ask another country to take responsibility for the application. Under the Dublin II Regulation, member states are required to respond to these requests within either two months or one month depending on the circumstances of the case (three months under the Convention). There is provision in both the Convention and Regulation for urgent replies in cases where, for example, the applicant is detained.

ORAC may make enquiries of other states as to whether the relevant criteria apply in respect of a particular applicant but where sufficient evidence is already available to ORAC, for example fingerprint evidence (see section on EURODAC below), a request may issue directly to the relevant state. In addition, under the Dublin II Regulation, where a request to another member state is based on EURODAC fingerprint information, the period of time within which a response must be received is reduced to 14 days.

⁴ Dublin II Regulation – Council Regulation (EC) 343 of 2003.

⁵ The Convention determining the state responsible for examining applications for asylum lodged in one of the member states of the European Communities (Dublin Convention) – so called because it was signed in Dublin in 1990 during the Irish Presidency of the EU.

Where another country accepts responsibility for a person who has applied for asylum in Ireland, ORAC issues a determination by registered post to the applicant setting out the decision and the country to which they are to be transferred.

Appeals

The arrangements for appealing such a decision differ between the Dublin Convention and the Dublin II Regulation. Under the Convention, the applicant has five working days to appeal the decision and the appeal has the effect of suspending the transfer, whereas Dublin II Regulation appeals must be lodged within 15 working days of the determination but are non-suspensory. This means that the Minister for Justice, Equality and Law Reform may arrange for the removal of the applicant to the relevant country before the appeal is heard.

Appeals under both the Convention and the Regulation are considered by the Refugee Appeals Tribunal. If an appeal is successful, the applicant is admitted to the substantive asylum process in Ireland for a determination on their application. If the applicant has already been transferred to another member state under the Dublin II Regulation and their appeal succeeds, then arrangements will be made for their return.

EURODAC

As described in Chapter 3, since 15 January, 2003 the fingerprints of all new asylum applicants within the EU (excluding Denmark) as well as Norway and Iceland are entered on the EURODAC database. This evidence greatly facilitates the operation of the Dublin arrangements and reduces the number of enquiries ORAC must make of other member states.



DubliNET

The efficiency of the Dublin arrangements has also been enhanced by the introduction of a secure electronic communications system between member states – DubliNET. This system was provided for in the Dublin II Regulation and came into use in September, 2003. Prior to its introduction, communication between member states (which may involve copies of passports or other documentation) had to be made via fax and registered mail.

Dublin Unit – Staff Training and Development

During the year staff training and development within the Unit focused on the processing of complex Dublin Convention cases and on establishing the procedures to be applied to give effect to the Dublin II Regulation and to operate the DubliNET system in Ireland.

At the request of the Department of Justice, Equality and Law Reform, the Unit made a presentation on the Dublin II Regulation to the Immigration Division of the Department and the Garda National Immigration Bureau.

Development of Relations with Other Dublin Convention Offices

The Dublin Unit continues to liaise and develop relations with other member states, both at a bilateral level and through participation in EU fora dealing with the operation of the Convention and the Regulation. As most business is conducted with the UK, staff from the Dublin Unit met representatives of the UK Third Country Unit. The meeting focused on Dublin Convention operational issues. The meeting contributed to a common understanding of the operation of the Convention and it is expected that similar future meetings will address issues arising from the operation of the new Regulation.

Judicial Review

In 2003 there were 13 judicial reviews initiated against decisions to transfer applications under the Dublin Convention as well as 11 cases outstanding at the start of the year. Of these 24 cases, 5 were resolved during the course of the year leaving 19 cases outstanding going into 2004. (See Chapter 5 for details on judicial reviews in non-Dublin Convention matters.)

These judicial reviews, in the main, consisted of challenges to the Dublin Convention and the Dublin Convention (Implementation) Order, 2000 as well as to the practices and procedures applied by ORAC in operating the Convention. As at the end of 2003 the new Regulation had yet to be the subject of judicial review.

The outcome of one case in particular had implications for the operation of the Convention and for many of the other judicial reviews outstanding at the end of the year. In December, 2003 in the case of *Ymedji v the Minister for Justice, Equality and Law Reform*, the Refugee Applications Commissioner, and the Refugee Appeals Tribunal, it was held by the Supreme Court that Article 10(1)(e) of the Dublin Convention was not incorporated into Irish law. Article 10(1)(e) deals with requests to another Dublin Convention country to take back an alien whose application it has rejected and who is illegally in another member state. As a consequence, ORAC has since readmitted the applicant to the substantive asylum process and commenced an exercise to examine other judicial review cases on hand to determine if they should be settled on foot of the *Ymedji* judgement.

Statistics

Statistics relating to the operation of the Dublin Convention and Regulation are set out at Appendix 3.





5

Investigation of Applications



Background & Structure of Case Processing Units

Processing applications is the core function of this Office and the statutory requirements are set out in the Refugee Act, 1996⁶.

Every application processed involves the scheduling of an individual interview for the applicant, the objective research of the claims made and the making of a recommendation to the Minister for Justice, Equality and Law Reform as to whether an application should be granted or refused.

In order to manage the constituent elements of the determination process and to provide essential support services to caseworkers, a number of separate units exist within Case Processing as follows:

- Scheduling Unit
- Case Processing Units
- Country of Origin Information (COI)/ Refugee Status Determination Support (RSD) Unit
- Policy and Procedures Unit
- Judicial Review Unit

Scheduling of Interviews

Scheduling Unit arranges the scheduling of interviews for asylum seekers from approximately 130 countries as well as attendance by interpreters, where requested by applicants, and where applicable, translation of application forms/questionnaires.

Setting up interviews on such a large scale can be complicated. The applicant must be matched with a date and time, an interview room, an interpreter and a caseworker who is familiar with the country of origin. In setting up interviews for unaccompanied minors, the availability of social workers and legal representatives can also be an issue. Consideration is also given to the distance applicants must travel before the interview time is decided.

In 2003, the Unit arranged 9138 asylum interviews. In line with the prioritisation directives issued by the Minister effective from 15 September and 15 December, 2003, certain categories of applicant are now dealt with before others. Such cases are scheduled for interview four working weeks from the date of their application. By year end more than 40% of all new applicants were being scheduled in this way. Other applicants (those not subject to a Ministerial prioritisation directive) typically now receive an interview date 6 months after making their application and with the exception of some applicants from Iraq⁷ there are no applicants from 2002 or earlier who have not been invited to interview.

As was the case in 2002 and previous years, the number of applicants not attending for interview continued to result in under-utilisation of interview capacity. However, the extent of non-attendance did fall during the course of the year (69% of all scheduled interviews went ahead in December as opposed to 40% in January). This increase in participation on the part of applicants appeared to complement the reduction in the number of persons withdrawing from the asylum process. Notwithstanding this improvement in attendance, achieving greater efficiency in the utilisation of interviewing resources will continue to be a focus in 2004.

Case Processing

Once an interview has been scheduled, the case is referred to one of the case processing units, each of which deals with a particular range of applicant countries. Their function is to fairly and efficiently investigate the application and to make a recommendation on the application to the Minister for Justice, Equality and Law Reform in accordance with the Refugee Act, 1996, having regard to relevant country of origin information.

⁶ Sections 11, 12 and 13.

⁷ Processing of applications from Iraqi nationals was suspended for much of 2003 in light of developments in that country and in line with UNHCR advice. Processing recommenced in March, 2004.



During 2003, amendments were made to the Refugee Act which required the Office to adapt its procedures to enable applications to be processed in accordance with the new legislative requirements (see Appendix 5 for summary of new provisions). Some of these amendments had an impact on case processing work. Chief among these was the power given to the Minister to (1) designate certain countries of origin – countries generally regarded as not giving rise to protection issues – as safe countries, and (2) issue prioritisation directives. Procedures were put in place for dealing quickly with asylum applicants from these countries. Those procedures included, the setting up of a new unit dedicated to processing applications from the safe countries of origin as well as putting in place arrangements for interviewing applicants who are subject to a prioritisation directive within 4 weeks of their initial application and notifying them of the recommendation of the Commissioner within 1-2 weeks thereafter.

The Investigation

As part of the substantive process, applicants for asylum are interviewed in accordance with the statutory procedure set out in the Act. Interviews are conducted by authorised officers, all of whom are trained for this purpose, and currently take place in specially designed interview rooms in Timberlay House, Lower Mount Street, Dublin.

To gather information on an applicant's claim for protection and to enable authorised officers to prepare for interview, every applicant is given a detailed questionnaire to complete. The main purpose of the questionnaire is to gather important information in relation to a claim for asylum and it is also an opportunity for applicants to provide as much detail as possible in advance of the interview. The format and content of the questionnaire was reviewed during 2003.

The completed questionnaire is, where necessary, translated into English and the issues raised are researched before interview. If necessary, the interview is conducted with the aid of an interpreter and the applicant may be accompanied by a solicitor. About 52% of applicants require the use of translators/ interpreters. It is the practice of the Office, where possible, to assign an interviewer of the same gender as the applicant where gender specific issues are central to the application.

Interviewers are trained to conduct focused interviews which afford applicants the opportunity to fully explain why they fear returning to their country of origin. As part of the investigation process, the interviewer researches objective country of origin information (COI) that will inform the analysis of the application. COI research is essential for researching the political and human rights situations in an applicant's country of origin. Throughout the interview – which can take several hours – every effort is made to obtain as much information as possible in relation to the claim and the applicant is given every opportunity to present their case. In essence, the interview is an interactive process where the applicant is helped to explain his or her fear of persecution.



The majority of applicants lack documentary evidence to support their claim, but this does not, of course, mean that their claims are not valid. In accordance with guidelines from the UNHCR the applicant is given the benefit of the doubt, where the applicant has made a genuine effort to substantiate his/her claim and all possible evidence has been obtained and checked or the applicant has fully explained the lack of evidence. Applicants are also given the opportunity, if the need arises, to clarify any apparent inconsistencies in their statements.

Detailed written records of the main issues stated at interview are retained and are the basis of the section 11 report as provided for under the Refugee Act, 1996. A copy is given to the applicant at the end of the process if the recommendation of the Commissioner is to refuse refugee status.

During the interview, applicants are afforded an opportunity to review what has been recorded and are requested to sign each page of interview notes as confirmation that they agree with the accuracy of the recorded account.

Changes to the investigation process were implemented with effect from September, 2003 as a result of the amendments to the Refugee Act. Where an applicant is a national of or had a right of residence in a designated safe country, or where the applicant had lodged a prior application in another state, they are now presumed not to be a refugee unless they show reasonable grounds to rebut such a contention. The new provisions also provide that the Commissioner should have regard to a list of specific factors in assessing the credibility of an applicant.

Another of the changes refers to representations, which should now be submitted prior to or during the interview, whereas previously the Act provided that applicants or their solicitors, could make further written representations to the Commissioner in the seven working days following an interview.

Another important change to the Act has been that where an applicant does not attend for interview and fails to submit reasonable grounds for non-attendance, the application is deemed to be withdrawn, the investigation of that application is terminated and a recommendation that they be refused a declaration for refugee status is forwarded to the Minister. Previously, a refusal would only be recommended following the applicant's second failure to attend without reasonable cause.

Reports

Following interview, there is a statutory requirement for a report to be completed in every case. The content required has been set out in the Act and this has been interpreted in the High Court through a series of judicial review proceedings. The report, known as the section 13 report, is by its nature, very comprehensive. It analyses the core elements relating to the case and is carried out in conjunction with research on relevant country of origin information and the criteria for recognition as a refugee as set out in the Refugee Act, 1996. It also contains a recommendation as to whether refugee status should be granted or refused.

The section 13 report compares the applicant's account with objective, up to date information on the applicant's country or place of origin, examines the critical elements of the applicant's claim and assesses the credibility of his/her account. Information sources used include, reports from the UNHCR, Amnesty International, UK Home Office, US State Department, internet news and archive news reports, international asylum authorities' websites as well as geographical information.

The criteria by which the substance of the claim are to be determined are set out in the Refugee Act, and derive from the 1951 Convention. These involve determining if the applicant has a well founded fear of persecution, that there is a Convention reason, that the applicant is unable or unwilling to return to his/her own country, what internal protection alternative (if any) might be available within his/her own country, as well as credibility issues. Under the Act and Convention, the well founded fear must be connected to the Convention grounds (race, religion, nationality, political opinion or membership of a particular social group) and consideration has also to be given to whether any exclusion clause may apply. In formulating reports, reference where appropriate, is also made to domestic and international refugee case law. The underlying objective of the process is that authorised officers make fair, reasonable and well researched recommendations on all applications.

The Outcome

Applicants are notified in writing of the recommendation made in relation to their case and a copy of the report is furnished to applicants and their solicitor (if known)⁸.

Where it is found that an applicant has established a case which qualifies him/her for refugee status, the Commissioner will furnish the report to the Minister for Justice, Equality and Law Reform.

Where it is found that an applicant has not established a case to qualify for refugee status he/she is advised of a right of appeal to the Refugee Appeals Tribunal, ordinarily within 15 working days of the date from the sending of the letter, and provided with details of how to make an appeal. Once again, applicants are advised of the desirability of availing of legal advice. If the recommendation is not appealed within the required timeframe the Commissioner then furnishes the report to the Minister for Justice, Equality and Law Reform.

Where an application is deemed withdrawn under the new provisions of the Act and the investigation is terminated, a recommendation is included in the report that the applicant concerned should not be declared a refugee. In such cases, the report is forwarded directly to the Minister as there is no right of appeal in respect of applications deemed withdrawn.

Also as part of the investigation of the application, and arising from the latest amendments to the Act, consideration must be given to whether or not certain specific findings set down in section 13(6) of the Act should be applied. These include:

- (a) "that the application showed either no basis or a minimal basis for the contention that the applicant is a refugee;
- (b) that the applicant made statements or provided information in support of the application of such a false, contradictory, misleading or incomplete nature as to lead to the conclusion that the application is manifestly unfounded;
- (c) that the applicant, without reasonable cause, failed to make an application as soon as reasonably practicable after arrival in the State;
- (d) the applicant had lodged a prior application for asylum in another state party to the Geneva Convention (whether or not that application had been determined, granted or rejected); or
- (e) the applicant is a national of, or has a right of residence in, a safe country of origin for the time being so designated by order under section 12(4)".

Where such findings are applied, the applicant is notified in writing of a right of appeal to the Refugee Appeals Tribunal within 10 working days of the date from the sending of the letter and once again provided with details of how to make an appeal. Such appeals will be determined without an oral hearing.

⁸ Section 13(4)(a) of the Act.



Cases Completed and Processing Times for 2003

Recommendations made during 2003 were marginally lower than those of 2002 which saw the highest number of applications determined in any single year. This reduction can mainly be attributed to an increase in the number of vacancies at caseworker level which could not be entirely offset by productivity gains. By the end of 2003, however, many of these vacancies were being filled and new staff were in training as caseworkers which will have a positive impact on output in 2004.

Although the number of applications fell significantly during 2003 (from 11634 in 2002 to 7900 in 2003), the number of cases withdrawn dropped even more dramatically (from 6064 in 2002 to 1243 in 2003). As a consequence, the number of cases which were required to be processed to completion grew, with consequent additional demands on caseworker resources. Nevertheless, by the end of 2003, the overall number of cases on hand had been reduced by 10%.

As described in the earlier section on Scheduling, by the end of 2003 more than 40% of all new cases were being scheduled for interview four working weeks from date of application and these prioritised cases are generally finalised in one to two working weeks of interview. For non-prioritised cases, interviews are generally scheduled six months after application and decisions issued in under four to six weeks of interview.

While the increase in the number of cases to be processed to completion has also put pressure on processing times, when measured as an average of prioritised and non-prioritised cases, processing times have nonetheless improved during 2003. The backlog of cases which had existed in previous years has certainly been addressed, with only 194 cases outstanding from before 2003 at the end of the year, some of which were Iraqi applicants (see footnote 7 on suspension of processing of Iraqi applications).

Country of Origin Information (COI)/ Refugee Status Determination Support (RSD) Unit

The main objective of the Unit is to manage the provision of Country of Origin Information (COI) and Refugee Status Determination (RSD) guidance. This facilitates informed determination of applications and ensures that information is shared and disseminated.

During 2003, the Unit consolidated its role in providing objective COI to decision-makers and presenting officers⁹ and, in co-operation with the Refugee Documentation Centre, processing queries relating to individual cases. The Unit was involved in organising the first Intergovernmental Consultations on Asylum (IGC) Multidisciplinary workshop on a single country of origin which was held in Dublin in January, 2003. In addition, the Unit participated in other IGC and EURASIL¹⁰ meetings and workshops throughout the year. In the latter part of 2003, work also began on developing a framework for Quality Assurance, initially with a case processing perspective, but in such a way as could be used as a model for other key functions within ORAC.

⁹ See Chapter 7.

¹⁰ See Glossary.

Country of Origin Information (COI)

The COI database, which allows all staff access COI reports directly from their personal computer, was expanded and now stores over 2200 documents. The UNHCR *Refworld* package is now also available to all staff on their computer. Following the roll out of desktop Internet access, the focus in COI/RSD Unit is to provide links to relevant sites, documents and news providers on the Internet and to developing a comprehensive and user-friendly 'favourites' index of useful sites.

In 2003, the Unit participated in the Refugee Documentation Centre (RDC) steering group which is supporting the introduction of a Knowledge Management Information System for the asylum and immigration area under the aegis of the RDC. The steering group has engaged an international expert on Country of Origin systems as a consultant to conduct a review of the RDC and to make recommendations on the RDC's future development. This review will be completed by early 2004. In the meantime, ORAC formulated and referred queries in about 400 individual cases to the RDC. Sensitive and urgent queries continue to be processed in-house by the COI/RSD Unit.

The Unit provides an electronic daily news update from the main countries of origin to all case processing and presenting staff by e-mail. In addition to the electronic sources of COI, the Unit maintains a small reference library.

Refugee Status Determination Guidance

Arising from the designation of accession countries plus Romania and Bulgaria as 'safe countries of origin' under the provisions of the amended Act, the COI/RSD Unit prepared draft information packs consisting of COI, jurisprudence and RSD guidance notes for the common case types identified from Romania, Czech Republic, Lithuania and Poland (of the countries designated safe, these four gave rise to the most asylum claims in Ireland in 2003).

The COI/RSD Unit, in co-operation with Policy and Procedures and Case Processing Units facilitated a number of case conferences throughout 2003, during which RSD or COI issues arising from individual applications could be discussed by caseworkers.

The Unit also co-operated with Policy and Procedures Unit in developing training programmes in RSD for new caseworkers and RSD refresher programmes for experienced caseworkers and in providing trainers to deliver a number of these courses in 2003. In addition, the Unit provided training in COI research to caseworkers and presenting officers.

IGC on Asylum Multidisciplinary Workshop on Nigeria

The Unit hosted the inaugural Intergovernmental Consultations Multidisciplinary Workshop in January, 2003, in co-operation with Asylum Policy and Repatriation Divisions of the Department of Justice, Equality and Law Reform and Garda National Immigration Bureau (GNIB). Discussions since the June, 2002 IGC meeting led to Nigeria being the first country examined in this forum, with the Workshop concentrating on country of origin information, decision-making, returns and trafficking.

Attendance included 13 IGC Participating States, representatives from the UNHCR, the European Commission and the International Organisation on Migration. In preparation for the Workshop, delegations completed a questionnaire on their Nigerian caseload and this exchange formed the basis for discussions. Due to the multidisciplinary approach involved, extensive preparation and co-ordination was required from ORAC staff together with their Irish and international colleagues in order to ensure a successful Workshop.

The Workshop involved presentations from the Research Unit, Repatriation Division of the Department of Justice, Equality and Law Reform and GNIB, as well as presentations from the Swiss and Belgian delegations. Subsequently, many of our international colleagues visited ORAC, the Department of Justice, Equality and Law Reform and GNIB in order to continue discussions and to find out more about the Irish systems.

Overall, our international colleagues at the IGC have deemed the exercise a success both in terms of content and organisation. That success has paved the way for IGC Interdisciplinary Workshops on Russia in March and on the Balkan States in November which were held in Geneva. The COI/RSD Unit participated in both.

International Fora

In addition to the IGC multidisciplinary workshops mentioned above, the COI/RSD Unit participated in a number of international fora; in an IGC COI Working Group meeting; in EURASIL meetings on Roma asylum applications, on Afghanistan, on identity, nationality and age determination processes and a workshop on the Democratic Republic of Congo.

Quality Assurance (QA)

The Research Unit conducted research into quality assurance systems in refugee departments and organisations. The Unit developed a pilot QA matrix to document the various checks and balances in place in the Research and Case Processing Units of ORAC to ensure that functions are performed to the necessary standard. The matrix also details the appropriate training and required resources. It will serve as a starting point for enhancing and assuring the quality of ORAC's outputs into the future.

Policy and Procedures Unit

The role of this Unit is to act as a central information resource to lead the development and ongoing review of ORAC's policy and procedures in relation to the examination of applications and to provide appropriate training for staff in this regard.

The main focus for this Unit during 2003 was to ensure that the organisation was properly prepared for the transition to the new procedures arising out of the legislative amendments to the Refugee Act. This involved liaison and co-ordination, both externally with the Department of Justice, Equality and Law Reform and other agencies involved in the asylum process and internally within ORAC. The procedures in operation in the organisation under the existing provisions of the Refugee Act were reviewed and, where necessary, revised to reflect the new provisions.

Applicants who applied before the date the amendments came into effect (15 September, 2003) but who had yet to receive their substantive interview by that date are covered by the new legislation. In that regard, a notice issued to all such applicants advising them in a language they understood of the main changes in the legislation. In addition, a revised general information leaflet was prepared (available in 26 languages) and has been provided to all new applicants since 15 September. Information on the legislative amendments and the associated changes to ORAC's procedures was also circulated to the Irish Refugee Council and the other NGOs on ORAC's customer liaison panel.

The Act included new provisions whereby the Minister could designate certain countries as safe countries of origin and comprehensive training was designed and provided for the units assigned to process applications from the countries in question. In addition, briefing sessions in relation to the new procedures were provided for staff across the organisation as well as more specialised sessions for all those working in Case Processing Units.

The Policy and Procedures Unit was also involved in a range of other important projects during the year.

A working group was set up to review the format and the content of the questionnaire which issues to applicants, in consultation with other agencies and practitioners involved in the asylum process, including UNHCR, the Refugee Legal Service and the Refugee Appeals Tribunal, and with non-governmental agencies who represent the interests of refugees and asylum seekers. A new format questionnaire was introduced in 2002 but this review identified a range of further improvements, principally with a view to making the document more concise and user-friendly, and it is intended that the revised version will be introduced in Spring 2004.

One of the key values included in this organisation's Strategy Statement is a commitment to excellence through performing work to a standard that will ensure the production of high quality recommendations. The Unit has been working closely with the COI/RSD Unit in the identification of criteria which will promote and define quality in the refugee determination process as a first step in the development of a quality assurance programme in the organisation.

During 2003, the Unit was also involved in the implementation of a legal consultancy project which commenced in 2002. This entailed the examination of the structure and composition of the reports assessing the asylum claim in order to develop a report which provides a high level of legal rigour. A new report format was piloted and evaluated in consultation with staff. The Unit continued to work with the external legal consultant in 2003 in order to develop the training module for staff on the completion of the new format reports. The new format report was introduced in the first half of the year, and the training modules were provided to all staff in the case processing area.

The Unit also oversaw the continuation of a pilot project introduced in 2002 regarding the application of Manifestly Unfounded procedures under the existing section 12(1)(a) of the Refugee Act (which dealt with situations where the Commissioner

forms the opinion before interview that an application is Manifestly Unfounded). This involved the development of screening procedures and guidelines for interviewing applicants in such cases. The Unit monitored the results of the screening of such applications, including their subsequent determination at first stage and at appeal. This approach had some success in reducing the number of cases overturned on appeal. The new amendments to the Act however, provided for a fundamentally new approach to the processing of cases which would have fallen into this category and this project is no longer relevant.

Judicial Review Unit

Judicial review is a process, available in its current form since 1979, whereby a remedy is sought from the High Court against the decisions of lower courts, tribunals or administrative authorities.

Recommendations by ORAC to refuse a declaration for refugee status are liable to be judicially reviewed in accordance with section 5 of the Illegal Immigrants (Trafficking) Act, 2000. Usually, the remedies being sought are writs of *certiorari* (the quashing of a decision) or *mandamus* (instructing ORAC to do something specific, e.g. to re-interview). Most judicial reviews are therefore concerned with how the recommendation was reached rather than what was actually decided, i.e. whether the stated procedures are carried out in accordance with law and constitutional and natural justice.

The Act also provides that judicial reviews must be initiated within 14 days of being notified of the finding which the applicant seeks to challenge. In addition, the applicant is required to have "substantial grounds for contending that the... recommendation... is invalid or ought to be quashed".¹¹

¹¹ Section 5(2), *Illegal Immigrants (Trafficking) Act, 2000*.

When leave to bring judicial review proceedings is sought by an applicant, the notice of motion, the grounding statement and any supporting affidavits as well as the Commissioner's case file are all thoroughly examined. If it emerges that a procedural error was made, an offer of settlement, which will re-admit the applicant to the first instance investigation process, will be made. If, however, ORAC is satisfied that the Office has discharged its functions correctly and fairly the application will be contested. If it is decided to contest the application, briefing material is prepared and, where our legal advisors consider it appropriate, replying affidavits will be sworn.

When new legislation comes into effect, particularly legislation which affects individuals, experience shows that it will be frequently tested in the courts, until a sufficient body of precedent is built up. This Office is operating with relatively new legislation which itself has been subject to substantial amendments and consequently it is often dealing with issues not previously considered in an Irish administrative system. A number of applicants allege that first instance procedures are unjust, unfair, unconstitutional and unreasonable. Allegations of this nature are always contested.

In 2003, many judicial review applications in respect of ORAC's procedures were outside the statutory time limit. In some cases applications were made only after the applicant was notified of his/her unsuccessful appeal to the Refugee Appeals Tribunal or at deportation stage. The High Court, following consideration of the main issues grounding the application, has tended to refuse the extension of the time limit.

Section 7 of the Immigration Act, 2003 introduced several amendments to the Refugee Act. As expected, there were a number of early challenges to recommendations made under the new statutory first instance investigation procedures. No initial leave hearing of any of these cases had been heard by the High Court before the end of the year.

At the beginning of 2003, there were 23 unresolved judicial review applications relating to ORAC processes, excluding Dublin Convention related cases¹². During the year 53 cases were instituted. Of the total 76 cases, 23 were finalised in 2003, leaving a total of 53 outstanding cases at the end of the year.

¹² Judicial reviews in relation to the Dublin Convention are discussed in Chapter 4 of this report.





6

Unaccompanied Minors



Unaccompanied Minors and the Refugee Act

Section 8(5)(a) of the Refugee Act provides that, where it appears to an authorised officer of the Commissioner or to an Immigration Officer that a person who has arrived in the State is under the age of 18 years, that child must be referred to the relevant health board which will then decide whether or not to make an application for asylum on their behalf. In the event that an application is made, the health board then assists the minor throughout the asylum process, including by accompanying them to their interview.

Processing of Applications from Unaccompanied Minors

ORAC recognises that certain applicants or groups of applicants in the asylum process may have special needs, including in particular unaccompanied minors and children. In order to deal with these applicants in a fair and appropriate manner, ORAC has developed procedures which take into consideration any specific factors and circumstances arising in these cases.

Consequently, ORAC has put in place guidelines in relation to the determination of applications from unaccompanied minors. In developing these guidelines, account was taken of past experience, UNHCR guidelines and advice, as well as the EU *Children First Programme*. These guidelines have been kept under review and while they have been found to be working well generally, a number of minor revisions were made in 2003.

In order to ensure that the special needs of this group of applicants are properly taken into account, a group of experienced interviewers has received additional specialised training to assist them in working on cases involving unaccompanied minors. This training involved presentations from a number of child care experts, with a focus on issues such as psychological needs, child specific aspects of the refugee process, the role of the social worker and other issues particular to refugee determination for unaccompanied minors.

It is recognised that some children, especially young children, may manifest their fears in ways different from adults and may not be able to fully elucidate the reasons why they left their country of origin. Consequently, in examining the claims of children, it can be necessary to have greater regard to certain objective factors such as country of origin information, in determining the application of the child.

It may also be necessary to take into account that particular policies and practices amounting to violations of specific rights of the minor (for example, the forced recruitment of children into army or rebel groups) may, under certain circumstances, lead to situations that fall within the scope of the 1951 Geneva Convention relating to the Status of Refugees.

In addition, ORAC, together with the other agencies involved in dealing with unaccompanied minors, believes that there are advantages to adopting a multi-agency approach in the training of practitioners in this area and as a result the specialised training programme is also attended by representatives from the health boards, Refugee Appeals Tribunal and the Refugee Legal Service.

ORAC also participates in the inter-agency Working Group on Unaccompanied Minors which is attended by the relevant Departments and agencies who are responsible for dealing with minors. In addition, regular informal liaison takes place with the health boards in order to arrange for the processing of unaccompanied minor cases and to deal with practical issues as they arise.

While the emphasis in preparing and putting in place the above arrangements has been on the needs of unaccompanied minors, the approach taken and in particular the training provided is also of considerable benefit in the interviewing of children who are accompanied but whose parents have decided should be the subject of a separate application for asylum.

Applications from Very Young Children

Whereas most applications received by ORAC from unaccompanied minors are in respect of children of 16 or over, a small number of applications are received from very young children (12 years of age and under). The statutory framework for the investigation of applications for a declaration for refugee status affords all applicants the opportunity of an interview before any recommendation is made, with the exception of children who are included in their parents' applications.

As a result, guidelines and appropriate facilities have been put in place to provide a suitable response to the receipt of applications from very young children, including where the child is accompanied by an adult but has an independent or separate claim for asylum. Additional inter-agency training was organised by ORAC in conjunction with UNHCR for officials from the Refugee Appeals Tribunal, Refugee Legal Service, East Coast Area Health Board and officials from this Office who would be involved in interviewing very young children and determining their status.

ORAC has endeavoured to ensure that a suitable environment is provided which will encourage very young children to fully explain their claims. This includes creating a child-friendly interview room, and adopting an approach designed to put the child at ease and to facilitate their comfortable participation in the interview process.

Developments in 2003

In 2003, a total of 841 persons claiming to be unaccompanied minors attended the Office either seeking to make an application for a declaration for refugee status or to be reunited with their families. Of these, 729 were referred to the health boards and the remaining 112 were judged to be adults and admitted to the asylum process on that basis. A small number of minors referred to the health boards are not reunited with families already in the State and health boards applied for asylum on behalf of 276 such minors in 2003 (288 applications were made in 2002).

During 2003, 337 interviews were scheduled and 201 recommendations issued under section 13 of the Refugee Act, 1996 in respect of unaccompanied minor applications. (A number of factors account for the difference between interviews scheduled and recommendations, including repeat scheduling due to failure to attend, complex cases requiring more than one interview and cases where interviews were adjourned or cancelled due to circumstances relating to the child's welfare.) This compared with 1135 interviews and 560 recommendations made during 2002 (a decrease of 70% and 77% respectively).

As can be seen from these figures, the progress which had been made in 2002 in eliminating the backlog of cases involving unaccompanied minors was reversed in 2003. A shortage of social workers on the part of the East Coast Area Health Board's unaccompanied minors team (the ECAHB is responsible for most unaccompanied minors) meant that it could only provide assistance at a greatly reduced number of interviews and ORAC was obliged to adjust its scheduling accordingly. Additional resources have since been made available to the Health Board team and some progress was achieved in addressing the backlog towards the end of 2003.

The Office also co-operated with the Irish Refugee Council on its report dealing with minors seeking asylum in Ireland which it was commissioned to write for the 'Separated Children in Europe' Programme.

Age Testing

The position regarding persons who present at ORAC and claim to be under 18, but appear older, continues to be a cause for concern, not least in relation to child protection issues.

At the present time, an assessment is made by experienced ORAC staff following an interview with the person and by reference to their account of their background and their apparent intellectual and physical maturity. Due to the considerable difficulty of determining age with any certainty, a large benefit of the doubt is applied, particularly where it appears that the person might be within a few years of 18.

It is recognised by all of the agencies involved with unaccompanied minors that some medical advice in age determination would be desirable. To this end ORAC carried out a pilot project in 2002 based on a medical assessment of bone density (using an X-ray of the hand and forearm). This was followed up by detailed research amongst the EU member states during 2003 as to reliable age testing systems in use elsewhere. In addition, meetings were held with various hospitals in Dublin with the objective of establishing a reliable and scientific method of age testing for minors whose ages were in doubt. This research revealed that there is no universally accepted indisputable medical age determination system but a number of approaches have merit and will be considered further by ORAC in 2004.





7

Presenting at Appeal Hearing





Interaction with the Refugee Appeals Tribunal

Presenting is the term applied to the participation by a Presenting Officer, acting on behalf of the Refugee Applications Commissioner, in the appeal process. The Refugee Act, 1996 states: "The Tribunal shall enable the... Commissioner or an authorised officer to be present at the hearing and present their case..."¹³

The role of the Presenting Officer is:

- to assist the Member of the Tribunal (MOT) in reaching a fair and just decision;
- to respond at the appeal hearing to the issues raised in the appellant's appeal; and
- to represent the Commissioner at the hearing.

In advance of the hearing, the Presenting Officer gains a thorough knowledge of the appellant's file: why the appellant claims a fear of persecution, the detail of the investigation at first instance, and the recommendation of the Commissioner. The Presenting Officer must also consider any information the appellant provides in the grounds of appeal (there is a legal requirement for all appellants to provide such grounds including identifying any claimed errors on the part of the Commissioner), the available up to date country of origin information and any relevant caselaw.

At the hearing, the Presenting Officer may ask questions of the appellant and witnesses (if any) to clarify the issues central to the appeal. These may include, issues relating to any new information disclosed at the appeal hearing and to the credibility of the appellant's claim. The Presenting Officer also summarises the Commissioner's case at the end of the hearing. Responsibility for the recommendation from the appeals process rests with the MOT who conducts the hearing.

In 2003, the Office continued to be represented in the appeal process in accordance with the Act. During the year, the Refugee Appeals Tribunal scheduled a weekly average of 114 appeal hearings over 47 weeks of hearings. Presenting Officers participated at 4498 appeal hearings (including adjournments and no shows) over the course of the year. As there are weekly fluctuations in the numbers of hearings scheduled by the Refugee Appeals Tribunal, forward planning can present difficulties. During the year there was also a sizeable turnover of staff in the Presenting Unit and the necessary training and familiarisation processes are ongoing.

The Act¹⁴ also provides that the Tribunal may request further enquiries/observations in relation to particular issues concerning cases and these are processed in the Presenting Unit. In 2003, the Unit dealt with 90 requests for further information under section 16(6) and with 2 requests for observations on grounds of appeal under section 16(7).

¹³ Section 16(11)(c).

¹⁴ Sections 16(6) and (7).





8

Family Reunification



Focus on the Family

The final act of the conference that adopted the 1951 Geneva Convention included a recommendation in relation to the principle of family unity. In Irish law, the principle that a refugee is entitled to be reunited with his or her family is enshrined in the Refugee Act, 1996.

Respective Roles of the Commissioner and the Minister

Under the Refugee Act¹⁵, this Office is responsible for the investigation and preparation of reports to the Minister for Justice, Equality and Law Reform on applications from those persons granted refugee status who subsequently seek permission for certain family members to enter and reside in the State.

The Act defines "member of the family" for this purpose as:

- where the refugee is married, the spouse of the refugee (providing that the marriage is subsisting on the date of the application).
- where the refugee is, on the date of the application for family reunification, under 18 years of age and is not married, his or her parents.
- the child of a refugee, who on the date of the application is under 18 years of age and is not married.

The Act also specifies that the Minister may also, at his or her discretion, grant permission to a dependent member of the family of a refugee to enter and reside in the State. A "dependent member of the family" is defined as: "any grandparent, parent, brother, sister, child, grandchild, ward or guardian of the refugee who is dependent on the refugee or who is suffering from a mental or physical disability to such extent that it is not reasonable to maintain himself or herself fully".

Any refugee may apply to the Minister for permission for a family member to enter and reside in the State. The application is generally made to the Immigration Division of the Department of Justice, Equality and Law Reform, although some applicants contact this Office directly. All applications are subsequently referred to ORAC for investigation. To collect information in regard to the application, a questionnaire is issued to the refugee making the application and this is sometimes supplemented by requests for specific information. For the majority of applications there is no need to call people for interview. However, in a small number of cases this year, applicants were interviewed to clarify aspects of the application.

A report is compiled based on the available information, including information provided in the questionnaire. The report essentially seeks to set out the relationship between the refugee and the family member, and if applicable, the domestic circumstances of the family member. The report is then sent to the Minister to consider and make a decision on the application. The decision is subsequently notified to the applicant.

Applications for Family Reunification in 2003

During 2003, 529 applications for family reunification were referred to this Office, an increase of 48% on 2002. The total number of family members/dependants referred to in these applications is 1093, an increase of 36% on the number of dependants applied for in 2002. Of the 529 applications, 64% were received from male refugees, and 36% from female refugees.

¹⁵ Section 18.

Applications for family reunification were received from refugees from over forty different countries of origin. The main countries of origin with regard to such applications were Democratic Republic of Congo, Nigeria, Zimbabwe, Angola, and Somalia. By the end of the year, 358 files had been finalised and returned to the Minister for Justice, Equality and Law Reform for decision, an increase of 62% over 2002. The number of family members/dependants referred to in these files is 782 (compared with 535 in 2002).

Future Developments

In order to assist applicants, Family Reunification Unit will prepare a new questionnaire, explanatory leaflet and information sheet outlining clearly the Family Reunification application, examination and recommendation processes.

As the number of people declared as refugees increases the trend suggests that there will be a corresponding increase in the number of applications received for the reunification of family members, and also an increase in the number of family members permitted to enter and remain in Ireland. It will be necessary to devote additional resources to this area of work as demand increases.



9

Customer Service





Overview

The focus of the Customer Service Unit in 2003 was primarily on the further development of the standards of service outlined in the ORAC Customer Service Action Plan 2002.

While our primary customers are of course persons who have applied for asylum or for family reunification, ORAC also interacts with and provides services to the Department of Justice, Equality and Law Reform, other statutory bodies such as the Refugee Appeals Tribunal, the Irish office of the UNHCR, various NGOs who represent or provide services to asylum applicants as well as our own staff.

The Customer Service Centre (CSC), is a central contact point for enquiries to the Office. It also has responsibility for, *inter alia*, the monitoring and development of customer structures with particular reference to the commitments outlined in the Customer Service Action Plan 2002; management of customer enquiries; liaison with other organisations (governmental and non-governmental); and file management and copying.

Work in 2003 was based around the following areas:

- consolidating and enhancing procedures to deal with postal, telephone, e-mail and Internet enquiries to the Office with the aim of giving prompt and accurate replies;
- providing a liaison point for statutory and non-statutory organisations who interact with the Office;
- consolidating and enhancing file management and internal correspondence tracking systems;

- developing a revised Customer Complaints Procedure;
- initiating a process of regular customer surveys, the results of which will inform future customer service policy;
- reviewing the role and membership of the Customer Liaison Panel for NGOs;
- developing a file archive for ORAC; and
- processing of requests to withdraw asylum applications.

Customer Enquiries

The range of enquiries dealt with by the CSC is a useful indicator of the practical issues with which the Office has to deal. Enquiries received include:

- applicant queries on the progress of their claim;
- a large volume of Change of Address notifications both from applicants and the Reception and Integration Agency;
- correspondence from legal representatives (principally the Refugee Legal Service) seeking copy documents or raising legal or procedural issues in relation to the processing of their clients' applications;
- requests to withdraw asylum applications;
- enquiries about other stages of the asylum or immigration process or welfare matters which are administered by other statutory bodies;
- requests for statistics;
- requests for information from the Department of Justice, Equality and Law Reform.

In most cases, CSC deals directly with the queries received but it also acts as a link between customers and other units in ORAC, as well as referring customers to other offices/Government departments where appropriate.

In 2003, CSC dealt with approximately 1550 work items each week including the following categories:

- Written correspondence
- Phone enquiries
- File movement transactions
- Copy files processed



Customer Service Survey

During 2003, the CSC undertook ORAC's first customer service survey. The results of the survey were very positive and indicate that the vast majority of customers who come into contact with the Office are satisfied with the quality of service provided: 98.73% of those who indicated that they had 'called in person' stated that they were treated with courtesy and respect; 94.44% of those who indicated that their contact was 'by telephone' stated that they were either very satisfied or satisfied with the service they received; and 97% of those whose contact was 'written' indicated that their correspondence was responded to within 20 working days (the target response time set out in ORAC's Customer Service Action Plan).

It is planned that future surveys will be targeted more towards the individual types of service delivered by ORAC.

Liaison and Feedback Structures

The two principal areas for formal liaison and feedback structures were further developed and consolidated in 2003:

■ Statutory and Legal Bodies

Contact with the various other statutory and legal bodies involved in the asylum process was ongoing throughout 2003 on a range of issues and was mainly on a bilateral basis.

■ Non-Governmental Organisations

The Customer Liaison Panel of NGOs provides an open forum for issues which need to be addressed and is a very useful communication tool for ORAC and NGOs. It also assists in developing knowledge of each other's operations and in highlighting issues of concern to asylum applicants.

As mentioned, the membership of the NGO Panel was reviewed in 2003 to ensure the widest possible customer participation. As a result of this review the membership of the NGO Panel was increased from 6 to 7. The Panel had two formal meetings in 2003. In addition to these meetings, members of the NGO Panel are informed in writing of important developments in respect of ORAC's activities as and when they occur.

Copy Files and File Management

Copies of applicants' files are made available to the applicants themselves, their legal representative and, where an appeal is made, the Refugee Appeals Tribunal. During 2003, approximately 6031 files were copied by CSC staff.

During the year, a file archive for ORAC was developed and existing structures were reviewed and enhanced, where appropriate, to ensure the continued smooth operation of ORAC's file management systems.



10

Organisation Support



Corporate Organisation and Development

During 2003, the Corporate Office continued to provide administrative and secretarial support to the Commissioner and her senior management team. The scope of this remit is broad and includes the following functions:

- to ensure that sufficient administrative support will allow other units within this organisation, the Department of Justice, Equality and Law Reform and other Government departments and agencies, national and international fora to continue to interact in a co-ordinated and effective manner, by the maintenance and co-ordination of accurate, accessible and timely briefing material;
- the preparation and publication of corporate documents and material for *Sustaining Progress* Progress Reports and their circulation;
- the preparation and co-ordination of material for inclusion in responses to Parliamentary Questions and other briefing material as required by the Minister for Justice, Equality and Law Reform and the media;
- the publication on a quarterly basis of the newsletter of the organisation – *The ORACLE*; and
- provision of administrative and secretarial support to the Partnership Committee.

During 2003, the 5 year Corporate Plan for the period 2004 to 2008 was finalised. The focus of the Plan will be to deliver quality refugee status determination through an organisation committed to continual improvement and where people are valued. The development of the Plan was informed by a detailed consultative process. The Plan and its implementation will be reviewed to ensure its relevance to the context within which we operate and our effectiveness as a public service.

During the year the Strategy Statement for 2004 to 2006 was also finalised. This is the first Strategy Statement for the Office and follows on from the Strategy Framework Document of 2001. It presents an overview of the Office; summarises its mission and mandate; outlines the context and environment in which it must pursue its goals; and sets out the high level goals, objectives, outputs and performance indicators for both the operational and organisational areas of the Office.

Both the Corporate Plan and Strategy Statement reflect the outcome of a review of the organisation which was facilitated by the Centre for Management and Organisational Development (CMOD). The terms of reference for CMOD were to “provide assistance to ORAC to enable the Office to carry out an examination of current procedures, practices and structures in order to align resources to maximise efficiency and effectiveness”. The review which commenced in January, 2003, involved widespread consultation with staff and included the following stages:

- A work group of 22 staff at various grades was set up using the Common Assessment Framework for evaluation purposes (see below).
- One-to-one interviews by CMOD with a further 25 staff members from across the organisation.
- Four workshops involving over 40 staff.
- Individual meetings with over 20 staff, at which a communications questionnaire was completed.

(The Common Assessment Framework (CAF) is an EU-wide public sector performance comparison self-improvement tool. This Office was the first Irish public sector organisation to carry out a CAF exercise.)

The final report of the review was received from CMOD in September and was submitted to the Partnership Committee for consideration and circulated to all staff. An implementation plan was drawn up and taken into account in the business planning process. Particular attention will be paid to means of improving communications and liaison within the Office with a view to streamlining processes and improving effectiveness.



In July, 2003, a Partnership Committee comprising trade union, staff and management representatives was established to strengthen the change management process within the Office. The Committee operates with the help of working groups as the need arises. By the end of 2003, two working groups had been established: an Internal Communications Working Group to develop an internal communications strategy and an Equality Working Group to develop an equality policy and programme.

Finance

Payment in respect of all monies expended by the Office is made by the Finance Division, Department of Justice, Equality and Law Reform, Killarney. ORAC's Finance Unit works closely with Finance Division and with the Department's Asylum Policy Division in relation to budgetary matters and represents ORAC at meetings of the Inter-Agency Budget Group.

During 2003, in the context of ORAC's ongoing commitment to ensuring best financial practices, value for money etc. in all areas of expenditure, the Unit produced a Financial Policy Procedures document which sets out the procedures to be followed by all staff when incurring expenditure on behalf of the Office. The document covers a number of areas, including, procurement, overtime, the use of official issue mobile telephones, the use of taxis for official purposes, travel and subsistence and foreign travel arrangements.

In 2003, the Unit continued to provide a detailed analysis and breakdown of monthly expenditure, extracted from the most up to date accounts supplied by the Finance Division, Department of Justice, Equality and Law Reform. These reports are fundamental in monitoring and planning expenditure throughout the year.

The organisation's expenditure outturn for 2003 is set out in Appendix 4.

Organisation

The Organisation Unit is responsible for the upkeep and maintenance of the buildings of the Office, together with all health, safety and security requirements in respect of the staff at Timberlay House, Lr. Mount Street and Lr. Grand Canal Street. The staff located at Hanover Street are under the auspices of the Refugee Appeals Tribunal in matters of health, safety and security.

2003 saw the final completion of an extensive refurbishment programme at Lr. Grand Canal Street.

In compliance with health and safety requirements, the Area Safety Committee for ORAC met twice in 2003 to address and consider all health and safety issues. During the year, the Timberlay House Safety Statement was revised and made available to all staff in the building. Additionally, an Area Safety Committee for the Grand Canal Street building was established. A safety statement for Grand Canal Street has been devised and circulated to all staff. Meetings also took place during the year with the Office's fire wardens, and fire drills were held in both buildings.

The Office continues to hold a contractual arrangement with a private company for the provision of security services in all public areas of Timberlay House during normal working hours. This service has been put in place to support the safety and security of staff and visitors alike.

Personnel

As at 31 December, 2003, there were 274 staff working in the Office which, with worksharing arrangements, represents a staffing complement of 258. In 2003, 39 staff of various grades were assigned to this Office with 59 staff departing from the Office through retirement, resignation, promotion or transfer.

The worksharing scheme was introduced in the Office in March, 2002 and at end December, 2003, 39 members of staff were availing of the scheme. Staff also availed of other family friendly schemes such as term time and parental leave.

Performance Management and Development System

The Office is committed to the implementation of the Performance Management and Development System (PMDS). Performance Management is a broad term to describe the way a jobholder's work performance, career and development needs are managed and its goal is to contribute to continuous improvement in performance by aligning individual and team performance with the goals of the organisation. New staff to the Office receive PMDS training and staff complete annual Role Profile Forms in line with the Business Plan. Training and development needs are identified between the jobholder and the relevant manager and are forwarded to the Training Unit. The PMDS cycle also includes an Interim Review and an Annual Review process.

Equality

During the year the development of initiatives in the Equality area received particular attention. In October, 2003, an Equality Officer was appointed and a working group was also set up under Partnership to draw up an Equality Policy and Programme for the organisation. The group addressed five areas, i.e. disability in the workplace, racism awareness and interculturalism, bullying and harassment, family friendly policies and e-working, and will present its findings and recommendations to the Partnership Committee in early 2004. It is intended to set up a further group in 2004 to complete the remaining work in this area.

Staff Supports

The services offered by the Employee Assistance Officer (EAO) continued to be highlighted to staff throughout the year. Information on the service was circulated by e-mail, in leaflet form and included in the staff newsletter, *The ORACLE*. In addition, on-site visits were arranged on a six-weekly basis where the EAO was available for one-to-one consultations with staff. Two visits were arranged with a representative from The Hospital Saturday Fund (a plan to cover costs of health care and loss of earnings) who explained the advantages of the scheme to staff. A visit was also arranged with the VHI in relation to its Group Scheme.

Provision of appropriate supports for staff is particularly significant in this organisation where staff meet applicants face to face and in the course of their work often hear applicants' accounts of traumatic experiences in their countries of origin. Such accounts can include killings, torture, sexual violence, mutilations etc.

Clearly this can be a very difficult experience for applicants but also for staff members and, while the position of applicants will always be of critical importance, the position of staff members who have to deal with such accounts, initially at interview and later at reporting and presenting stage, is also of concern.

To address this difficult and stressful aspect of work, the Office engaged the services of the Dublin Rape Crisis Centre to design and provide training for front-line staff. This training included the provision of guidelines for interviewing applicants in relation to traumatic events having regard to the sensitivities of the applicant and also contained an element on self-care for staff. This training was made available to all caseworkers, their supervisors and to all presenting officers. The Office also initiated a peer support/debriefing project for caseworking staff which was facilitated by a member of ORAC's management team and the Department's Employee Assistance Officer. This project involved caseworkers getting together in small groups in a structured, facilitated



setting where they could raise issues of concern with a view to solutions/best practices being found within the group. This project was put in place as a direct response following a survey of staff needs in this area.

Training

The Training Unit co-ordinates, facilitates and delivers training for all areas of the organisation. Training delivered can be categorised as general developmental and job specific. In 2003 there was considerable emphasis on job specific training, in particular in preparation for the implementation of the legislative amendments.

Training programmes specific to the refugee status determination function have been devised in consultation with the UNHCR and with regard to the experience and advice of asylum experts. This training, heretofore delivered by the UNHCR, is increasingly being delivered by ORAC itself with support and guidance from the UNHCR. To this end a group of staff have been trained as trainers to assist as required in the delivery of refugee status determination training and in the provision of specific induction training to new caseworkers and presenting officers. To facilitate this training and to enhance the quality of decision-making a consultant was appointed by the UNHCR and provided considerable support to ORAC in 2003. He worked largely on a one-to-one basis with caseworkers in relation to interviewing and report writing and also provided guidance on country-specific issues.

There is an ongoing programme of training for staff in respect of interviews, assessments, decision-making, asylum procedures and appeals.

The programme of delivering training to Higher Executive Officers continued during 2003 with the provision of the course "Managing People – The Responsibility of Line Managers" to a further 26 staff. Tenders were also sought for management training for Assistant Principal Officers.

Training in IT applications in use in the Office was arranged for 80 staff. The courses were designed by the IT Unit to ensure that the organisational needs as well as individual needs were met, and were delivered by an external training provider.

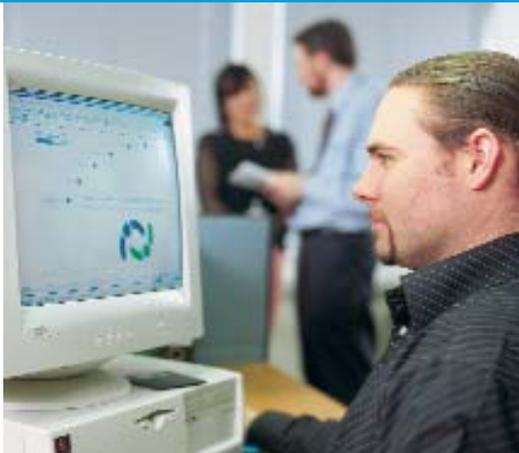
Other training delivered during 2003 included:

- Induction Training
- Performance Management Development System
- Effective Communication Skills
- Stress Management
- Occupational First Aid
- Bullying and Harassment
- Presenting Skills
- Train the Trainer

In addition, a Principal Officer, Legal Researcher and a Higher Executive Officer from the Office attended the International Institute of Humanitarian Law Diploma Course in Refugee Law which took place in San Remo, Italy.

Training Needs Analysis

Work commenced in 2003 on a training needs analysis which is expected to be completed in early 2004 and will inform annual training plans as well as a medium-term training strategy. The training needs analysis will be based on training needs identified on individual role profile forms as well as organisational training needs identified in consultation with management in each Unit.



Information Technology

Information and communications technologies play an ever increasing role in supporting the business objectives of the organisation. The Unit supports an IT network spanning three buildings. Services provided by the IT Unit include the provision of PCs, laptops, printers and telephones, the provision of a helpdesk facility and the support and development of the organisation's specialist systems including, case management, Dublin Convention, fingerprinting and reception systems.

During 2003, a number of significant projects were undertaken by the Unit. Foremost amongst these were two EU-wide systems to facilitate the electronic transfer of data securely and efficiently between EU member states. EURODAC¹⁶ was introduced in January, 2003 and DublinET¹⁷ was implemented in September, 2003.

In 2003, the organisation launched its own website www.orac.ie which was designed in-house to make information about the Office and its activities more easily available to other organisations and members of the public. The website contains information about the asylum process, relevant legislation, ORAC publications and monthly and annual statistics.

An IT Strategy will be put in place in 2004 to facilitate a more strategic approach to the use of technology in the Office.

¹⁶ See Chapter 3.

¹⁷ See Chapter 4.

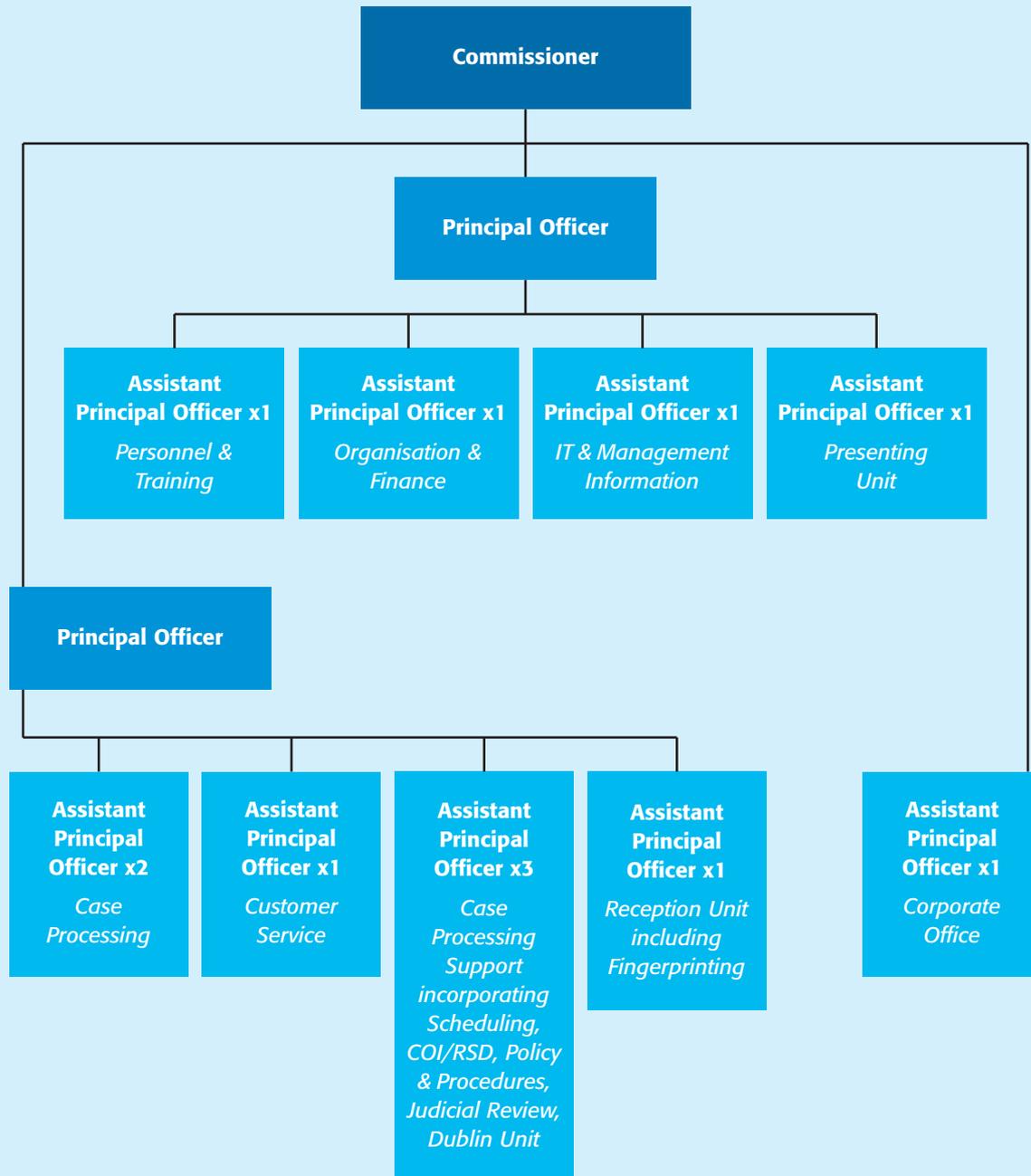




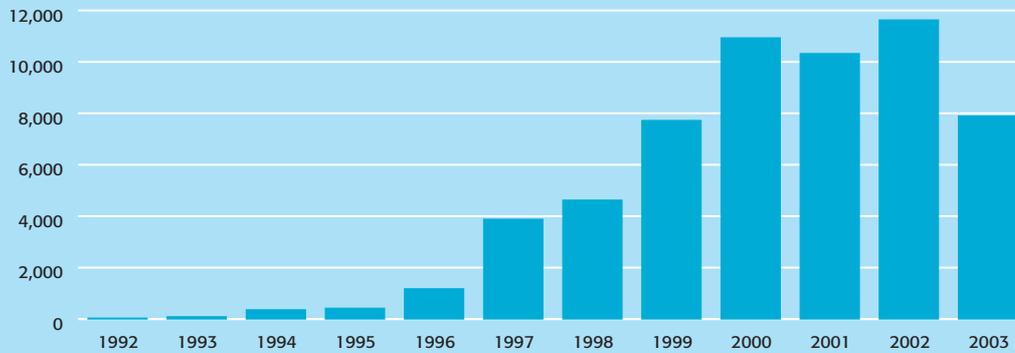
Appendices



Appendix 1 – Organisation Chart for the Office of the Refugee Applications Commissioner



Number of Applications per Year from 1992 to 2003



Applications Received by Month from 01/01/03 to 31/12/03

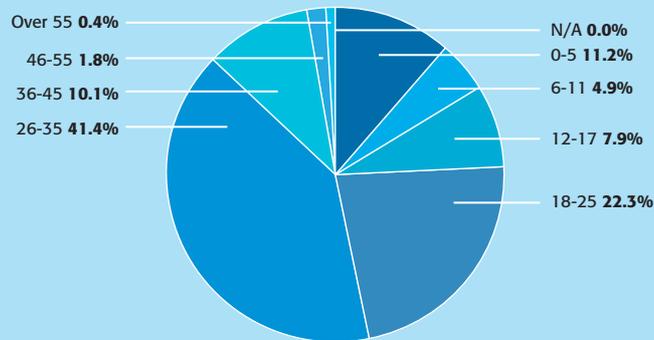


Places of Applications 2003

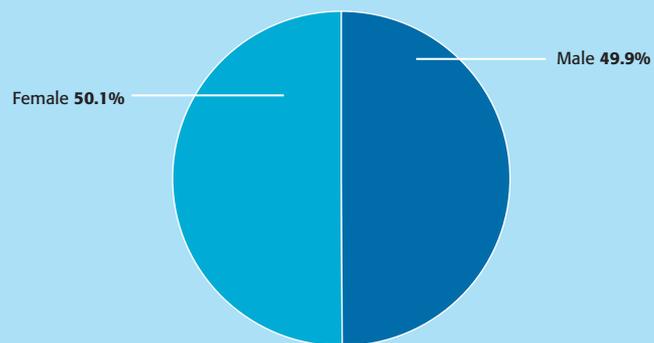


Appendix 2 – Applications/Processing Statistics

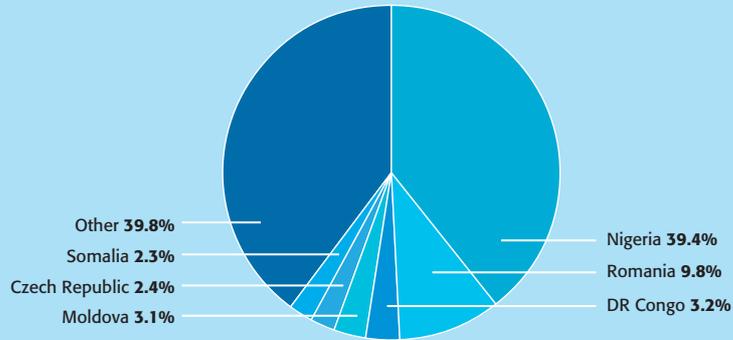
Age Stated by Applicants 2003



Gender Breakdown 2003



Top Six Stated Countries of Origin 2003

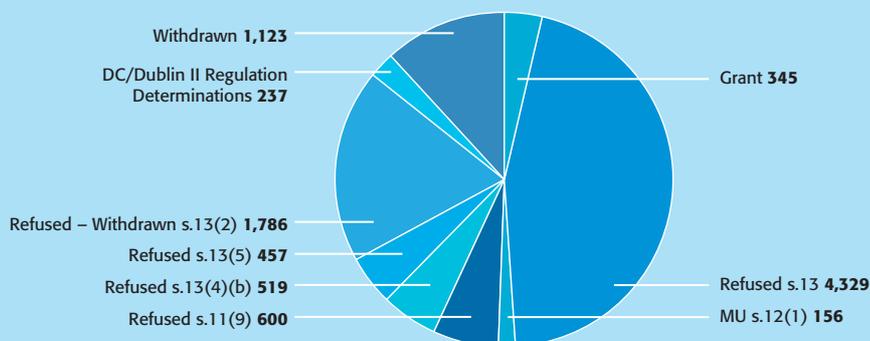


Comparison of Applications Received and Cases Finalised 2003



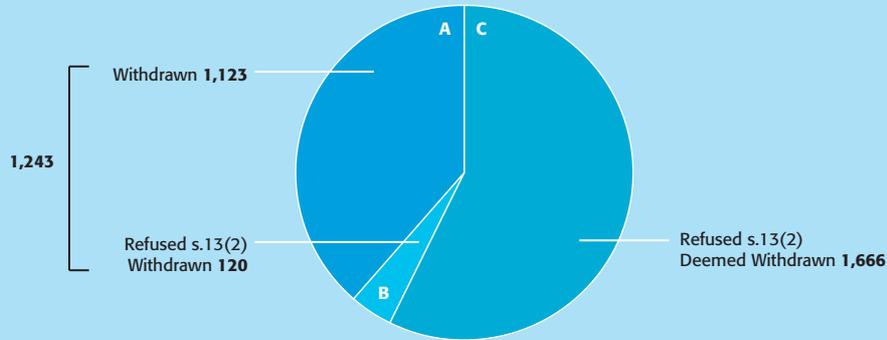
Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
<i>Applications Received</i>	979	947	892	667	604	661	646	655	611	496	395	347
<i>Cases Finalised</i>	1,121	874	799	630	745	588	741	594	680	692	691	486

Cases Finalised 2003



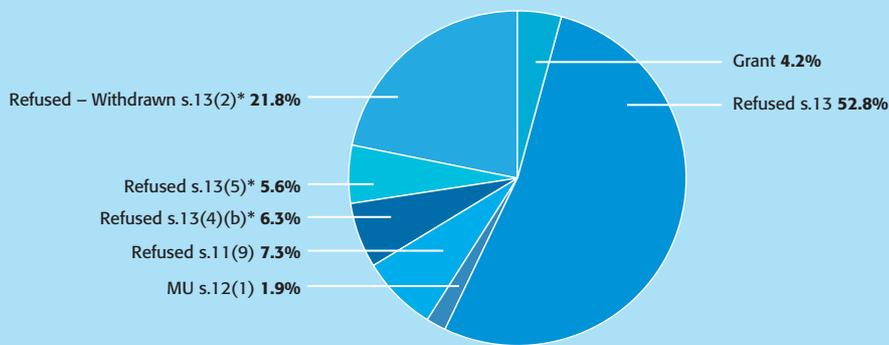
Grant:	<i>The Commissioner has made a recommendation that the applicant be granted refugee status.</i>
Refused s.13:	<i>The Commissioner has made a recommendation that the applicant should not be granted refugee status (under the provisions of the Act which existed prior to 15 September, 2003).</i>
MU s.12(1):	<i>The Commissioner has made a recommendation that the applicant is deemed “manifestly unfounded” under the provisions of section 12(4) of the Act as existed prior to 15 September, 2003.</i>
Refused s.11(9):	<i>Where the applicant fails to attend a second scheduled interview the Commissioner makes a recommendation that the applicant should not be declared a refugee (under the provisions of the Act which existed prior to 15 September, 2003).</i>
Refused s.13(4)(b):	<i>The Commissioner has made a recommendation that the applicant should not be granted refugee status (under the provisions of the Act applicable after 15 September, 2003). An appeal to the Tribunal must be taken within 15 days.</i>
Refused s.13(2):	<i>The Commissioner has made a recommendation that the applicant should not be granted refugee status where an application has been withdrawn or deemed to be withdrawn (under the provisions of the Act applicable after 15 September, 2003). No appeal to the Tribunal is possible.</i>
Refused s.13(5):	<i>The Commissioner has made a recommendation that the applicant should not be granted refugee status and included in her report a finding under section 13(6) provisions of the Act applicable after 15 September, 2003. An appeal to the Tribunal must be taken within 10 days.</i>
DC/Dublin II Regulation Determination:	<i>Where it has been established that the applicant’s claim for refugee status should be determined in another Dublin Convention/Dublin II Regulation country.</i>
Withdrawn:	<i>Where the applicant has withdrawn their application for refugee status (under the provisions of the Act which existed prior to 15 September, 2003).</i>

Cases Withdrawn/Deemed Withdrawn 2003



Following the legislative amendments introduced in the Immigration Act, 2003, a recommendation to refuse refugee status is made where an application is withdrawn by the applicant or deemed withdrawn by the Refugee Applications Commissioner. This chart details applications withdrawn and deemed withdrawn in 2003. Where the figure 1,243 is used in the text of this report, it refers to all applications withdrawn by the applicant (A and B above).

Recommendations Issued 2003



* New legislative recommendations active since 15/09/03.

Appendix 3 – Dublin Convention Statistics

Interviews Scheduled and Attended 2003



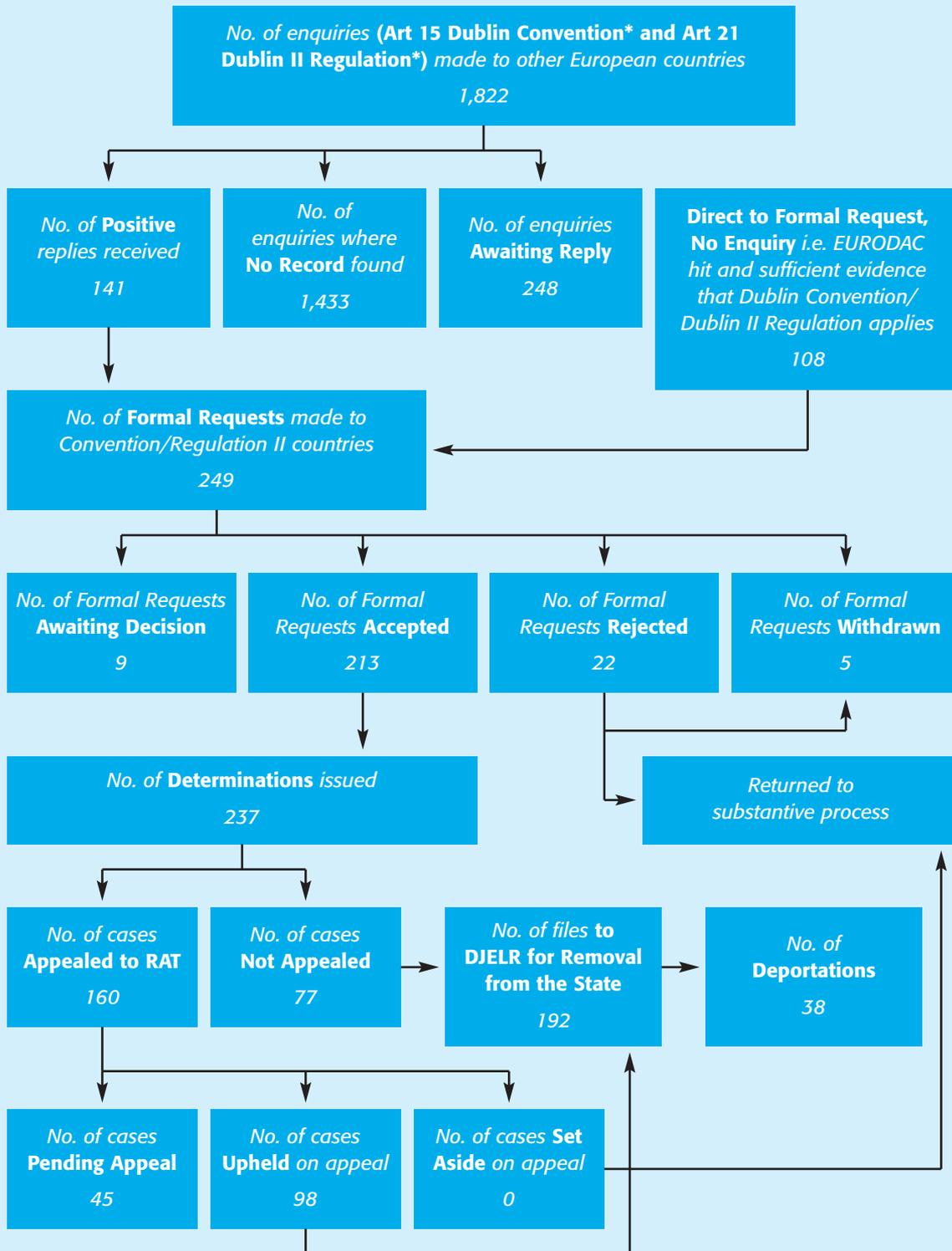
Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
<i>Scheduled</i>	1,191	1,251	1,182	804	807	637	647	491	416	612	626	474
<i>Attended</i>	475	522	531	464	459	429	444	348	285	411	430	328
<i>% Attended</i>	40	42	45	58	57	67	69	71	69	67	69	69

Applications Outstanding as at 01/01/03 to 31/12/03



Appendix 3 – Dublin Convention Statistics

Statistics for the Dublin Convention/Dublin II Regulation for the Period 01/01/2003 to 31/12/2003

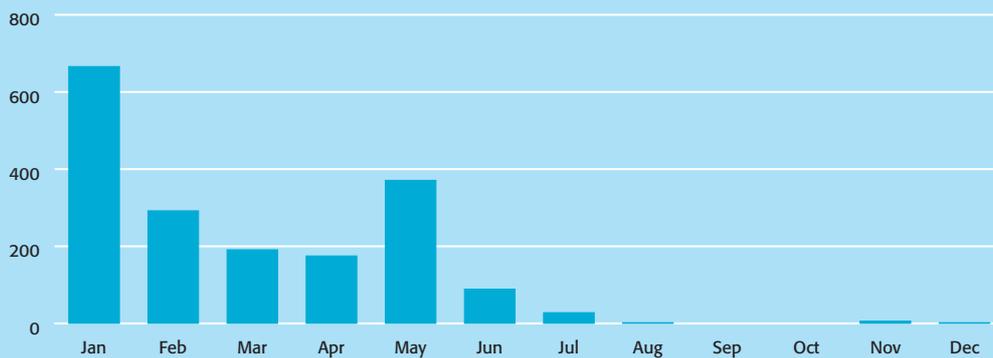


* Enquiries to other Convention countries are made under Article 15 of the Dublin Convention and Article 21 of the Dublin II Regulation. The enquiries are made to ascertain if the requested state has any information on the applicant.

Appendix 3 – Dublin Convention Statistics

Article 15 (Article 21 – Dublin II Regulation) – Enquiries to Other Convention/Regulation Countries – 2003

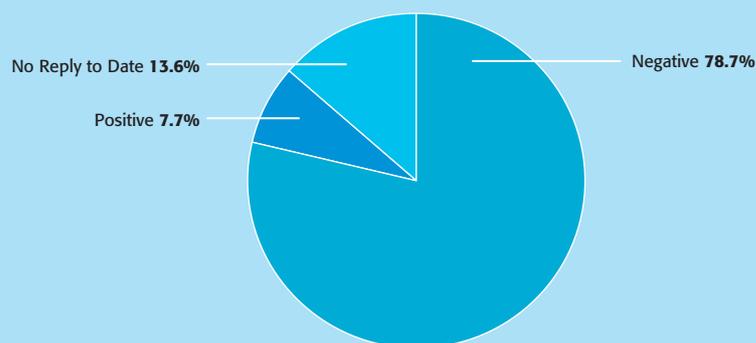
Article 15 Enquiries to Convention/Regulation Countries (Article 21 Dublin II Regulation) – 2003



Article 15 Enquiries to Convention Countries – 2003 (Article 21 Dublin II Regulation)

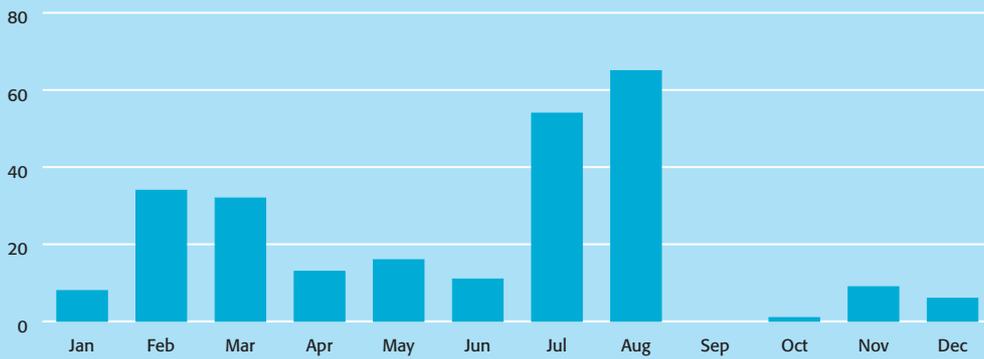
Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Requests													
2003	666	292	191	175	371	89	28	2	–	–	6	2	1,822

Replies to Article 15s (Article 21s Issued)



Formal Requests to Other Dublin Convention/ Dublin II Regulation States – 2003*

Formal Requests to Dublin Convention/ Dublin II Regulation Countries – 2003

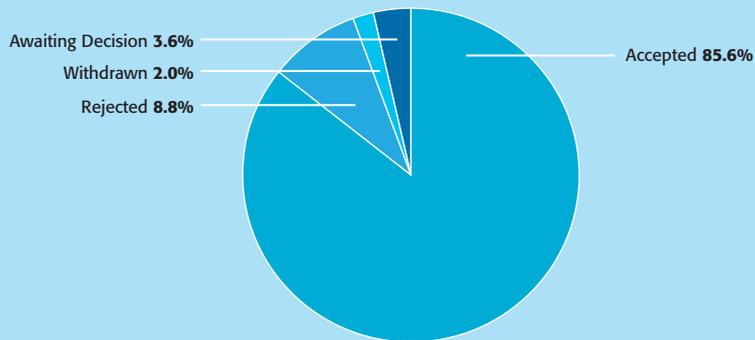


Formal Requests to Other Dublin Convention/Dublin II Regulation States – 2003

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Requests													
2003	8	34	32	13	16	11	54	65	–	1	9	6	249

* These formal requests include requests made under the Dublin II Regulation which came into effect on 1 September, 2003.

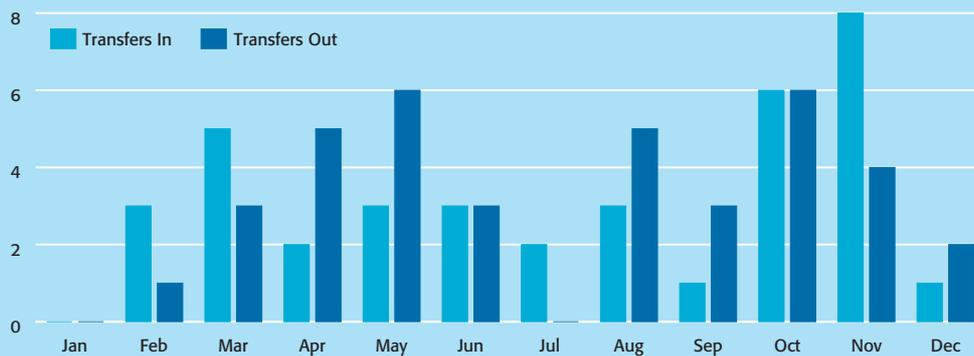
Replies to Formal Requests Issued – 2003



Appendix 3 – Dublin Convention Statistics

Transfers Under the Dublin Convention/Dublin II Regulation by Number and Month – 2003

Transfers under the Dublin Convention/Dublin II Regulation – 2003



Transfers under the Dublin Convention/Dublin II Regulation – 2003

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
<i>Transfers In</i>	–	3	5	2	3	3	2	3	1	6	8	1	37
<i>Transfers Out</i>	–	1	3	5	6	3	–	5	3	6	4	2	38

Profile of Pay Expenditure for the Office of the Refugee Applications Commissioner: 1 January - 31 December, 2003

The pay figure for the Office of the Refugee Applications Commissioner is amalgamated with the Reception and Integration Agency, the Refugee Appeals Tribunal, Ministerial Decisions Unit, Immigration and Asylum Policy Units of the Department of Justice, Equality and Law Reform, under Subhead G of Justice Vote 19.

The outturn for pay for Subhead G for the Department of Justice, Equality and Law Reform was €19,447,000*.

Profile of Non-pay Expenditure for the Office of the Refugee Applications Commissioner: 1 January - 31 December, 2003

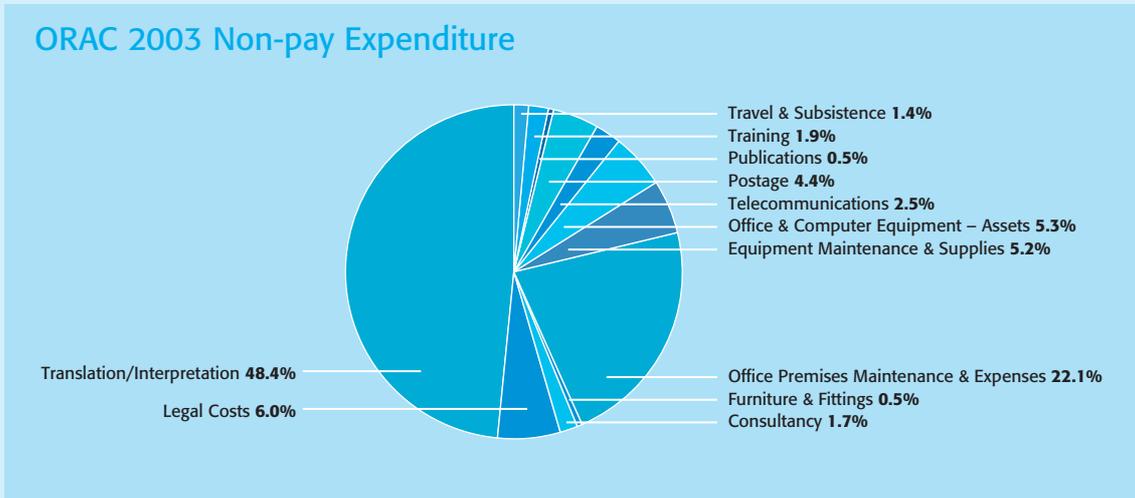
Breakdown of Non-pay Expenditure

Description	Amount
<i>Travel & Subsistence</i>	€45,843.19
<i>Training</i>	€62,606.73
<i>Miscellaneous**</i>	€23,574.39
<i>Conference Expenses**</i>	€14,511.49
<i>Exceptional Performance Award**</i>	€7,261.55
<i>Refreshments**</i>	€2,843.35
<i>Publications</i>	€17,206.57
<i>Strategic Management Initiative**</i>	€6,556.86
<i>Postage</i>	€146,239.43
<i>Telecommunications</i>	€81,369.21
<i>Office & Computer Equipment – Assets</i>	€176,855.57
<i>Equipment Maintenance & Supplies</i>	€172,247.90
<i>Office Premises Maintenance & Expenses</i>	€732,161.81
<i>Furniture & Fittings</i>	€17,015.64
<i>Consultancy</i>	€56,667.94
<i>Library & Legal Research**</i>	€6,401.43
<i>Legal Costs</i>	€197,303.35
<i>Translation/Interpretation</i>	€1,600,706.77
Total	€3,367,373.18

* As provided by Finance Branch, Department of Justice, Equality and Law Reform 6 January, 2004.

** The totals in respect of these item codes are too small to represent on the pie chart following.

Appendix 4 – Financial Data



Appendix 5 – Principal changes to the Refugee Act, 1996 and to the process for dealing with applications for asylum arising from amendments contained in section 7 of the Immigration Act, 2003

1 Introduction

The changes to the Refugee Act came into effect on 15 September, 2003. A summary of the main new legislative provisions are included in the following note. References throughout to “the Act” are to the Refugee Act, 1996 (as amended) and to “the Minister” are to the Minister for Justice, Equality and Law Reform. This summary note is for information and guidance only and does not purport to be a legal interpretation of the Act or an exhaustive description of the changes to it.

2 Fingerprinting

Prior to 15 September only applicants over the age of 14 could be fingerprinted. Applicants under 14 may now be fingerprinted, but only in the presence of a parent or a guardian, and on the authority of a person designated by the Minister for that purpose or, where the person is being fingerprinted by a Garda, on the authority of a senior Garda. As at end 2003 the Minister had not designated any persons for this purpose.

3 Reporting Notice

Applicants may be required to reside in a certain place or district, or to report regularly to an Immigration Officer, Garda officer or another authorised person. Failure to comply with such a requirement

- is a criminal offence for which the applicant may be fined or imprisoned; or
- may result in the applicant’s application being deemed withdrawn.

4 Detention and Intervals between Court Appearances

If an applicant is detained under section 9(8) of the Act while their application for asylum is being determined, the maximum interval between Court appearances to review such detention is increased from 10 to 21 days.

5 Revised ‘Exclusion’ Clause

The definition of a refugee under section 2 of the Act has been amended insofar as it relates to the application of the so called ‘exclusion’ clauses to persons who have committed a crime against peace, a war crime, a crime against humanity or a serious non-political crime or who are guilty of acts contrary to the purposes of the United Nations. These ‘exclusion’ provisions may now apply where, in accordance with the 1951 Geneva Convention, there are ‘serious grounds for considering’ that the person comes within the categories in question.

6 Duty to Co-operate, Withdrawal and Deemed Withdrawn Cases

The new provisions specifically place a duty on the applicant to co-operate at all times in the investigation of their application and in the determination of their appeal, if any.

In this regard, an applicant is required to furnish to the Commissioner or the Refugee Appeals Tribunal, at the earliest possible opportunity, all information relevant to their application that they have or can get.

Applicants are required to inform the Commissioner of their address within 5 working days of the making of an application for a declaration for refugee status. If they do not comply with this requirement, their application will be deemed to be withdrawn, without further notice.

As was the case prior to 15 September, applicants must inform the Commissioner of any change of address as soon as possible. Under the new provisions, failure to comply with this requirement may now result in an application being deemed withdrawn.

If an applicant does not attend for an interview on the date and at the time fixed for the interview and does not furnish a reasonable explanation for their non-attendance within 3 working days after that date then their application will be deemed to be withdrawn.

Appendix 5 – Principal changes to the Refugee Act, 1996 and to the process for dealing with applications for asylum arising from amendments contained in section 7 of the Immigration Act, 2003

Where an applicant fails in their duty to co-operate or to provide information relevant to their application or is in breach of certain of the obligations¹⁸ placed upon them under the Act, then they are sent a notice in writing requesting them to indicate whether they wish to continue with their application. If they do not reply within 15 working days of the notice being sent, their application will be deemed to be withdrawn.

An applicant may withdraw their application by writing to the Commissioner.

If an application is withdrawn or deemed withdrawn prior to the Commissioner making a recommendation on an application, the investigation of the case by the Commissioner will cease and a recommendation will be made that the applicant should not be declared to be a refugee. There is no appeal against this category of recommendation, and the recommendation will be forwarded to the Minister.

7 Investigation of Applications by the Commissioner

The Commissioner is required to take into account any written representations received from an applicant before or during their interview. There is no longer a requirement in the Act for the Commissioner to provide a further 7 days following an interview within which further written submissions may be made.

8 Burden of Proof & Safe Country of Origin

Under the new provisions, the Minister may, after consultation with the Minister for Foreign Affairs, designate a country as a safe country of origin. In deciding whether to make such a designation, the Minister shall have regard to whether the country is party to certain international human rights instruments as specified in the Act, whether it has a democratic political system and an independent judiciary, and whether it is governed by the rule of law.

In an order dated 15 September, 2003, the Minister has designated the following countries as safe countries of origin:

Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia.

The Minister has also stated that he intends to keep this list under review. Countries may be added to or subtracted from the list over time.

If it appears to the Commissioner that an applicant is a national of, or is entitled to live in, any of the above countries designated by the Minister as a safe country of origin, or if the applicant had applied for asylum in another country which is a party to the Geneva Convention, then they will be presumed *not* to be a refugee unless they can show reasonable grounds for the contention that they are a refugee.

¹⁸ The obligations are:

- an applicant must not leave, or attempt to leave, the State without the consent of the Minister;
- an applicant must provide their address to the Commissioner or details of any change of address as soon as possible;
- an applicant must remain at a particular place in the State where required to do so under the Act;
- an applicant must report at specified intervals where requested to do so under the Act.

Appendix 5 – Principal changes to the Refugee Act, 1996 and to the process for dealing with applications for asylum arising from amendments contained in section 7 of the Immigration Act, 2003

9 Prioritisation of Certain Categories of Application by the Minister

The Minister may direct the Commissioner or the Chairperson of the Refugee Appeals Tribunal to give priority to certain classes of applications.

Following a direction from the Minister, dated 15 September, 2003 applications from applicants who are from, or have the right to reside in, a country designated as a safe country of origin (see list above) are to be given priority.

Additionally, following a direction from the Minister, dated 15 December, 2003 applicants from **Nigeria**, who apply on or after that date, are also to be given priority.

This means that if an applicant falls within one of the above categories and makes an application for refugee status, their application will be given priority and may be dealt with by the Commissioner before other applications.

10 Credibility

In assessing an applicant's credibility in connection with their application for a declaration for refugee status, the Commissioner or the Refugee Appeals Tribunal shall consider the following:

- whether the applicant has identity documents or gives a reasonable explanation for not having them,
- whether the applicant has given a reasonable explanation for any claim that Ireland is the first safe country in which they arrived after leaving their own country,
- whether the applicant has provided a full and true explanation of how they travelled to Ireland,
- whether the applicant had applied immediately on arriving at a point of entry into Ireland, or whether a reasonable explanation has been provided for not so applying,

- whether the applicant has forged, destroyed or disposed of identity documents, and whether they have given reasonable explanation for such actions,
- whether the applicant has given manifestly false evidence or has made false statements,
- whether, without reasonable cause, they have reapplied for asylum having previously withdrawn,
- whether the applicant applied for asylum following commencement of the deportation process,
- whether the applicant has co-operated in the investigation of their case, has provided relevant information at the earliest possible opportunity, has not left the State without the consent of the Minister, and has kept the Commissioner informed of their address or complied with any requirement to live at a particular place or to report regularly to a named person,
- whether on appeal, the applicant brings forward new information which could have been, but was not, given to the Commissioner.

11 Negative recommendations of the Commissioner and Right to Appeal to the Refugee Appeals Tribunal (the Tribunal)

Where the Commissioner's report on an application includes a recommendation that the applicant should not be declared a refugee, either because their application was withdrawn or deemed to be withdrawn, **there is no appeal**. Otherwise, where the Commissioner's report includes a recommendation that an applicant should not be declared a refugee, the normal position is that an applicant may appeal to the Tribunal against the recommendation within **15 working days** of the sending of the notice. Applicants may request any such appeal to be conducted by way of oral hearing.

Appendix 5 – Principal changes to the Refugee Act, 1996 and to the process for dealing with applications for asylum arising from amendments contained in section 7 of the Immigration Act, 2003

In certain circumstances, different procedures for appeal will apply as follows:

- (i) If the Commissioner's negative recommendation includes among its findings any one of the additional findings listed at (a) to (e) below, an applicant may appeal to the Tribunal against the recommendation within **10 working days** after the sending of the notice. Any such appeal will be determined without an oral hearing.

Additional findings of the Commissioner are:

- (a) the application showed either no basis or a minimal basis for the contention that they are a refugee;
- (b) the applicant made statements or provided information in support of their application of such a false, contradictory, incomplete or misleading nature as to lead to the conclusion that their application is manifestly unfounded;
- (c) without reasonable cause, the applicant failed to make an application as soon as reasonably practicable after arrival in the State;
- (d) the applicant had lodged a prior application for asylum in another state party to the Geneva Convention (whether or not that application had been determined, granted or rejected)
- (e) the applicant is a national of, or has a right of residence in, a safe country of origin so designated by order of the Minister under section 12(4) of the Act (see paragraph 8 above).

- (ii) The Minister has the power to direct that certain categories of applications be dealt with in such a way that, should a negative recommendation be made by the Commissioner, and should any one of the additional findings listed above at (a) to (e) apply, an applicant will have **4 working days** to appeal against the recommendation to the Tribunal instead of the 10 working days described at (i) above. Any such appeal would be determined without an oral hearing. As at the end of 2003, no such categories had been designated by the Minister.

12 Dublin Convention and Agreements with Safe Third Countries

The Act also provides for the operation and the making of orders to give effect to the Dublin Convention as well as to the new EU Regulation which replaces the Dublin Convention from 1 September, 2003 (known as the Dublin II Regulation). The Act also provides for the possibility of bilateral agreements with other safe third countries which would allow for the transfer of responsibility for certain applications for refugee status between Ireland and such third countries. As at the end of 2003, no such agreements had been entered into.

Country of Origin Information (COI)

Country of Origin Information (COI) consists of many types of information such as legislation, news reports, maps, official documents, e.g. passports, work permits. It is used as an aid to determining the substance of applications for declarations for refugee status.

Declaration of Refugee Status

As referred to in section 17 of the Act, where the Minister gives to the applicant concerned, following a recommendation by the Refugee Applications Commissioner, or following a decision of the Refugee Appeals Tribunal to set aside the recommendation of the Commissioner, a statement in writing that he/she is a refugee.

Dublin Convention

The Dublin Convention provides a mechanism for determining the Convention country responsible for considering an application for asylum. The Convention was signed in Dublin on 15 June, 1990 by the member states of the European Community. All fifteen member states of the European Union have ratified the Dublin Convention. In addition, Iceland and Norway ratified the Dublin Convention in April, 2001.

Dublin II

The Dublin II Regulation which came into operation on 1 September, 2003 replaces the Dublin Convention. This Regulation provides a mechanism for determining which Dublin II Regulation country is responsible for examining an application for a declaration for refugee status. All EU member states are bound by the Regulation with the exception of Denmark who will continue to operate the Dublin Convention with all member states. Iceland and Norway also operate the Regulation.

EURASIL

European Union Network for Asylum Practitioners/Réseau de l'UE pour les Praticiens de l'Asile. A forum for asylum practitioners in the EU to exchange information on asylum issues such as refugee status determination systems and country of origin information systems.

EURODAC

A system for the electronic exchange of fingerprints of persons over the age of 14 years between EU member states (with the exception of Denmark), together with Iceland and Norway. Fingerprints are transmitted daily to a central database in Luxembourg.

The Intergovernmental Consultations on Asylum (IGC)

The Intergovernmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia is an informal forum of 16 states which meet to discuss migration and asylum issues.

Refugee Legal Service

The Refugee Legal Service is a service offered by the Legal Aid Board which provides legal services to applicants seeking declarations of refugee status.

Temporary Residence Certificate

The Temporary Residence Certificate, provided for under section 9(3)(a) of the Refugee Act, 1996, is a card given to applicants which holds their photograph, name, fingerprint, and other identification data.

UN Convention

The UN Convention signed in 1951 is an international instrument to define the legal status of refugees. The Convention relating to the Status of Refugees was adopted by a Conference of Plenipotentiaries of the U.N. on 28 July, 1951, and entered into force on 21 April, 1954.

United Nations High Commissioner for Refugees (UNHCR)

The Office of the United Nations High Commissioner for Refugees (UNHCR) was established on 1 January, 1951. The 1951 Convention specifically notes that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and ensuring the effective co-ordination of measures taken to deal with this problem in co-operation with the various states.



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