



SOCIAL PROTECTION DENIED

*The Impact of the
Habitual Residency Condition
on Migrant Workers*

The Migrant Rights Centre Ireland is a national organisation working to promote the rights of migrant workers and their families. Based in Dublin the MRCI provides direct support to migrant workers throughout Ireland. We also work with migrant workers to become involved in the issues concerning them and support their visibility and inclusion in Irish society. Influencing policy development and campaigning for positive social change are core aspects of MRCI's work. In addition we are active in supporting locally based initiatives and networks at a local, national, European and global level.

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Siobhan O' Donoghue

Director

November 2005

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GLOSSARY

CB	Child Benefit
CTA	Common Travel Area
CWO	Community Welfare Officer
DA	Disability Allowance
DETE	Department of Enterprise, Trade and Employment
DJELR	Department of Justice, Equality and Law Reform
DSFA	Department of Social and Family Affairs
ENP	Exceptional Needs Payments
ECAS	European Consumer Action Service
EEA	European Economic Area
EU	European Union
GNIB	Garda Naturalisation and Immigration Bureau
HRC	Habitual Residence Condition
HSE	Health Service Executive
ICI	Immigrant Council of Ireland
IOM	International Organisation for Migration
LRC	Labour Relations Commission
MRCI	Migrants Rights Centre Ireland
OPFP	One Parent Family Payment
PPSN	Personal Public Service Number
SWA	Supplementary Welfare Allowance
SWAO	Social Welfare Appeals Office
UA	Unemployment Assistance
UB	Unemployment Benefit

EXECUTIVE SUMMARY

1 INTRODUCTION

Effective from May 1st 2004, the Irish government introduced the Habitual Residence Condition (HRC) as an additional criterion for qualifying for social assistance payments, Child Benefit (CB) and access to emergency accommodation.

Migrant workers experiencing hardship due to the implementation of the HRC are approaching the MRCI, and other Non-Governmental Organisations (NGOs), for advice and support. This report explores the unintended impact of the Habitual Residence Condition policy.

Methodology

The methodology consisted of:

- The development of case studies on the HRC and migrant workers;
- Meetings with MRCI staff, and telephone interviews with NGOs in Longford, Cork and Galway and the Society of St. Vincent de Paul (SVP);
- A meeting with the Habitual Residence Condition Unit in the Department of Social and Family Affairs (DSFA);
- Telephone interviews with the Supplementary Welfare Allowance Policy Section, Department of Social and Family Affairs and a Community Welfare Officer.
- Sourcing data on the implementation of the HRC from the DSFA.

2 POLICY CONTEXT

2004 EU Enlargement and Fears of 'Welfare Tourism'

In the run up to enlargement, fears were expressed in the EU15 members states of a possible 'influx' of workers from the new members states taking jobs from EU citizens and migrating purely for social welfare purposes - 'welfare tourism'. Ireland, the United Kingdom and Sweden were the only countries to allow open access to their labour markets to new member states. Sweden however, did not link eligibility for welfare benefits to tight eligibility conditions, while Ireland and the U.K. governments introduced habitual residence tests. Ireland introduced the HRC a very similar test to that established in the U.K.

This is namely due to the Common Travel Area (CTA) between the two countries.

Given that Sweden was the only country granting equal access to its welfare system and labour force post-May 2004, using the 'welfare tourism' line of reasoning, we would expect to see new member state nationals migrating there to avail of such open labour market and welfare access. This fear did not transpire on either front. Welfare tourism fears are also not supported by the statistics on the implementation of the HRC in Ireland. From May 1st 2004 to July 31st 2005, of the 118, 262 migrant workers coming to Ireland, only 4,036 (3.4%) applied for social assistance/ CB and had their application determined by the DSFA's HRC Unit.

Migration to Ireland and Visas/Permits Required for Working in Ireland

Ireland has been a country of emigration rather than inward migration but this trend is now reversed. The Irish immigration system is market-led and employer driven. Unprecedented economic growth and labour shortages have led to the recruitment of workers from outside of the European Economic Area (EEA). Migration has been facilitated by the Irish government through the allocation of working visas/ authorisations and work permits allowing people from non-EEA countries to live and work in Ireland.

The one-year renewable work permit is issued to and held by the employer to employ non-EEA nationals, and changing employer may be possible within limitations. Family reunification is limited and spouses do not have an automatic right to work. The two-year, renewable working visa/work authorisation scheme is restricted to specific skilled occupations in short supply, such as IT and nursing. Visas/ authorisations are issued to the employee and the employee can change employer. Family reunification is easier to achieve and in limited cases spouses have been granted the right to work.

Profile of Migrant Workers in Ireland

Most of the recent growth in inward migration to Ireland comes from countries outside the EU and USA. Seventy-four per cent of all work permits relate to areas of work in the so-called 'low skills' category. Such workers tend to be very low paid and work significantly longer hours than all persons employed in Ireland.

Becoming Undocumented

There is no estimate of the number of undocumented workers in Ireland. It is the experience of the MRCI that undocumented migrant workers are likely to enter legally as temporary workers on work permits, as students or as tourists. Many workers become undocumented when, having been made redundant or been forced to leave their employment due to exploitation, their right to reside ie residency status expires before locating a new employer.

Employment Experiences of Migrant Workers in Ireland

For some migrant workers in Ireland, discrimination, low pay and poor working conditions are a factor in their employment. In some instances migrant workers are finding recourse through the Labour Relations Commission (LRC), the Employment Appeals Tribunal and the Equality Tribunal (ET).

The Department of Enterprise, Trade and Employment has responsibility for enforcing employment rights. The Social Welfare Inspectorate of the DSFA will also investigate cases of irregularities in employer's observance of tax and social insurance regulations.

3 THE IMPLEMENTATION OF THE HABITUAL RESIDENCE CONDITION.

The basis of the HRC is that applicants, regardless of nationality, must be deemed to be habitually resident in the Irish State in order to qualify for, amongst other social assistance payments: Unemployment Assistance (UA); One-Parent Family Payment (OPFP); Disability Allowance (DA); Supplementary Welfare Allowance (SWA) (other than once-off exceptional and urgent needs payments); and Child Benefit (CB). The HRC is an additional condition to be satisfied along with the other conditions for entitlement to payments for all applicants.

Key points in the regulations guiding the implementation of the HRC¹ are:

- It is presumed that a person is not habitually resident in the state unless s/he has been in the state or the CTA for a continuous period of 2 years, but there will be circumstances in which a person in

¹ The full regulations are available at www.welfare.ie

Ireland for less than 2 years will satisfy the HRC.

- There are 5 factors determining habitual residence:
 1. Length and continuity of residence;
 2. Length and purpose of absence from Ireland;
 3. Nature and pattern of the employment;
 4. Applicant's main centre of interest in Ireland;
 5. Future intention of applicant.
- The most important factors for habitual residence are the length, continuity and general nature of actual residence rather than intention.
- The list of five factors determining habitual residence is not exhaustive and no single aspect is consistently likely to be the deciding factor.

Applying for Social Welfare and Emergency Accommodation

While social welfare payments listed previously have clear eligibility criteria, SWA decision-making is more discretionary. Alongside a basic payment, the SWA provides for discretionary payments such as a rent supplement and mortgage supplement and exceptional needs payments (ENPs). Community Welfare Officers (CWOs) in Health Service Executive (HSE) areas administer the SWA scheme from a network of local Health Centres nationwide, and the applicant makes claims in person to the CWO.

Homeless persons requiring emergency accommodation approach Health Centres for assistance. Under the HRC, CWOs can no longer refer homeless migrant workers not considered habitually resident to emergency accommodation provided by local authorities. Non-governmental organisations are also substantial providers of emergency accommodation and are not barred from receiving non-habitually resident migrants.

CB and OPFP applications are processed centrally while applicants seeking other payments must approach their local DSFA office. Complex HRC cases are forwarded from central and local DSFA offices to a centralised HRC Unit for determination.

The European Union and the HRC

Under EU law, the HRC should not be applicable in determining the eligibility of EEA nationals who are employed or self-employed in Ireland or have become unemployed and in receipt of UB for payments considered to be 'Family Benefits'. CB and, from August 2005, OPFP are considered to be a 'Family Benefit'. Confusion on the influence of this point of EU law arose in the development of this report.

The Implementation of the Habitual Residence Condition by the HRC Unit

Ten per cent of social assistance/Child Benefit applications are forwarded to the central HRC Unit in Dublin for decision. Of the 18,231 cases determined by the Unit from May 1st 2004 to August 18th 2005: 13,365 (73%) passed the HRC; 4,866 (27%) did not pass the HRC; and 6,144 cases are still waiting to be determined. The number of complex cases being forwarded to the HRC Unit, and the resulting backlog, was unanticipated by the DSFA. Decision-making is to be devolved to local DSFA offices.

Each application is decided on a case-by-case basis. Satisfying the HRC is linked with the application for an individual payment rather than an across the board approach being taken to all payments.

From the perspective of the DSFA, the central crux of the HRC dilemma is how to meet social assistance needs for migrant workers and their families as they arise without giving long-term entitlement to payments.

The Implementation of the HRC in SWA applications and Emergency Accommodation

As discretion exists within the SWA system and the HRC regulations are also flexible, SWA outcomes for applicants can differ. A CWO contacted for this report indicated that SWA basic payments may be given as a short-term stop-gap where: migrant workers have applied for another social assistance payment and are awaiting a decision; applicants have been ill or unfairly treated in their job; or migrant workers are awaiting wages. A recent Departmental Circular states EEA nationals who are considered to be either workers or former workers will satisfy the HRC condition when applying for SWA. This change does not apply to workers who have recently arrived and are classified as job seekers. Homeless non-habitually resident migrant workers are not referred to emergency accommodation due to the restrictions placed by the HRC.

They are referred to the Reception and Integration Agency (DJELR) where they are given accommodation for one or two nights before being offered repatriation.

4 THE IMPACT OF THE HABITUAL RESIDENCE CONDITION ON MIGRANT WORKERS AND THEIR FAMILIES

This section presents a series of case studies detailing the experiences of migrant workers and their families in need of social assistance, emergency accommodation and Child Benefit and being denied payment under the HRC.

Access to Child Benefit – Supporting Children and Families

The case studies and interviews contained in the full report reflect:

- the current delays being experienced in the administration of CB claims by the HRC Unit – over 6 months in both case studies;
- the lack of communication with applicants when complex HRC cases are referred to the HRC Unit;
- the consequences of the lengthy delays, e.g., threat of eviction and difficulty in meeting daily expenses;
- the reliance on the SVP for financial support in the absence of social assistance;
- the confusion that exists on the implication of the Family Benefit rule for EEA nationals when applying for CB.

Migrant Workers Experiencing Exploitation

The case studies and interviews contained in the full report illustrate:

- that the uncertainty of receiving a social assistance payment diminishes workers bargaining power and their ability to assert their employment rights;
- that for migrant workers refused social assistance under the HRC, the emergency needs payments provide the only formal income safety net, while friends and NGOs provide vital support.
- that meeting the centre of interest criteria in the HRC guidelines is problematic for migrant workers due to the short term nature of work permits;

- how NGOs identify that some CWOS and DSFA local office staff have insufficient knowledge of work permit/visas systems;
- how migrant workers can find themselves undocumented as a result of exploitation, having implications for eligibility for social assistance and social insurance payments; and
- that a general impression exists that a HRC decision is applied across the board to all payments rather than on a case-by-case basis.

Migrant Workers Recruited through Employment Agencies

While many employment agencies operating in new member states and outside exhibit good practice, the practices of some agencies are causing deprivation and homelessness for migrant workers. Reported cases include migrant workers being offered non-existent or inappropriate jobs before coming to Ireland and the employment agency taking a substantial fee from the migrant worker. Eligibility for social assistance under the HRC is unlikely for such people, other than the possibility of a once-off ENP and the offer of repatriation.

Migrant Workers Unable to Work due to Injury or Illness

The case studies and interviews contained in the full report illustrate:

- that the introduction of the HRC is having implications for the welfare of migrant workers while they are recuperating, and the availability of an income safety during their illness or disability;
- the difficulties experienced by some migrant workers in accessing correct information on their social welfare and social assistance entitlements due to language difficulties and to the lack of correct information and guidance; and
- the difficulties of being an undocumented migrant worker in Ireland. Paying insurance contributions will not count towards a social insurance based payment without a work permit/ residency stamp during the period of employment.

Migrant Workers Experiencing Homelessness

The case studies and interviews in this report demonstrate:

- that paying for rented accommodation on low wages can be difficult, but easier if the migrant worker is single and can share

accommodation with a group of workers. Workers in Ireland on their own and families are most vulnerable to homelessness in this regard;

- how important it can be for migrant workers finding themselves without employment or income due to the HRC to have friends and colleagues that can house and support them in the short-term;
- that the time period required to get a new work permit can result in homelessness and deprivation;
- the catch-22 for migrant workers on work permits, i.e., how to demonstrate a centre of interest while on a work permit which is by nature temporary;
- that as new member state nationals do not require visas to come to Ireland to work and live, some are travelling to Ireland without being fully prepared and can end up homeless; and
- that while NGOs are providing shelter and support to homeless migrant workers, they also face constraints in this regard.

Migrant Workers Unprepared for Living and Working in Ireland

Some migrant workers are unprepared for the time it takes to find work in Ireland, the cost of accessing private rented accommodation and the overall cost of living. NGOs nationwide identify that migrant workers who end up requiring social assistance often come to Ireland with insufficient funds and over optimistic hopes of finding work. The MRCI also support workers arriving with little or no information on the cost of living in Ireland or how to go about finding work in Ireland. The only intervention provided by the state is repatriation through the Reception and Integration Agency. The need for further support to be provided for migrant workers by the embassies of migrant workers in Ireland was identified.

NGOs recognise that returning home, in some instances, may be the best course of action for individual migrant workers and NGOs will support people in making that decision. Some migrant workers do not have the option to return home, as they are the main earner in the family or have a debt to repay.

A substantial number of migrant workers are coming to Ireland to work in the construction industry. They require 'Safe Pass' courses before they will be allowed on site due to health and safety regulations. Migrant construction workers need to enter the workplace quickly in order to

support themselves and often cannot afford to take the Safe Pass training. NGOs are supporting workers in accessing the course.

Migrant Workers Let Go from their Employment

While some migrant workers in Ireland end up without employment due to exploitation or discrimination, others are laid off from their job or their work contract is not renewed due to the short term and insecure nature of contemporary work practices. It is the experience of the MRCI that as migrant workers have travelled to Ireland specifically to work, they will begin the search for new employment immediately and that their request for social assistance is usually short-term while they are seeking work.

A case study illustrated how migrant workers on work permits working in low paid and insecure employment find it difficult to prove that their 'centre of interest' is in Ireland. In this particular study, the applicant found that her employer had not forwarded all of her social insurance contributions to the DSFA.

Women Experiencing Domestic Violence

Migrant women experiencing domestic violence in Ireland is an emerging feature of the MRCI's caseload. The vulnerability of women in domestic violence situations is deepened by the uncertainty brought about by the HRC, as women in these circumstances may end up homeless and in need of SWA payments. The position of women who are EEA nationals in relation to eligibility for OPFP was not clear at the time of writing. The situation for women experiencing domestic violence in Ireland on spouse dependent visas may be much more problematic from both a social welfare and immigration perspective.

5 EMERGING POLICY ISSUES

Social Welfare Policy Issues

- Given the negative impact of the HRC on migrant workers, and the fact that the fears leading to its introduction have not come to pass, it is time to reconsider the aims and objectives of the HRC.
- The outcome of the introduction of the HRC has been, not to deter 'welfare tourists', but to increase homelessness and poverty and deprivation for some migrant workers in Ireland.
- Migrant worker's lives can fall apart very quickly without state

support. The case studies illustrate how the interaction of immigration and the HRC criteria can cause homelessness. .

- The HRC criteria are complex and subjective, and as the circumstances of each case are taken on their own merits, accountability in social welfare decision making for migrant workers is lessened;
- Given that the certainty of the income safety net previously provided by the SWA system no longer exists for migrant workers, charities, NGOs, and friends are now the providers of last resort.
- Conversely, the application of the HRC to payments such as UA highlights the importance of the SWA system as a speedy flexible system that can meet the short-term needs of migrant workers while they are searching for new employment or taking a case through the LRC or the ET.
- Bureaucracy on applicants and administrators, and the changes in the profile of social welfare clients create information difficulties for DSFA personnel at local level.
- Migrant workers in the case studies lacked knowledge on the Irish social welfare system and the payments available, or had insufficient English with which to navigate the system.

Employment Rights and Equality Issues

- The implementation of the HRC exacerbates the risk of exploitation for migrant workers by employers. Being denied, or the fear of being denied, social assistance can leave employees in a weak bargaining position.
- The issue of employers withholding employment documents such as P.60's, P. 45s, pay slips and written contracts arose frequently in this report, as did the non-payment of social insurance contributions to DSFA by employers. The use of the Social Welfare Inspectorate in pursuing such employers was not as evident as expected in this report.

Immigration Policy Issues

- Migrant workers can find themselves in a catch 22 situation when the operation of immigration policy and the HRC criteria come into conflict. There are three key difficulties for migrant workers in proving that their 'centre of interest' is in Ireland: (1) one year work permits, (2) unstable contract work and (3) limited family

reunification. While the HRC guidelines look favourably on migrant workers in stable employment living with their spouse and children in Ireland, the reality is that all of the three difficulties cited are outside the control of the worker.

- Exploited migrant workers therefore run the risk of becoming undocumented in Ireland. Undocumented workers cannot receive social welfare payments, even if sufficient social insurance contributions have been made.

Anti-Poverty and Children's Policy Issues

- Many of the migrant workers approaching MRCI for support exist on minimum wage. Child Benefit is a substantial payment and can help lift children in migrant families out of poverty. There are migrant families in Ireland, both EEA and non-EEA nationals needing CB but not receiving it. EEA nationals working in Ireland may not always be applying for or receiving Child Benefit due to the ongoing lack of clarity on the Family Benefit regulation.
- The inclusion of CB within the scope of the HRC has introduced a distinction between Irish citizen children residing in the State. It may also be in breach of the United Nations Convention on the Rights of the Child, and is not coherent with the aims and objectives of national and European anti-poverty policy.

6 RECOMMENDATIONS

Reviewing the rationale for the HRC

1. The HRC should be abolished given that the rational underpinning its implementation is no longer valid.
2. While awaiting its abolition, there are a series of steps that should be taken by government departments to ensure that the needs of migrant workers in Ireland are met.

Amending the Habitual Residence Condition

3. Remove Child Benefit from the list of payments for assessment under the HRC.
4. Allow access to SWA for non-habitually resident migrant workers reporting exploitation in the work place and wishing to pursue their case in the Labour Relations Commission, Equality Authority etc.

5. Allow access to SWA payments for non-habitually resident migrant workers finding themselves laid off from work or who cannot work due to illness or injury.
6. Allow access to homeless services and SWA for non-habitually resident migrant workers reporting themselves as homeless.
7. Allow all migrant workers with a work history to access the same level of social protection/welfare as the rest of the work force.

Breaking the catch-22 between Immigration Policy and Habitual Residence

8. Do not use the fact that the work permit is valid for one year as justification for failing the applicant on the 'centre of interest' criteria, given that the work permit time period is outside of the control of the migrant worker.
9. Given the limited opportunities provided for family reunification for workers on work permits, the lack of family life in Ireland should not be used as grounds to deny HRC due to the centre of interest.

Changing the Administration of the HRC

10. Further resource the DSFA Habitual Residence Condition Unit.
11. Provide social welfare information in the main languages used by migrant workers.
12. Ensure that the required translation services are provided in local DSFA offices nationwide.
13. Ensure that the Social Welfare Inspectorate is adequately resourced and supported in safeguarding and enforcing migrant workers' employment rights, and that in specific HRC cases, the investigations of the Inspectorate are taken into account in HRC decision making.
14. Ensure that DSFA central and local decision making offices are trained in the implementation of the HRC prior to the devolution of decision making from the HRC Unit.

Supporting Existing and Potential Migrants to Ireland

15. Provide pre-departure information to migrant workers coming to Ireland to work.
16. Provide additional resources to information, advice and advocacy groups supporting migrant workers in urban and rural areas.

Bridging the Gap between Immigration Procedures and the HRC

17. Introduce a 'bridging visa' for migrant workers who can demonstrate that they have become undocumented through not fault of their own.
18. Regulate and monitor the operation of recruitment agencies in Ireland to protect migrant workers.
19. Change employment legislation to ensure that migrant workers own their work permit, amend legislation to have security of residence longer than one year.

INTRODUCTION

1.1. Introduction

Effective from May 1st 2004, the Irish Government introduced the Habitual Residence Condition (HRC) as an additional criterion for qualifying for social assistance payments, Child Benefit and access to key state services. Previously, applicants would have had to be simply resident and meet individual payment criteria. The introduction of the condition was timed to coincide with the enlargement of the EU on May 1st 2004 due to fears of an influx of migrant workers from the new EEA States coming to Ireland with the intention of claiming social welfare.

In the brief period of time between the announcement of the introduction of the HRC and the enshrinement of the Condition into law, non governmental organisations including the Migrant Rights Centre Ireland (MRCI) and the Immigrant Council of Ireland, and the independent statutory advisory agency the National Consultative Committee on Racism and Interculturalism, expressed dismay at the introduction of the HRC, and prophesied that the outcome for the most vulnerable migrant workers in Ireland would be deprivation and hardship. These workers and their families are often living in vulnerable positions due to Irish immigration law and policy and their precarious financial, accommodation and work circumstances.

Seventeen months on from its introduction, migrant workers experiencing hardship due to the implementation of the HRC are approaching the MRCI, and other information providers and advocacy bodies around the country, for advice and support. These workers find themselves in Ireland in need of Child Benefit (CB) or short-term social assistance in order to support their families, or provide income support while recuperating from injury or seeking new employment.

The Minister for Social and Family affairs has stated that he is:

not aware that the habitual residence condition is causing hardship to persons arriving in Ireland. The habitual residence condition is being operated in a careful manner to ensure that Ireland's social welfare system is protected, while at the same time ensuring that people whose cases are appropriate to the system have access to it when they need it (Parliamentary Question, 30 June 2005).

This report seeks to generate awareness, by documenting cases that are illustrative of the type of unmet social assistance and accommodation needs faced by some migrant workers in Ireland.

A review² of the HRC is ongoing in the DSFA and will be finalised by the end of 2005. It is hoped that the findings of this report will be considered within the context of the review.

This report is not suggesting that all employers exploit migrant workers, nor is it suggesting that the Health Service Executive or the Department of Social and Family Affairs (DSFA) at either central or local level are uncaring to the needs of migrant workers, or ineffectual. It is clear from the case studies and interviews conducted for this study that the HRC is a complex section of the social welfare code and that many migrant workers in Ireland find their needs are met by the social welfare system. But for some, the fluidity of HRC criteria has left migrant workers in need without a safety net and that charities and non-governmental organisations become the last resort. Advocates are left trying to find solutions to the difficulties faced by migrant workers when social assistance and state provided emergency accommodation are not an option.

The issues and problems faced by the migrant workers featured in this report reflect the dilemmas of a far wider number of migrant workers in Ireland. The stories told here are illustrative of the hardship experienced by some migrant workers in Ireland, and the way which the operation of the immigration and social welfare systems can worsen their dilemmas.

1.2 Report Structure

The report consists of four further sections. Section two provides the context to the introduction of the HRC, migration to Ireland and the Irish social welfare system. Section three analyses the implementation of the HRC to date by the Department of Social and Family Affairs. Section four illustrates the impact of the HRC on migrant workers and their

² The terms of reference of the review are:

- Assessing the impact of the HRC on different categories of persons claiming Social Assistance/Child Benefit and Supplementary Welfare Allowance payments;
- Assessing the current organisational arrangements in the Department for administering the condition and the service provided to customers;
- Identifying opportunities for improvements to the administration of the scheme, including those aspects involving other departments;
- Examining all aspects of the decision making process; and
- Identifying emerging policy issues and considering how these should be addressed.

families through a series of case studies and an examination of the experiences of agencies working on the ground with migrant workers. Section five outlines key issues emerging from the previous sections of this report. Section six presents recommendations for amending the HRC.

1.3 Methodology

The Migrant Rights Centre Ireland sought a methodology that would illustrate its wider HRC related caseload. Case studies were deemed to be the most effective methodology. It was considered that utilising MRCI case file data supplemented with caseworker knowledge was the most appropriate means of developing the case studies. Further interviews with the clients were conducted when more information was required.

Alongside interviews with MRCI staff, telephone interviews were conducted with local organisations in Longford, Cork and Galway providing support for migrant workers, and also with the Society of St. Vincent de Paul as a national organisation with local conferences providing aid for people experiencing poverty and social exclusion.

As this report is concerned with access to social assistance and emergency homeless services for migrants, interviews were also conducted with the Habitual Residence Condition Unit in the Department of Social and Family Affairs, the Supplementary Welfare Allowance Policy Section of the Department for Social and Family Affairs, and a Health Board office to which migrant workers in need of SWA and/or emergency accommodation are referred.

Current data on the implementation of the HRC by the DSFA was sought and received, and a literature review was conducted.

POLICY CONTEXT

2.1 Background to the Introduction of the Habitual Residence Condition

2.1.1 EU Enlargement and the Fears of 'Welfare Tourism'

In the run up to enlargement, the EU15 members states considered how enlargement might impact on their labour markets and the cost of social assistance payments and public services. Fears were expressed of a possible influx of workers from the new members states taking jobs and migrating purely for social welfare purposes, the pejoratively termed 'welfare tourism'.

In reacting to the enlargement of the EU, existing Member States were given a transitional period of seven years during which they could restrict the entry of people from the new member states. This action would normally be against community rules on freedom of movement. Ireland, the UK and Sweden were the only countries to grant open access to their labour markets. Other countries, such as Germany and France treat new member state citizens the same as non-EEA³ citizens and are required to apply for a work permit, which is to be issued only where neither their own citizens nor EU15 nationals can fill the job. Other countries such as Italy and the Netherlands introduced a quota for workers for new member states (ECAS, 2005).

Existing member states adopted different policies on access to social assistance and social services for newly arrived migrants with Sweden being the only EU15 member state to not link eligibility for welfare benefits to new tight eligibility conditions. The UK and Ireland linked access to social assistance to habitual residence conditions, and the remainder of the EU15 linked social assistance eligibility to strict conditions (ECAS, 2005).

Fears of an influx of 'welfare tourists' and the fear of labour from the new member states displacing British workers informed the policy debate in the U.K. The National Consultative Committee on Racism and Interculturalism (NCCRI) in Ireland has expressed the view that the introduction of the HRC was in response to a xenophobic campaign by

³ European Economic Area, comprises the EU plus Norway, Iceland, and Liechtenstein.

the British tabloid press in the run up to EU accession on 1 May 2004 (NCCRI, February 2005). The European Citizen Action Service (2005:9) observed similar scaremongering in the wider European context. They assert that the fear of enlargement was not because an immediate and dramatic increase in migration had been forecasted but that the transitional arrangements in relation to labour market access to existing EU states were introduced to reassure the public opinion in those countries. Within the context of its booming economy and labour shortages, Ireland retained its status as having one of the most open immigration systems in the EU and did not limit access to its labour market. Given the booming economy and the fact that Ireland was experiencing unprecedented economic immigration before EU enlargement, debate was much more around 'welfare tourism', and fears that Ireland would be considered a 'soft touch' for those moving here with the specific intention of abusing the social welfare system.

For the Irish government, the Common Travel Area (CTA) between the UK and Ireland provided the most immediate concern as the U.K. government introduced a series of measures to restrict access to their economy including a workers registration scheme and an amended Habitual Residence Test⁴ on the qualification for social assistance and social services. This led the Irish government to follow the actions of the U.K. government on social welfare:

Because of our common travel area with Britain it is now important that we put in place some conditions.... I will be proposing changes to the social welfare code which will be no less robust than those introduced in Britain. (DSFA Press Release, 24 February 2004).

The Irish government introduced the Habitual Residence Condition (HRC) in February 2004 as a late amendment to the Social Welfare (Miscellaneous Provisions) Bill, 2004 to '*ensure that our social welfare system and other public services are not open to abuse.... I will not allow our social welfare system to become overburdened*' (DSFA Press Release, 24 February 2004).

⁴ There is a Habitual Residence Test in the UK for benefits, which says that people who claim the main means-tested benefits must be 'habitually resident' in the 'common travel area'. The test (which applies to UK as well as other nationals) is 10 years old, it is still somewhat vague, and the relevant regulations do not define what 'habitual residence' means. Since 1 May 2004, the rules have been changed so that anyone who has arrived in the UK in the last two years and claims one of the main income-related benefits must now pass a two-part test. The first part is to show they have the right to reside in the UK or the common travel area. The 'right to reside' is a new concept, and it is limited to certain groups, and they must be living in the UK for 2 years or more and show a link with the state. The test is criticised for its increase in the bureaucratic burden on claimants, its complexity, vagueness and over-reliance on discretion in decision-making (TUC, June 2005, EU enlargement and social security, No 55 in the TUC welfare reform series).

Given the fact that protecting the Irish social welfare was a key rationale in the introduction of the HRC, it is important fifteen months after the introduction of the Condition to examine the basis of the 'welfare tourism' argument.

2.1.2 Examining the Basis of 'Welfare Tourism' Claims

Applying no transitional measures and granting equal access to its welfare system for nationals of the new member states, Sweden is the only country amongst the EU15 to give free movement within the enlarged EU (ECAS, 2005: 13). Sweden then provides an ideal control case on welfare tourism and allows us to examine the reasons for migration within an enlarged EU.

Of those leaving Lithuania to work, 48 per cent (26,145 people) of Lithuanian workers left for the UK and 33 per cent (18,000 people) left for Ireland. While both the UK and Ireland gave generous labour access to the new member states, they both have a similar Habitual Residence Test/Condition determining access to social assistance. Should the reason for migration be 'welfare tourism', we would not expect to find that only 6 per cent (1,076 people) chose Sweden as the main destination (ECAS, 2005:22). Indeed, the Swedish social security system allocated only €18,000 in social assistance to new member state nationals (ECAS, 14). Also, given the relative sizes of the UK and Irish labour markets, the fact that 33 per cent of Lithuanian nationals chose to migrate to Ireland shows that the availability of work is a major draw to this country.

Until the required data becomes available, it is difficult to assess the costs and benefits of migrant workers to our welfare state. Quinn and Hughes (2005: 35) suggest that Irish Personal Public Service Number (PPSN) data may provide opportunities for investigation of the amount of tax and social insurance contributions paid by immigrants and the demands that they make on a range of public services including the health, education and welfare systems. Such an analysis would be valuable in that migrant workers' contribution to the Exchequer could be identified, as could the displaced costs of supporting migrant workers denied social assistance under the HRC. The European Citizen Action Service (2005: 10) report stated that Ireland was one of the top destinations for migrants from the new members states and that the Irish economy benefited from their contribution. The report did not quantify the economic output generated by migrant labour but likened it to the UK experience where there was a net gain of around £500 million from the 175,000 migrant workers who registered in the year

following EU enlargement, while only a tiny percentage of migrant workers sought social assistance.

Within the Irish context, statistics on the implementation of the HRC⁵ do not bear out the prophecies of 'welfare tourism'.

The level of HRC cases against the number of PPS numbers allocated to workers from new members states from May 1st 2004 to July 31st 2005, indicates that of the 118, 262 workers coming to Ireland, only 4,036 (3.4%) applied for Social Assistance/Child Benefit (excluding Supplementary Welfare Allowance) and had their application determined by the HRC Unit in DSFA. If we remove the 1,638 Child Benefit⁶ applications, the percentage drops to 2 per cent. Child Benefit, prior to the introduction of the HRC was a universal work neutral measure. There was therefore little point in restricting access to the payment on the grounds of welfare tourism as it could be claimed by all normally resident in the state with children.

In terms of the outcomes of the HRC Unit's determinations⁷, statistics indicate that overall there is a high rate of positive applications for social assistance/Child Benefit. From May 1st 2004 to August 18th 2005, 73 per cent of the 18,231 claims decided in the Department's HRC central decision-making section passed the HRC. Over a quarter of cases referred to the Unit related to Irish nationals applying for social assistance, with a further 14 per cent of cases coming from UK nationals. While pass rates vary by country of origin of the applicant, 60 per cent of applicants from new member states were deemed to be habitually resident. Seventy one per cent of third country nationals, i.e., not from the CTA or expanded EU, were deemed to be habitually resident and having a need for social assistance/Child Benefit. Recent analysis indicates that the HRC is having a greater impact on nationals of the EU15 states than on migrant workers from the new member states at whom it was targeted (Quinn and Hughes, 2005: 30).

However, for those migrant workers not considered habitually resident for the purposes of social assistance, the downward spiral into hardship and deprivation can be quick, stressful and difficult to recover from.

⁵ Received from DSFA HRC Unit August 2005

⁶ It was noted in a personal communication that the Child Benefit figures include asylum seeking families qualifying on the basis of leave to remain in the state due to an Irish born child.

⁷ Received from DSFA HRC Unit August 2005

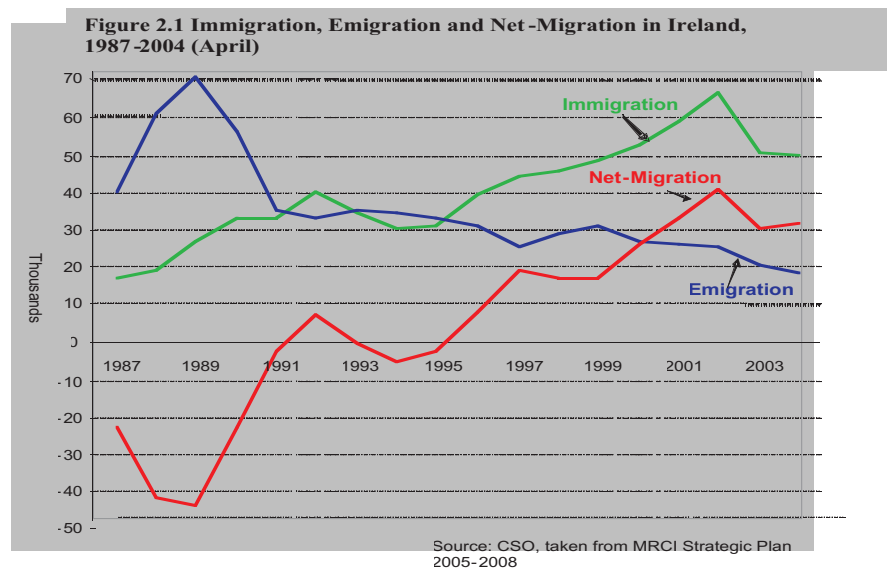
2.2 Migration to Ireland

2.2.1 Trends in Migration to Ireland

Traditionally, Ireland has been a country of emigration rather than inward migration. The last ten years have seen a reversal of this phenomenon with Ireland now experiencing net migration. This is not to suggest that Irish people are no longer global economic migrants. In 2003, 20,700 Irish people emigrated, and in 2004 18,500 left the state. The UK was not the prime destination for Irish migrants, despite the common travel area, with only approximately 30 per cent of Irish people leaving Ireland to live there in those two years (European Migration Network, 2005:2).

Figure 1.1 below illustrates the overall trend in migration in Ireland.

Unprecedented economic growth and historically low unemployment rates in Ireland from the mid 1990s led to labour shortages. This is particularly evident in sectors such as nursing, information technology, construction work and the service sector, leading to the recruitment of staff in countries which are outside of the European Economic Area. Migration has been facilitated by the Irish Government through the allocation of working visas/authorisations and permits allowing people from non-EEA countries to live and work in Ireland. There are 137,000 migrant workers working in Ireland representing 7 per cent of the labour force. Over the period 2000 to 2005 alone, over 100,000 persons from outside the EEA came to Ireland for employment purposes. This is in addition to the substantial numbers of nationals of EEA member states (DJELR, 2005:7).



At a broader level, the need for migrant workers in Ireland reflects a greater need in developed countries. Europe's aging populations, rising dependency ratios, and shrinking indigenous work forces, contribute to a context where migrant labour is essential to sustained economic and social development (MRCI, 2004: 12). Within the Irish context, the Enterprise Strategy Group of government agency Forfas reported in July 2004. They examined the demographic changes underpinning economic growth from 1993-2003 (first time entry into the labour market by school leavers and third level graduates, the pool of unemployed people available at the beginning of that period, increased female labour participation and net immigration) and concluded that 420,000 new workers will be required up to 2010. Furthermore, that apart from immigration, other sources of additional labour supply are reducing resulting in a requirement for significant immigration levels (DJELR, 2005: 61).

The Irish immigration system is market-led and employer driven, centred on meeting the short-term needs of the labour market. FÁS has warned that the state needs to develop a range of policy initiatives to maintain the momentum in both employment and economic growth, including a coherent immigration policy and a new 'green card' system for workers from outside the EU (Irish Times, 21/12/04).

2.2.2 Visas/Permits Required for Working in Ireland

Ireland's current economic migration system can be complex when the range of state actors involved in administration, decision-making and policy development is considered. Briefly, the Department of Foreign Affairs (DFA) is involved in working visa/work authorisation applications and in visa applications generally, the Department of Enterprise, Trade and Employment (DETE) is involved in the issuing of work permits while the Department of Justice, Equality and Law Reform (DJELR) is responsible for considering certain visa applications, but also for the operation, through the Garda National Immigration Bureau, of border controls. All workers must register with the DSFA and receive a Personal Public Service Number (PPSN).

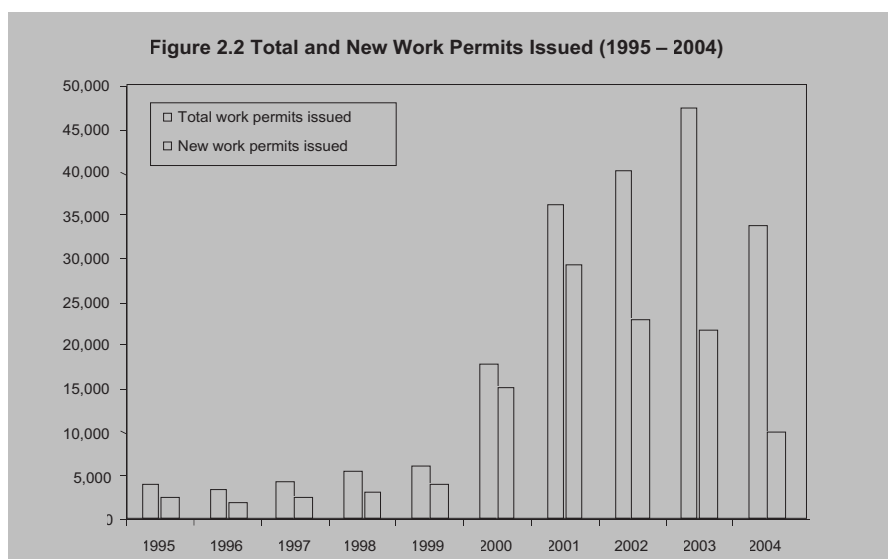
The type of visa required and the administrative procedures that must be followed by the migrant worker coming to Ireland depend upon the nationality of the migrant worker and the nature and skill level of the work to be undertaken by them. The majority of non-EEA nationals working in Ireland do so on temporary forms of permission to work, of which there are two main types: the work permit and the working visa/work authorisation. There are other types of migrant workers in

Ireland, for example overseas non-EEA students can work up to twenty hours per week, but this report is primarily concerned with those on work permits, working visas, and EEA nationals not requiring a visa to work in Ireland.

The work permit is issued to the employer giving them permission to employ non-EEA nationals. The permit is issued for a period of one year. An employer has to first identify a vacancy that cannot be filled from within the EEA, and then a non-EEA national to fill the vacancy. Irish embassies local to the non-EEA migrant will issue entry visas to Ireland. In some circumstances a person can change jobs if they can find a new employer who is willing to apply for a work permit and is granted one. Ownership of the work permit is one of the most serious concerns for all migrant workers employed in this way (MRCI, 2004: 31). Migrant workers on work permits can seek family reunification when they have been in Ireland for at least a year and have been offered a contract for a further twelve months (Immigrant Council of Ireland, 2003:65). Family reunification is limited and at the discretion of the Minister for Justice, Equality and Law Reform, and if spouses are granted the right to join the worker, they do not have a right to work.

Non-EEA nationals with work permits require the permission of the Minister of Justice, Equality and Law Reform to reside in the state and must register with the GNIB. Workers must present their documentation, including the work permit, to immigration to get their 'leave to remain' stamp on their passport. This stamp provides the worker with residency status for the duration of the work permit. Understanding that possession of a PPS number and a work permit does not mean a person is legally resident arose in discussions with advocacy agencies for this research. Migrant workers and their employers sometimes think that possession of a PPS number and having PRSI contributions deducted from wages means that they are 'legally resident' within the country. For some migrant workers on work permits, due to exploitation, they either do not have access to their passport or work permit (which is held by the employer) or cannot get time off work to go to the GNIB.

Figure 2.2 illustrates the trend in new work permits issued and renewals of work permits. The total number of permits issued reached its height in 2003. Migrant workers admitted through the work permit system have come from a wide range of countries, though the largest nationalities represented up to 2003 were among the ten new EU member states. The freedom of movement rights granted to nationals of the new member states accounts for the overall decrease in work permits issued in 2004 (DJELR, 2005:61).



The working visa/work authorisation scheme is restricted to specific skilled occupations that are in short supply, such as professionals and technicians in Information Technology (IT), professionals in construction, and registered nurses. Work authorisations are granted to employees who are nationals of states not requiring a visa to travel to Ireland, while a working visa is granted to employees who are nationals of states requiring a visa to travel to Ireland. Visas are issued for two years, are renewable, are issued to and held by the employee and the employee can change employer within the sector specific to their visa/authorisation. Unlike the work visa scenario, family reunification is easier to achieve and, since February 2004 the spouses of non-EU nurses, professionals in IT, building and research were also granted a right to work (ICI, 2003: 76). The number of working visas/work authorisations is much smaller than the number of work permits and the numbers have been declining. In 2001, 3,749 workers came to Ireland on working visas/authorisations, in 2003 the figure was 2,610 and in 2003, 1,158 (ICI, 2003: 76).

On family reunification for migrant workers, Comhairle (2005b) has identified that the level of earnings required to be considered by the State to be “capable of supporting the family members in question without the need for them to have recourse to public funds or paid employment”, is out of the reach of many migrant workers due to low wage levels. Some migrant workers applying for family reunification experience severe difficulties with the level of bureaucracy, due to the fact that it often takes over a year to get a decision and that there is no independent appeals mechanism for applications that are turned down.

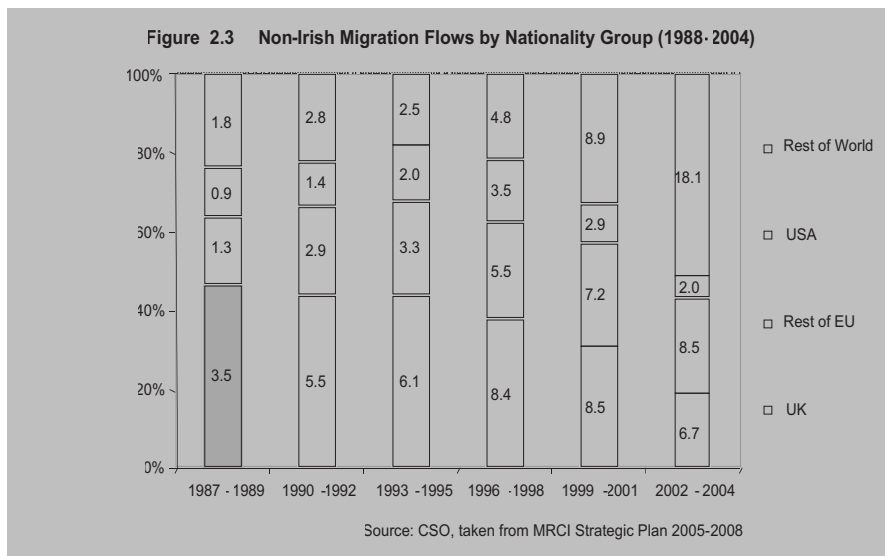
Since January 2002, arrangements have been put in place to ensure that employers offer first choice of available jobs to Irish or other EEA nationals. In light of the Government's decision to freely open up the Irish labour market to nationals of the new member states since 1 May 2004, the DETE has tightened up considerably on the criteria for issuing permits. The intention according to the DJELR (2005: 62) is to move to a position where it is expected that permits be granted only for higher-skilled, higher-paid employment, and envisage, that the bulk of Ireland's overseas recruitment needs will be met from within the enlarged EU.

2.2.3 Profile of Migrant Workers in Ireland

Most of the recent growth in immigration flows comes from countries outside the EU and USA.

There is a dearth of data on the scale of the migration of new member state nationals to Ireland and their participation in the labour market (European Migration Network, 2005; Ruhs, 2004). However using DETE data, Ruhs (Immigrant Council of Ireland, 2003: 75) identified that:

- Work permit holders from OECD countries are employed in highly-skilled occupations, while work permit holders from what were previously EU accession countries tend to be concentrated in unskilled occupations (especially agriculture), and in some semi-skilled occupations. Only three per cent of nationals from the new member states worked in Ireland as managers, administrators, or in professional or technical occupations in 2003;
- The average age of new workers employed under the work permit scheme is thirty years;



- Seventy-four per cent of all work permits relate to relatively low-skilled occupations;
- The average gross weekly pay of immigrant workers was €423.61. The job with the lowest weekly pay was personal services in the domestic sector, which was €253 per week⁸, while the weekly wage of agricultural jobs was €286;
- Between 1998 and 2002, the estimated average working hours per week for non-EU nationals employed in Ireland significantly exceeded those of all persons employed in Ireland (41.6 hours and 38.1 hours, respectively). In the health sector, non-EU nationals worked 15.6 hours longer per week than the average of all persons employed in the sector; in hotels and restaurants, non-EU nationals worked 6.9 hours longer; in the wholesale and retail trade, they worked 5 hours longer; and
- Workers are opting to remain in Ireland for longer than one year. The renewal rate of work permits issued increased from 25 per cent (1,448) in 1999 to 53 per cent (25,039) in 2003.

Many of the migrant workers whose stories are contained in section 4 of this report fit within these levels.

2.2.4 Undocumented Workers

There is no estimate of the number of undocumented workers in Ireland and there is no reliable data on how they enter the country (ICI, 2003: 78). Undocumented immigrants are likely to enter legally as temporary workers on work permits, students or tourists. Many workers become undocumented when they are made redundant or are forced to leave their employment due to exploitation and their residency permit is problematic (MRCI, 2004). It is not known how many of the accession state nationals who received PPS numbers after May 1st had been already resident and working illegally before EU enlargement (Ruhs, 2004).

Section 4 of this report examines the repercussions for migrant workers of being undocumented when applying for social assistance. Undocumented workers cannot apply for or receive social welfare payments and time spent undocumented in the state is not taken into account in determining habitual residence.

⁸ For an analysis of the experiences of migrant women employed in the private home in Ireland, see Migrant Rights Centre Ireland (2004) *Private Homes, A Public Concern*, available from the MRCI.

2.2.5 Employment Experiences of Migrant Workers in Ireland

For some migrant workers in Ireland, discrimination, low pay and poor working conditions are a factor in their employment. A number of these workers are finding recourse through the Labour Relations Commission and the Equality Authority.

In its 2003 Annual Report, the Equality Authority⁹ observed that a large number of migrant workers reported incidents of excessive overtime, lack of holiday pay and unfair dismissal. Of the 166 race-based employment equality cases undertaken during 2003: 77 related to working conditions; 34 to dismissals; and 22 to access to employment. The changes in the Equality Authority caseload, for Quinn and Hughes (2005:29), reflect the vulnerability of migrant workers in Ireland, many of whom accept poor conditions rather than jeopardise their work permit. In the Equality Authority's 2004 Annual Report (2005: 14) the continuing vulnerable position of migrant workers was evident in the case files. The two grounds that relate to racism dominated the case files of the Equality Authority in 2004 with 49.1 per cent of the case files related to working conditions, 19.5 per cent of the case files to dismissal and 16.1 per cent to access to employment.

The Authority's Annual Report 2004 (p. 25) relates a case where a claimant referred her complaints to both the Equality Tribunal and Labour Court alleging discriminatory treatment and constructive dismissal on grounds of race. The complainant worked as a cleaner. Her employer forced her to work excessive hours, 6 days a week. He constantly threatened her with deportation if she did not do as requested. Her employer confiscated documents including her passport and gave it back to her only when she paid him a lump sum. The worker eventually had no option but to leave. He refused to give her a P45, which she needed for another employer. The employer agreed in the Equality Tribunal to pay a substantial sum in settlement of the complaints. This case strongly reflects the type of difficulties faced by migrant workers seeking support from the MRCI.

Migrant workers can also bring their cases to the Labour Relations Commission¹⁰. The Rights Commissioner Service does not keep separate statistics with regard to cases by migrant workers. However, a sample analysis of cases brought by migrant workers and heard by Rights Commissioners in 2004 show that 94 per cent of such claimants had

⁹ The Equality Authority enforces the Employment Equality Acts 1998-2004 and the Equal Status Acts 2000 and 2004.

¹⁰ The LRC investigates and recommends on disputes and grievances referred by individuals and groups of workers under industrial relations and employment rights legislation.

valid complaints (LRC, 2005: 29). This was found to be significantly in excess of the general average of successful outcomes for claimants. The claims referred were on working hours in excess of the statutory limits and underpayment of wages by reference to legally established rates in the industry in question or the minimum wage.

The Department of Enterprise, Trade and Employment is also responsible for enforcement of employment rights legislation in the State by way of the Labour Inspectorate in the DETE, which will investigate complaints from employees (DJELR, 2005:62). The Social Welfare Inspectorate of the DSFA will also investigate cases where employers do not forward employee's social insurance contributions to the Department, or do not give their employee's P.45s when employment ends, or P60s at the end of the tax year.

2.2.6 The future for Irish Immigration Policy

Given Ireland's history of emigration, the development of overarching legislative immigration architecture had not been high on the Government's agenda. Ruhs (2004) characterises Irish immigration policymaking as 'fairly ad hoc', and, according to the MRCI (1994: 12), the absence of a coherent and comprehensive immigration policy framework has created the conditions in which migrant workers, employers, and state officials struggle to negotiate an inadequate and over-burdened system. A system that is unable to cope with the administrative demands of managing contemporary migration flows.

Section 4 of this report presents the difficulties for migrant workers requiring work permits, with (1) granting the work permit to employers, (2) employees not knowing their rights, (3) the deduction of employment costs from employee wages and (4) having a residency stamp that lasts longer than one year. Migrant workers seeking social assistance find that these issues can complicate applying for financial support and successfully passing the HRC.

So while even limited changes to redress the power balance between migrant workers and employers are welcome, there are concerns over the type of immigration to be pursued in Ireland. The Work Permits Bill seeks to introduce a two tiered system where lower skilled migrant workers have fewer rights than those entering the country on visas for higher skilled workers. The focus on only attracting 'skilled' workers to Ireland under the work permits system, and only considering these types of workers as 'potential future citizens' has been criticised. The MRCI is concerned about the Government's over-reliance on the enlarged EU to

fulfil labour needs, in particular low skilled positions and consider that Ireland's immigration policy should provide for long-term solutions. When other EU states lift their current restrictions on workers from the new member States, competition will intensify to attract these workers. As the new member states become more integrated within the EU economy, outward migration may reduce from these states. The MRCI asserts that a forward-looking immigration and residence system should recognise the need for both high skilled and low skilled workers and advocate the use of the terms 'essential skills' and 'essential work' as a full range of skills is required to sustain the economic and social development of the Irish economy and society. This position is supported by recent statistics cited by the NCCRI (August 2005) where the Central Statistics Office has estimated that Ireland needs 50,000 overseas workers for the next 12 years. A third are likely to be employed in the catering and tourism sectors, i.e., those considered 'low skilled' but are in fact essential work for the functioning of the Irish economy and society.

THE IMPLEMENTATION OF THE HABITUAL RESIDENCE CONDITION

3.1 Social Welfare Payments and Emergency Accommodation

3.1.1 Background to Social Welfare Payments

The four types of payments that migrant workers in Ireland find themselves in need of are: (1) social insurance based payments; (2) social assistance based payments; (3) health service administered Supplementary Welfare Allowance (SWA); and (4) family based payments Child Benefit and One Parent Family Payment. Prior to the introduction of the HRC, alongside meeting the individual criteria for qualification for payments, applicants were required to be resident in the state. Child Benefit was an employment neutral, universal payment paid to parents in respect of their child (ren). The post-HRC status of the key payments for migrant workers is demonstrated in table 3.1.

Table 3.1. Basis of Eligibility for Relevant Social Welfare Payments

Payment	HRC	Means tested	Social insurance
Unemployment Benefit	No	No	Yes (must meet minimum contributions)
Unemployment Assistance	Yes	Yes	No
Disability Allowance	Yes	Yes	No
Disability Benefit	No	No	Yes (minimum contributions)
Injury Benefit	No	Yes	Yes (no minimum contributions)
Child Benefit	Yes (for non EEA -nationals)	No	No
One Parent Family Payment	Yes (for non-EEA -nationals)	Yes	No
SWA Basic Payment	Yes	Yes	No
SWA Rent Supplement	Yes	Yes	No
SWA Emergency Needs Payment	Yes	Yes	No
Family Income Supplement	No	Yes	No (must be in employment)

While most of the social welfare payments above have clear eligibility criteria and applicants have clear entitlements to the payments, Supplementary Welfare Allowance payments are designed to meet urgent financial needs in a flexible and speedy manner. SWA provides a safety net for situations not covered by any social welfare payment. Reasons for receiving the basic payment might include awaiting qualification for another social welfare payment or not being able to qualify for existing social welfare payments and having insufficient means. Alongside a basic payment roughly equivalent in sum to UA, the SWA provides for other discretionary payments such as a rent supplement and mortgage supplement and exceptional needs payments (ENPs) and urgent needs payments (UNPs). ENPs are once off payments, based on the circumstances of individual cases for a specific purpose such as paying utility bills, rental deposits or buying once off items such as washing machines. UNPs can be repayable and are made to people who are normally excluded from SWA, e.g., full time workers experiencing an emergency such as a fire. Community Welfare Officers (CWOs) who are employees of the Department of Health and Children administer the SWA scheme from a network of local health centres nationwide and the applicant makes claims in person to the CWO. The SWA scheme is funded by the DSFA and the Department also provide the operational guidelines for the payments. While the SWA has the advantage of allowing CWOs to quickly meet income and housing support needs, the discretionary nature of the supplements and emergency payments can be problematic as applicants with similar needs can have different outcomes (Memery et al, 2002).

Homeless persons requiring emergency accommodation also approach their local Health Centres for assistance. The Health Service Executive (HSE) runs specific homeless or no fixed abode sections in large urban areas, and local health centres may refer homeless migrants to these sections. CWOs can issue basic, rent supplement and exceptional needs payments to those out of home, and can also refer clients on to homeless service providers. Charities such as the Society of St. Vincent de Paul and Focus Ireland are also substantial providers of emergency accommodation and homeless food services.

3.1.2 Applying for Social Benefit and Assistance Payments

Child Benefit applications are processed centrally in Letterkenny, Co. Donegal while One Parent Family Payment applications are processed in Sligo. Applicants seeking the other social insurance based and social assistance payments must approach their local social welfare office. When an applicant approaches a local office of the DSFA the first

task undertaken by staff is to ascertain if there is an entitlement to a Benefit payment based on the applicants social insurance record. For EU nationals, social insurance contributions paid in other EU countries should also be taken into account in determining eligibility for Benefit payments. If not, then means tested social assistance payments are considered. For migrant workers on work permits, social welfare payments will only be made for the period remaining on the leave to remain stamp.

All applicants complete the standard application forms for each payment and each form will include questions to determine habitual residence. If it appears as though residency status is in doubt, the applicant is requested to complete a detailed eight-page form (HRC1) that asks questions relating to the HRC criteria. DSFA's HRC Unit deals with cases referred to it from local and central DSFA offices in relation to social assistance payment and Child Benefit applications. SWA claims are decided by CWOs in local health centres. A limited number of SWA applications are sent on to the HRC Unit for assessment.

If a social welfare application is disallowed due to the HRC, the applicant has the right to appeal the decision in the Social Welfare Appeals system. In the case of SWA an applicant refused payment can appeal, firstly, within the HSE system and then, if unsatisfied with the outcome, through the Social Welfare Appeals. ENP and UNP appeals cannot be brought to the Social Welfare Appeal system.

3.2 Habitual Residence Condition Guidelines

The basis of the HRC is that applicants, regardless of nationality, must be deemed to be habitually resident in the Irish State in order to qualify for the following payments:

- Unemployment Assistance (UA);
- Old Age Non-Contributory Pension (OANP);
- Blind Pension (BP)
- Widow(er)'s and Orphan's Non-Contributory Pensions (WONP);
- One-Parent Family Payment (OPFP);
- Carer's Allowance (CA);
- Disability Allowance (DA);
- Supplementary Welfare Allowance (SWA) (other than once-off exceptional and urgent needs payments); and
- Child Benefit (CB).

The HRC has also impacted upon access for migrant workers to emergency homeless services provided directly by the state. CWOs can no longer refer homeless migrant workers who are not considered habitually resident to emergency accommodation, and such services generally do not allow such workers to avail of their services.

The HRC is an additional condition to be satisfied along with the other conditions for entitlement to payments. Each application is examined on a case-by-case basis.

In response to the introduction of the HRC, the DSFA established a central HRC Unit in Dublin with responsibility for decision-making on complex HRC cases forwarded from local social DSFA offices.

The HRC guidelines developed by the Department of Social and Family Affairs are contained in appendix B of this report and the key points are reproduced below.

Time Period for determining Habitual Residence

- 'It shall be presumed, until the contrary is shown, that a person is not habitually resident in the State at the date of the making of the application concerned unless he has been present in the State or any other part of the Common Travel Area for a continuous period of 2 years ending on that date' (Social Welfare (Miscellaneous Provisions) Act 2004);
- There will be circumstances in which a person present in Ireland for less than 2 years will satisfy the habitual residence condition;
- If s/he proves that s/he has been present in Ireland for 2 years or more an applicant will not attract the presumption of not being habitually resident. This does not mean that an applicant is automatically considered to be habitually resident

Factors determining Habitual Residence

- In determining habitual residence, all relevant evidence is taken into account including the period before the person entered Ireland (or CTA), the present period and the future intentions of the applicant as evidenced by his/her actions;
- There are 5 factors determining habitual residence:
 1. Length and continuity of residence, e.g., arrangements for residence (staying with friends would appear to show a less settled intention but a mortgage or long term lease would imply a more settled intention), how long the applicant lived in a previous

- country and remaining ties in former country of residence;
2. Length and purpose of absence from Ireland. Habitual residence may be lost if an applicant spends time away e.g. if a person who is working abroad returns at regular intervals to Ireland e.g. to visit family or because a home has been retained here, it is like that habitual residence has not been lost. Other considerations include, when did the applicant leave Ireland, when did s/he return and how long did the applicant intend to remain abroad;
 3. Nature and pattern of the employment. The applicant's employment record in Ireland and elsewhere and in particular the nature of previous jobs and plans for the future are relevant. An applicant who has stable employment in Ireland (defined as permanent or steady employment; not successive short fixed-term contracts);
 4. Applicant's main centre of interest. In determining whether the applicant's main centre of interest is in Ireland the following are taken into account: a home; close family (spouse/children etc); a job; friends; membership of clubs; financial accounts including bank accounts;
 5. Future intention of applicant concerned as it appears from all the circumstances. A stated intention to live in Ireland for the foreseeable future does not in itself mean habitual residence. The purchase of a home in Ireland or the sale of one abroad may indicate habitual residence. The plans of the applicant are also important, i.e. did they make arrangements for employment and accommodation before arriving in Ireland, did s/he buy a one way ticket, and did the applicant bring all belongings to Ireland.

According to the guidelines:

- The most important factors for habitual residence are the length, continuity and general nature of actual residence rather than intention;
- The checklist of the above factors and the suggested questions to be posed to applicants are not exhaustive. Further enquiries may be required. The circumstances of each case will dictate what information is needed, and it is vital that all relevant factors are taken into account;
- The list of five factors determining habitual residence is not exhaustive and no single aspect is consistently likely to be the deciding factor though some may be more persuasive in certain circumstances than others; and

- No single factor is conclusive. The evidential weight attributed to each factor will depend on the circumstances of each case. It is considered necessary to weigh up all the information and balance the evidence for and against an applicant satisfying the HRC and reach a decision based on law, case law and available guidance.

The migrant workers stories contained in section 4 of this report illustrate the difficulties in implementing such subjective criteria.

3.3. The European Union and the HRC

Under EU law, the HRC should not be applicable in determining the eligibility of EEA nationals for social welfare payments considered to be 'Family Benefits'. Child Benefit is considered a 'Family Benefit'. Confusion on this point of EU Law in the use of the HRC in determining eligibility to CB for EEA nationals with children working in Ireland continually arose in the development of this report.

The Social Welfare Appeals Office (2005:12) is clear that the HRC should not be applied for Child Benefit purposes to EU migrant workers. Indeed the Office goes as far as to suggest that Child Benefit should be excluded from the scope of the HRC altogether due to concern that the provision may be in breach of the United Nations Convention on the Rights of the Child. This is also the view of NGOs such as the Children's Rights Alliance.¹¹ In recent months it has become clear that migrant workers with children are finding it easier to access Child Benefit.

The European Commission has served a Notice of Infringement on the Irish government on the grounds that some elements of the HRC may be contrary to EU law. The particular areas of concern to the Commission are that some payments (CB, OPFP and possibly SWA) are considered to be Family Benefits under EU law and should not be subject to the HRC, and that the Common Travel Area is giving preferential treatment to some EU countries over others. At the time of writing these issues are the subject of negotiation between the DSFA and the EU Commission.

The result of this intervention by the EU Commission is that clarity is being provided on the issue of Child Benefit as a Family Benefit, and that One Parent Family Payment is now also to be considered a Family Benefit.

¹¹ see www.childrensrights.ie

3.4 The Implementation of the Habitual Residence Condition

3.4.1 Data on the Implementation of the HRC

All social assistance applicants undergo the HRC test and 10 per cent of cases are forwarded to the central HRC section in Dublin for decision.¹² Statistics from the DSFA indicate that the HRC Unit decided upon a total of 18,231 HRC cases in the period from May 1st 2004 to August 18th 2005. In seventy three per cent of cases the applicant was found to be habitually resident in the state and received social assistance.

Table 3.2. Habitual Residence Condition Cases Decided 1 May 2004 to 18 August 2005						
	Irish	UK	EU 13	New Member States	Other	Total
Yes	4,188	2,400	775	1,599	4,403	13,365
No	454	281	1,262	1,075	1,794	4,866
Total	4,642	2,681	2,037	2,674	6,197	18,231
% Yes	90%	90%	38%	60%	71%	73%
% No	10%	10%	62%	40%	29%	27%
Source: HRU Unit, DSFA						

The HRC Unit, in August 2005, had a considerable backlog of cases waiting to be determined – 6,144 in total.

An analysis¹³ of the above statistics provided by the HRC Unit indicates that:

- The high pass rate for applicants from the UK is due to the Common Travel Area;
- The introduction of the HRC has had an unexpected impact on the ability of migrant workers from EU 13 to claim social assistance in Ireland;

¹² Personal Communication.

¹³ Personal Communication.

- The relatively positive HRC decision rate for migrant workers from new member states was related to the older profile of these migrant workers, and the fact that they would tend to have a longer term attachment to Ireland as they have been in Ireland for some time on work permits;
- The high positive HRC decisions (71%) for third country nationals is attributed to high CB numbers for workers here with their families on working visas, and those with leave to remain due to having children born in Ireland.

Further data received from DSFA indicates that of the HRC cases being administered by the HRC section from May 1st 2004 to August 18th 2005:

- 57 per cent related to Unemployment Assistance;
- 27 per cent to Child Benefit;
- 7 per cent to One Parent Family Payment; and
- 9 per cent for other payments.

Of the 153 different nationalities having their cases referred to the HRC Unit:

- Over a quarter of cases related to Irish nationals applying for social assistance;
- A further 14 per cent of cases relate to claims made by UK nationals;
- 9.5 per cent refer to Nigerian national's claims; and
- A further 4.9 per cent and 4.5 per cent were Lithuanian nationals and Polish nationals respectively.

Therefore almost 40 per cent of cases referred to the HRC Unit arise from claims made from nationals within the common travel area rather than from third countries or new EU member states.

Of the 4,866 cases refused social assistance/Child Benefit payments over the period May 1st 2004 to August 18th 2005, only 853 used the Social Welfare Appeals office to appeal the decision of the HRU Unit. Ninety-nine decisions were overturned, with a further 266 upheld. It is noteworthy that 488 cases have yet to be determined by the Appeals office.

Table 3.3. Habitual Residence Condition Appeals, May 1 2004 – August 18 2005				
Scheme	Received	Allowed	Disallowed	Outstanding
Unemployment Assistance	341	47	108	186
Child Benefit	335	35	97	203
One Parent Family Payment	94	10	30	54
Old Age Pension	13	1	6	6
Disability Allowance	52	3	20	29
Carers	15	3	3	9
Widows Non-Contributory Pension	3	0	2	1
Total	853	99	266	488
Source: HRU Unit, DSFA				

3.4.2. Supplementary Welfare Allowance and the Implementation of the HRC¹⁴

DSFA's SWA Policy Unit recognises the dearth of statistics on the implementation of the SWA scheme, and equally so on the implementation of the HRC, by Community Welfare Officers. Comprehensive returns are not always available from the large number of Health Centres around the country. A sample case of statistics in respect of SWA claims from the Health Service Executive Southern Area for July 2005 were provided to illustrate the implementation of the HRC, and these statistics are considered by the SWA Policy Unit to be broadly representative of the country as a whole.

In July 2005, a total of 9,993 SWA claims were registered nationally and all are subject to the HRC. In the HSE Southern Area for that month, a total of 1,967 SWA claims were registered. All but 94 complex cases (5% of all claims) were required to supply further details on the 8 page HRC 1 form. Of these cases, 22 cases (1% of all claims) did not satisfy the HRC.

3.4.3 The Interpretation of the HRC Criteria by the HRC Unit¹⁵

There are no absolutes in the interpretation and application of the HRC. The application of the HRC criteria varies between individual applications, from health board to health board and between the HRC

¹⁴ DSFA Personal Communication.

¹⁵ DSFA Personal Communication.

Unit in determining eligibility to CB and social assistance payments, and the Health Boards in their administration of the SWA.

Satisfying the HRC is linked to the application for an individual payment rather than an across the board approach being taken to all payments. One might be considered habitually resident for SWA but not for UA. Each payment is separate and subject to the decision of the Deciding Officer or the CWO. Differing outcomes may be due to information that is available to a CWO when they meet the applicant face to face that is not available to a Deciding Officer who may not meet the applicant.

Applicants may meet the HRC criteria over a period of time. Refusal of a payment does not mean that applicants should not apply again at a later date.

In terms of the five HRC criteria, the DSFA recognise that the one-year work permit system creates difficulties for social assistance applicants. The nature of the employer controlled permit means proving that an applicant's 'centre of interest' is in Ireland can be difficult. The stated practice of the HRC Unit is that decisions tend to be favourable if the work permit holder applying for social assistance/Child Benefit has been in Ireland for a number of years. While this may be a general practice, section 4 provides examples where this practice has not always been implemented.

The DSFA's HRC Unit recognise that employers may not always observe the employment rights of migrant workers. Approaching a local DSFA office or CWO without proof of employment and social insurance contributions paid is problematic when trying to prove entitlement to a Benefit payment or habitual residence. Where migrant workers are approaching DSFA to apply for a social benefit/assistance payment and their employer has not furnished them with a P.45, or where the employer may not have forwarded social insurance contributions to DSFA, the DSFA's Regional Manager or Social Welfare Inspectorate can be contacted by the worker and the case may be investigated. From the perspective of the HRC Unit, given the way in which each case is decided on its own merits, an ongoing investigation by DSFA should be taken into account in decision-making.

According to the HRC Unit, EEA nationals working in Ireland should get Child Benefit under the Family Benefit rule, again once the payment criteria are satisfied. The main issue of concern that may arise in the administration by the HRC Unit is clarification of addresses and employment information. The Unit may contact the applicant for more information, if required.

The need for a multi-agency approach to support migrant workers. is recognised by the DSFA. While their Department is one element of this approach, further elements required are that Irish embassies abroad should give information to migrant workers on living in Ireland, and the embassies of migrant workers in Ireland need to become more active in supporting their citizens. The operation of some employment agencies within Ireland and outside of it is also of concern.

From the perspective of the DSFA, the central crux of the HRC dilemma is how to meet social assistance needs for migrant workers and their families as they arise without giving long-term entitlement to payments.

3.4.4 Challenges Faced by the HRC Unit

The DSFA's HRC Unit is experiencing a number of challenges in its administration of the Condition.¹⁶

Firstly, the volume of complex cases being referred from local social welfare offices and the central Child Benefit section was unexpected creating administrative backlogs that are difficult to clear. As of August 2005, 6,144 cases remain undecided within the HRC Unit estimating delays of 3 to 4 months in decision-making. Clearing the backlog is slow within current staffing levels, and the complexity of the HRC criteria is adding to decision-making challenges. The use of translation services to translate supporting documentation, e.g., birth certificates, has a bearing on the speed of processing applications.

In assessing the social assistance applicant's ability to meet the HRC criteria, there is an information problem for the central HRC unit. Unlike the situation in local health board and social welfare offices where the applicant is in the company of the staff and the application can be further probed. The HRC Unit are determining applications purely on the information presented to them on the 8 page HRC form and further information may be requested.

A number of changes are being made that should impact on the speed of processing. Firstly, determination of complex HRC cases in Child Benefit claims is to be undertaken in the central Letterkenny office with the HRC Unit advising only in very complex cases. There is also to be a move towards the devolution of HRC decision-making to local DSFA offices. The HRC section will be giving on site training in the implementation of the HRC to both local and central decision-making

¹⁶ Personal Communication.

offices. It is also anticipated that further DSFA staff will be made available to the HRC Unit to clear the backlog of cases.

3.4.5 The Interpretation of the HRC by Community Welfare Officers¹⁷

The key difference between social assistance payments delivered directly by the DSFA and those delivered by CWOs is that the SWA system allows for a large degree of discretion to be exercised by the CWO. The nature of the SWA is that of the welfare safety net, and the inherent flexibility in the system allows for this function. The role of the CWO is to examine the individual circumstances of the SWA applicant and assess their need for the payments available under the scheme. CWOs are required to make quick decisions on social assistance to migrant workers as they are the providers of the ultimate income safety net and must make timely decisions for the welfare of clients.

The particular CWO contacted for this report indicated that homeless migrant workers are referred to his Health Centre from other Health Centres in Dublin, Wicklow and Kildare, and also from Citizen Information Services and local DSFA offices. SWA basic payments may be given as a short-term stop-gap for a 'few weeks' where: migrant workers have applied for another social assistance payment and are awaiting a decision; applicants have been ill or unfairly treated in their job; migrant workers are awaiting wages; or applicants have leave to remain due to having an Irish born child. A sympathetic view may be taken of the case even if the applicant is living in Ireland under two years and the applicant appears as though they are to remain in Ireland, e.g., they have children in school.

A SWA Circular dated November 15th 2005 has stated that the factors to be considered in making a decision on an application by a EEA worker are:

- The period of employment
- The level of earnings
- Whether the work was regular or irregular
- Whether the person has become voluntarily unemployed

The Circular also states the fact that work is part time or paid at a very low rate should not be considered as reason to believe that the work is not genuine. Job seekers i.e. people who have just arrived will continue

¹⁶ Personal communication – DSFA SWA Policy Section & No Fixed Abode Section.

to be subject to the HRC in the normal way. They will not be considered as workers. In effect a person who is considered an EEA worker or former worker applying for SWA continues to be subject to the HRC but will be judged to have satisfied the condition.

While EEA migrant workers with a work history applying for SWA are now in a position to qualify. Migrant workers coming to Ireland without having lined up a job, accommodation and sufficient savings before arriving are not. SWA payments will rarely be paid to a migrant worker in such a situation who stays here for a number of weeks. Repatriation through the DJELR is offered to such people, and the client is referred to the IOM. In practice the Reception and Integration Agency (DJELR) provide one or possibly two nights accommodation for homeless migrant workers without the person having to first agree to repatriation.

The No Fixed Abode Section also experiences the outcome of unprofessional employment agencies abroad bringing people to Ireland on the understanding that they have a job when they do not.

Homeless migrant workers are not referred to emergency accommodation from the No Fixed Abode Health Centre due to the restrictions placed by the HRC. However,¹⁶ a CWO suggested that he may inform the applicant of cheap hostels in Dublin and may provide an ENP to the client to pay for it, again, depending upon the individual circumstances. But the individual circumstances of the case come into play in decision-making. Many of the migrant workers seeking help from this Section are single homeless men. However in the case where a family presents as homeless to the Health Centre, emergency accommodation may have to be found for them. Each case is decided on its own merits.

¹⁶ However, the SWA Policy Unit indicated that there seems to be a very low incidence of repatriation.

THE IMPACT OF THE HABITUAL RESIDENCE CONDITION ON MIGRANT WORKERS AND THEIR FAMILIES

4.1 The Reality of the HRC for Migrant Workers

This section presents a series of case studies detailing the experiences of migrant workers and their families in need of social assistance, emergency accommodation and Child Benefit and being denied payment under the HRC.

The themes within which the case studies are developed reflect the general dilemmas and needs of migrant workers in Ireland.

4.2 The Role of Charities and Non-Governmental Organisations in Supporting Migrant Workers affected by the HRC

When migrant workers approach non-governmental organisations seeking help and support in their social assistance/Child Benefit claim, they tend to be in some distress and their needs are often immediate. Some of the dimensions of peoples difficulties may not be immediately apparent to case workers in the agencies. A caseworker described the difficulties of problems being 'all rolled up in each other' and trying to disentangle them. For example, a family may approach an agency experiencing an accommodation crisis or work related injury and the fact that they have not applied for child benefit might not arise. Case workers are often trying to solve multiple issues with one client with a series of Government departments and statutory agencies: visa validity with the DETE; entry visas with the DJELR; preparing a case for the Labour Relations Commission; trying to access a one off payment from the local health board; trying to access emergency accommodation; while at the same time trying to make sense of and explain to their client the reasons why they have been refused social assistance or emergency accommodation. The caseload is complex and requires considerable skill on behalf of caseworkers. Language difficulties and unfamiliarity with the Irish taxation and social welfare systems create barriers for migrant workers accessing their rights and entitlements.

The MRCI are finding that migrant workers being refused social assistance and emergency accommodation are being referred to them as

there is simply no other place for migrant workers to go once the statutory safety net, the SWA system, is closed off. Referrals have been made by local DSFA offices and local health centres that find their ability to meet need tied by the HRC. Referrals have also come from the embassies and consulates of the home countries of the migrants, as they often cannot support their citizens.

4.3 Access to Child Benefit – Supporting Children and Families

For migrant workers seeking Child Benefit, three issues come to the fore: the administration of the payment; the EU Family Benefit regulation; and the implications of the denial of or delay in awarding Child Benefit. The following case studies illustrate these difficulties.

Both of these case studies reflect the current delays being experienced in the administration of HRC claims by the HRC Unit. While successful applications and the back payment of CB are welcome, the lengthy delays have consequences for the ability of families to support their children. The lengthy waiting period for determination of some CB claims was raised by NGOs as a difficulty for migrant workers from non-EEA states. Should an unsuccessful applicant wish to appeal the decision, there is then a further wait due to a backlog in that system.

The lack of communication from DSFA on the progression of CB applications was also raised by caseworkers. For those cases taking time to be processed, there can be little communication with applicants. Were it not for the intervention of non-governmental organisations in both cases, applicants would not have known of or understood the requirement to forward CB applications to the HRC Unit.

Interviews with agencies on the ground advocating on behalf of migrants indicate that a lack of clarity exists on the implication of the Family Benefit rule for EEA nationals when applying for CB. There is a general assumption that the HRC criteria apply in the same way for all migrant workers as they do for social assistance payments. Both of the child benefit cases detailed point to this confusion. While James and Anna were eventually successful in their application, the reason recounted for their success was their ability to prove that their centre of interest lay in Ireland. However, having one parent as an EEA national should mean that the Family Benefit ruling applies. In Katrina and John's case, it is unclear at the time of writing why their social insurance record from Germany was not taken into account.

James and Anna

James came to Dublin from The Netherlands to work in April 2004. James had found a job as a general operative in a factory before coming to Ireland. In November 2004 his wife, Anna, and child joined him. James is a Dutch national, but originally came from an African country. His wife is originally from Africa also, but has residency rights in The Netherlands. James, while employed on a full time basis in a secure position, earns a low wage. Anna cares for their child on a full-time basis.

The couple applied for Child Benefit in November 2004. James and Anna approached the Society of St. Vincent de Paul for assistance with their claim, as they had received no communication from DSFA. The Society contacted the Child Benefit section on behalf of the couple and was told that the application had been forwarded from the Child Benefit section in Letterkenny to the DSFA's HRC Unit in Dublin. The Society subsequently contacted the HRC section directly and documented the case to officials there in order to make progress on the application. Further documentation to support their claim was sought from James and Anna in February 2005.

While James and Anna were eventually successful in their claim for Child Benefit, it was not until July 2005 that the couple received a response from DSFA in Letterkenny. Their Child Benefit claim was backdated to December 2005. It is understood that the basis for this couple's success in passing the Habitual Residence Condition is that they successfully proved that their centre of interest was in Ireland given the fact that they are settled in Ireland as a family and James is in stable employment in which he intends to remain.

James' wages alone could not meet the costs of living for the family. Due to inadequate income, the family found it very difficult over the 7 to 8 month HRC decision-making period to meet rent, utilities and food costs. They were at risk of homelessness as their landlord threatened to evict them when they fell behind with their rent causing Anna and James distress during the waiting period. As a result of the wait, the family had no option but to approach the Society for financial assistance to keep their home while awaiting the outcome of the administrative process. The Society also informed the couple of the existence of the Family Income Supplement.

Katrina and John

John and Katrina came to Co. Cork with their child from Germany in October 2004 and applied for Child Benefit in January 2005. John, at the time of his arrival, was a self-employed tradesman. Both John and Katrina are German citizens. John was getting paid for his work sporadically, and a job that he had undertaken did not pay him the money that he was owed. John sought Unemployment Benefit, but was told that he did not have sufficient social insurance, and was denied Unemployment Assistance under the HRC on the grounds that he had arrived only a few months before application. The couple approached their Community Welfare Officer who gave a number of exceptional needs payments to the couple so that they could buy food and pay bills. After the third payment, John and Katrina received a letter from their Health Board stating that they would receive no more payments from the Board and suggesting that they go to Dublin and approach the Department of Justice, Equality and Law Reform for assistance to return home to Germany. They received no communication from DSFA regarding the status of their CB application.

During this time, Katrina and John experienced great difficulty in meeting their rent and paying utility and food bills. As well as receiving help from their CWO, the couple received financial assistance from the Society of St. Vincent de Paul. As they were falling behind in their rent, they were having problems with their landlord. They approached Threshold for assistance and that organisation successfully negotiated with their landlord on their behalf.

John found full-time employment in May 2005. As their Child Benefit application was still outstanding, the couple contacted Avondhu Development Ltd for support and advice. The agency contacted the Child Benefit section on their behalf and the caseworker was told that the application had been forwarded to DSFA's HRC Unit for determination. John and Katrina received no communication from DSFA to indicate that their application had been forwarded to the HRC Unit. The caseworker then contacted the HRC Unit and was advised that there was a backlog in the assessment of applications in the HRC Unit and that no decision had been taken at that point on their application. Subsequent to this contact, the couple were asked by the HRC Unit to provide a letter from their employer to prove their employment and residence; which they duly did.

Towards the end of August 2005, the couple received a response to their CB application. While they were granted Child Benefit, they are only to be paid from May 2005. The grounds for this decision were that as John had been an employee since May 2005, EU rules meant that Child Benefit would be paid from this time but that the period previous to this was denied for payment under the HRC. John and Katrina contacted their Embassy about this situation and now their Child Benefit claim is being examined by a European agency.

It is understood that Katrina and John have paid social insurance contributions in Germany for over 10 years and that their social insurance details have been passed on to DSFA.

While it may be possible to live on a low income and no savings in the very short-term, the ability to get by is eroded very quickly. While both couples in the case studies did receive a backdated CB payment, they very nearly lost their home, and were forced to rely on friends and charitable donations to make ends meet.

Caseworkers identified that some migrant families not meeting the HRC and not from an EEA state have to bring up children on very low incomes due to ineligibility for CB. Families in Ireland on work permits, where there is no automatic right to work for the spouse, are in a situation where only the male partner is in low wage employment. Access to child benefit for these families can mean the difference between experiencing poverty and having a household income that is comfortably above poverty lines.

4.4 Migrant Workers Experiencing Exploitation

The MRCI observe that the reduced entitlement to and certainty of receiving a social assistance payment due to the HRC results in the disempowerment of migrant workers. Their bargaining power is diminished, as is their ability to assert their employment rights while in employment and when unfairly dismissed. The state is erecting a barrier to the assertion of rights in denying social assistance to such complainants on the grounds of the HRC.

For those migrant workers that are exploited and not considered habitually resident, SWA ENPs provide the only income safety net under the HRC rules. In the experience of the MRCI, while some workers have been successful in accessing ENPs while either searching for a new job or pursuing their rights, others have not been so fortunate. In two of the cases detailed in this section, the workers had their claims of unfair dismissal and exploitation vindicated by the Labour Relations Commission. Even if a CWO feels that such an applicant has a need for an ENP and payment can be justified, ENPs tend not to be given more than a handful of times to applicants, and would not be given for a long enough time period in which to take a case with the LRC or the Equality Tribunal. The workers experiencing discrimination and exploitation in these case studies had to rely on friends, particularly those from their home countries, in order to have shelter and food while undertaking their cases. The importance for migrant workers not considered habitually resident of being supported by members of their communities was constantly emphasised by caseworkers. Friends and NGOs have become the safety net for many migrant workers in Ireland for those falling through the SWA net.

Ravi

Ravi came from India to Ireland to work in October 2003. He is 46 years of age. He worked as a chef in an Indian restaurant in Dublin- a post that he had prearranged in India with his employer's family there. There was no written contract of employment. He worked ten hours per day, six days per week. It was agreed that Ravi would be paid 1,000 per month. However after the ninth week of employment, this sum dropped to 125 per week and after a few weeks more this sum dropped to €80 per week. The reason given to Ravi for such a dramatic drop in his wages was that his employer was deducting the price for his work permit and his airfare to Ireland. The employer told Ravi that the permit cost €10,000, when in fact it costs €500; and is payable by the employer. Ravi had already paid 25,000 rupees in India to his employer's nephew. When he finally left his job in the restaurant he was told that he owed a further €5,000 to his employer.

From September 2004 until he left in October 2004, Ravi was not paid at all. He could not live on the €80 per week and had to find a new job. His new employer did not apply for a new work permit for him and eventually let him go. In July 2004, Ravi's original work permit, and his residency stamp on his passport, expired. He remains undocumented in the state and so cannot apply for social assistance payments and emergency accommodation. This is despite the fact that Ravi was exploited while in employment.

Ravi took a case against his employer with the Labour Relations Commission under the Payment of Wages Act 1991, with the assistance of the MRCI. The Commission found in his favour and ordered his employer to settle with Ravi. The settlement did not include all of the wages owed by Ravi's employer and the MRCI are working with Ravi in appealing the amount that he received in the LRC's determination.

Since becoming unemployed and while undertaking his case in the LRC, Ravi has relied on his friends in Ireland for accommodation and food. He continues to search for employment and his appeal with the LRC is ongoing.

Anish

Forty seven year old Anish moved to Ireland from India in February 2000. Anish was employed as a cook in an Indian takeaway in Dublin and before coming to Ireland his employer received a work permit to employ him. His wife and teenage son joined him in 2002, and their son began attending secondary school. The family lived in one room of a house totalling 11 tenants. Anish's employer was also his landlord. Anish earned €210 for a 7 day week with 12 hour days, but he paid €115 per week in rent leaving Anish and his wife and son with €95 per week to live. Bank holidays and Sundays were included in Anish's working hours. He also had to pay the €500 for his own work permit. His employer did not give Anish payslips, P.60s or a P.45. Wages were paid cash in hand and there was no written contract for employment. His employer also retained his passport, along with his wife's and son's passports during his employment.

In August 2004, Anish's employer and landlord gave him and his family only two weeks notice of the termination of his tenancy and told Anish that he was being let go as the take away was closing. This was untrue and the shop remained open. When Anish lost his job, he and his family became homeless. Friends of Anish took him, his wife and son into their home, and these friends provided Anish with food and shelter.

When he lost his job and home, Anish went to his local Health Centre for assistance. The CWO referred him to a Health Centre in Dublin's city centre where he filled out the 8 page HRC1 form to apply for Supplementary Welfare Allowance. The decision given by the CWO there was that Anish's 'centre of interest' was not in Ireland as he had no definite employment in the future. He felt discouraged from applying for Unemployment Benefit due to being refused SWA. As he had no employment or P45, the CWO referred him to the Department of Justice, Equality and Law Reform. This Department claimed that as he had no P.45 or P.60s he had 'no current status' in Ireland. Yet he had a work permit and a valid residency stamp in his passport - and was homeless and unemployed through no fault of his own.

With the assistance of the MRCI, Anish brought a case against his former employer in the Labour Relations Commission under the Unfair Dismissal Act and the Payment of Wage Act 1997. While this case had a successful outcome, Anish is currently taking a case through the Employment Appeals Tribunal. He remains undocumented and reliant on his friends.

Anish's case highlights the difficulty for migrant workers on work permits of meeting the 'centre of interest' criteria in the HRC. The MRCI are finding that due to the short term nature of work permits, CWOs are considering such workers to not be habitually resident in Ireland. Contact with a CWO confirmed that workers on work permits will tend to fail the HRC.

Anish's case also points to a difficulty for migrant workers approaching state bodies when in need of support- that of misinformation. NGOs identify that some CWOS and DSFA local office staff may not have sufficient knowledge of work permit/visas systems, and that determining the legal status of social assistance applicants can lead to hold ups in decision making and incorrect assumptions about the legality of a persons residency rights. In Anish's case, a referral to an agency that would assist him in accessing his employment rights through the Social Welfare Inspectorate might have been more appropriate than sending him to the DETE.

Caseworkers in NGOs around the country note that migrant workers requiring work permits/working visas and without employment due to exploitation are in a particularly weak position, and the case studies provided through the MRCI are prime examples of the scenarios described by caseworkers. Due to the current restrictions and inflexibilities in economic migration policy, workers can find themselves undocumented in the state. Whatever flexibility may exist within the HRC itself, once a worker becomes undocumented when a permit expires, approaching a Health Centre is of little benefit except for repatriation.

Anish was discouraged from applying for UB due to the refusal of SWA, pointing towards a general impression that a HRC decision is applied across the board to all payments rather than on a case-by-case basis. NGOs indicate that they are aware anecdotally that some migrant workers are not applying for social welfare, even when they have a need. Migrant workers can be discouraged from applying for social assistance as they feel that there is little point due to the failure of their friends to qualify or their own failure to satisfy the HRC in the past. Also, the MRCI identify that as many migrant workers intend to stay in Ireland and plan on going through the naturalisation process, a fear exists that having sought or been in receipt of social welfare will affect the decision to grant them eventual citizenship.

Sanjeev

Sanjeev came from Pakistan to Ireland on a working visa in June 2001. His wife and child joined him in July 2003. Sanjeev held a number of IT posts and in February 2003 settled in the south east of the country in a permanent IT post. He was given a letter of permanency for his job and sought and received mortgage approval with a view to buying his own home.

Sanjeev claimed he was bullied and the subject of racial and religious harassment in work. He became sick in April 2004 and received a sickness certificate from his doctor. Fifteen more certified sick days were taken. Sanjeev was referred to hospital for further tests in order to find the cause of his illness. He was advised that he would have to stay in hospital for a lengthy period for tests. He sought leave to return home to Pakistan for medical treatment and was asked by his supervisor that he go on holiday rather than sick leave, and to get a sickness certificate from his doctor stating that he was fit to travel on holiday. He left for Pakistan in June 2004, with his wife and child, and attended specialists in that country. The specialists in that country issued a sickness certificate to his employer in July. The following day, his employer in Ireland issued a dismissal letter saying that Sanjeev had not been given permission to take leave. His salary was suspended from July 2004. Sanjeev says that he sought permission in writing to take annual leave and received it.

Due to his illness and a death in this family, Sanjeev could not return to Ireland until March 2005. He returned home to address his discrimination case and to locate new work. His wife and child remained in Pakistan. His working visa had lapsed so he went to GNIB to regularise his immigration status and was told that he could only get a short term residency stamp on his passport until he secured new employment, at which point he could switch back to working visa status. Without a working visa stamp, his wife and child were unable to enter Ireland, despite them having lived previously in Ireland. Friends in Ireland gave Sanjeev shelter and food.

With the support of the MRCI Sanjeev submitted a claim for unfair dismissal with the Labour Relations Commission. While taking this case and searching for new employment, Sanjeev applied for Supplementary Welfare Allowance but was refused under the HRC as it was determined that his centre of interest was not in Ireland. With the assistance of MRCI, Sanjeev appealed the decision in April 2005. While awaiting the outcome of the appeal, he successfully applied for Unemployment Benefit. As part of his application for UB, Sanjeev required a doctor's certificate stating that he was fit to work. As the SWA refusal meant that he had no money, the MRCI gave him money to pay the doctor.

Sanjeev's visa expired in July 2005 and as a result his UB payments stopped. Sanjeev then became undocumented and ineligible for social welfare. He has survived through donations from MRCI and the Society of St. Vincent de Paul and the support of his friends. His case for unfair dismissal is ongoing at the time of writing.

4.5 *Migrant Workers Recruited through Employment Agencies*

While many employment agencies operating in new member states and outside exhibit good practice and provide a valuable service, the practices of some agencies are resulting in some migrant workers experiencing deprivation and homelessness. The typical scenario described by caseworkers is where the employment agency takes a substantial fee from the migrant worker for a job that is non-existent. The migrant workers then arrive in Ireland without any income or without having accommodation lined up as they are expecting to start work immediately upon arrival. All of the NGO's contacted for this report have considerable experience in supporting migrant workers coming to Ireland in the expectation of having a job waiting for them, and then finding themselves in need of support.

In Co.Cork, local NGO's have discovered that some migrant workers are paying from €250 to €500 to agencies, mainly in Slovakia, to find work for Slovaks in the county. The process is that the worker pays the agency and spend the remainder of their savings on their transport to Ireland. The worker comes to Dublin, and may stay for one night in Dublin before travelling to Co.Cork the next day. The worker gets to Co.Cork and finds that the job is either non-existent or that the position found for them is unsuitable. Particular scenarios that have arisen are:

- Where men from Slovakia are continually being placed in unsuitable positions in that they lack the skills necessary for the work and within a few days of arriving in Ireland are let go. These workers will have a copy of a 'contract' from the Slovakian employment agency guaranteeing them employment for one year. In a particular case dealt with by a local development agency in Co. Cork, a Slovakian man was recruited for work and let go after three days. He then sought work in a local meat factory but was not successful. He was homeless in a town in Co. Cork on a Friday afternoon when access to services starts to become more difficult. The local CWO gave the man an ENP of €200 on the understanding that this money would be used by the client to return to Slovakia on Monday. By Monday, the local development agency had supported this man in finding a job.
- Also in Co. Cork, thirty Slovakian men arrived in a town in the county on the understanding that they had work in a distribution centre for a large retail outlet. All of the men paid €500 each to an employment agency in Slovakia who are working with a Dublin based employment agency. It transpired that on arrival in Ireland

these men were only being interviewed for the post and only five of them were actually recruited. Some of the men remained in the town to find work and others left.

Eligibility for social assistance under the HRC is unlikely for these men, other than the possibility of a once-off ENP and the offer of repatriation.

Citizen Information Services are also being approached by migrant workers finding themselves in Ireland without employment due to being misled by employment agencies (Comhairle 1.12.04). According to Roscommon CIS, many Brazilians came to Roscommon on the understanding that their employers had applied for work permits, or they had been promised work by employment agencies acting as intermediaries. After they arrived in Ireland they eventually discovered that the employer had not applied for permits. In one particular scenario related by the CIS, when the employers did eventually apply for the permits, the Department of Enterprise, Trade and Employment had restricted the issuing of permits so no permits were obtainable for that particular category of work.

4.6. Migrant workers unable to work due to injury or illness

Some migrant workers in Ireland find themselves undertaking manual physical labour in the agricultural sector, meat factories and working with heavy machinery. Risk of injury can be part of such work. Injury Benefit should be payable to such workers as the payment does not come under the remit of the HRC and does not require a minimum period of insurable employment, but access to long-term Disability Allowance is denied under the HRC.

A local development agency in Co. Galway, a county with a large number of migrant workers from Brazil, identified that when migrant workers in the area are injured in their employment getting the correct information on their social welfare and social assistance entitlements is problematic. While language difficulties are an issue, and a need for a translation service within the county was identified, the problem being experienced by migrant workers is that their income maintenance options may not always be discussed with them. In the particular case of José, it is unclear why he did not apply for Injury Benefit, or why he was not referred to the local Health Centre for SWA. José's case also illustrates how difficult it is for migrant workers to be ill or injured and take their certified work leave when they do not have social assistance to fall back on.

Ona

Ona came to Ireland from Lithuania in February 2001, received her PPSN number shortly afterwards and began working in a restaurant. She came to Ireland on a visitors visa and was undocumented until May 1st when Lithuania became part of the EU. Ona worked in this restaurant until early 2005 when she became too ill to work. She was diagnosed with Parkinson's Disease. Ona applied for unemployment assistance in February 2005 and in June 2005 was denied payment. Her application was refused on the grounds that: she has no ties to Ireland; that her centre of interest is not in Ireland; that she has not been legally resident for 2 years in the state; and that her future intention is to remain in the state is short term.

MRCI have assisted Ona to appeal the decision through the Social Welfare Appeals Office on the grounds that her centre of interest is in Ireland as her son and grandchildren live here, she intends to stay in Ireland long-term to be with her family and she has no connections to Lithuania apart from her elderly mother.

The appeal is ongoing at the time of writing.

Ona's case illustrates the difficulties of being undocumented in Ireland. While she paid social insurance contributions from February 2001 to May 1st 2004, they do not count towards a social insurance based payment as she did not have a work permit/ residency stamp during this period. It was not understood in this case that paying PRSI does not mean legal residence in the country. Again we see that the refusal of social assistance based on the centre of interest rule, despite the fact that Ona has family in Ireland.

4.7 Migrant Workers Experiencing Homelessness

One of the first issues facing migrant workers when they come to Ireland is to find suitable affordable accommodation. Paying for rented accommodation on low wages can be difficult, but easier if the migrant worker is single and can share accommodation with a group of workers. The Society of St. Vincent de Paul identified that in the experience of their local conferences, if a group of migrant workers travel together to Ireland they have a better chance of affording accommodation. Single people and families are most vulnerable to homelessness in this regard as they do not enjoy the economies that can be maintained by a group of workers.

The case studies in this report demonstrate how important it can be for migrant workers finding themselves without employment to have friends and colleagues that can house and support them in the short-term. The particular cases of Symon and Paul illustrate again how vulnerable undocumented workers are in Ireland when they are let go from their employment, through no fault of their own, and cannot access social assistance or approach social welfare agencies. Symon's case illustrates a difficulty experienced by migrant workers being supported by the MRCI; that of the time period required to renew a work permit. It is the MRCI's experience that this process can take up to 2 months in some cases. The difficulty for migrant workers is that due to the implementation of the HRC, the worker can experience homelessness and deprivation while awaiting the new work permit.

Paul experienced the catch-22 for migrant workers on work permits; how to demonstrate a centre of interest while on a work permit which is by nature temporary. Paul was unemployed and homeless because of unfair dismissal, again falling foul of the centre of interest rule. This is despite the fact that this lack of work and a home was outside of his control. He was referred from the No Fixed Abode health centre to the MRCI for support, demonstrating that non-governmental organisations are providing the ultimate safety net for migrant workers unable to access social assistance due to the HRC. In July 2005, the Latvian Embassy sent two Latvian men to the MRCI for assistance. They were experiencing difficulties in finding work. They ran out of their savings and went to the Latvian Embassy for help, who referred them to the MRCI. The MRCI negotiated on their behalf with the No Fixed Abode Health Centre and the CWO provided short-term emergency accommodation on the understanding that they would be returning to Latvia.

As new member state nationals do not require visas to come to Ireland to work and live, NGOs are finding that migrant workers are travelling to Ireland without being fully prepared and can end up homeless. Where the migrant worker does not speak English, there are limited work opportunities, and finding and accessing support becomes more difficult. Such scenarios include where:

- A family came to Co. Cork by driving for 3 days across Europe to

Symon

Symon came to Ireland from the Ukraine in 2002 on a work permit applied for by his employer, a mushroom company in Co. Wexford. In 2003, the company was taken over by another mushroom company, and they successfully applied for a second year work permit for Symon. This company then went into liquidation in December 2003. Symon was lucky, and found work immediately with another mushroom company in Dublin. During his time in employment, Symon had sought family reunification as his wife and two children remained in the Ukraine but had not received the required permission.

The mushroom company in Dublin went bankrupt in March 2004. In April Symon received some social welfare while he searched for a new job. However his work permit and residency stamp expired at the end of May 2004 and so Symon became undocumented and unable to apply for social welfare. Symon became homeless and his friends took him in and also provided him with food. He could not send money home to his wife and children.

Symon found a new job, this time in a security firm in Dublin. The security firm were happy to take him on and applied to the Department of Enterprise, Trade and Employment for a work permit to employ him. This work permit was refused in December 2004. The company say that they appealed this decision with the Department, but have received no response. The MRCI are liaising with the Department on Symon's behalf.

Paul

Paul came to Ireland from Romania in May 2003 on a work permit to work as a construction worker in Co. Tipperary. He is 45 years of age. Paul's pay was given to him irregularly, and he had to pay for his own work permit. On December 26th 2004 Paul went home to Romania for the Christmas holidays, and informed his employer that he would be taking his holiday time to do so. He returned to work on January 22nd 2005 when his employer told him that there was no work for him and that he was to leave the building site, and the accommodation provided by the employer. They refused to give him his holiday pay. Paul then very quickly became homeless and penniless.

Paul travelled to Dublin to seek emergency accommodation and Supplementary Welfare Allowance, and he approached the Health Centre in Dublin supporting homeless migrant workers. He was refused both on the grounds of the HRC as Paul was seen as having no centre of interest in the state as he was in Ireland on a work permit and was now without employment. MRCI negotiated with the Health Centre on his behalf and organised emergency accommodation and a once-off Exceptional Needs Payment. With the support of the MRCI, Paul was able to find a new employer who applied for a work permit to employ him. He has since found a new home.

MRCI is currently supporting other migrant workers claiming exploitation by the same firm that Paul had worked for.

a town with large meat factories where they heard, through word of mouth, that there was work available. Neither of the parents could speak English, one of the two teenage boys could speak a little English. They did not find work and were soon living in their car. They made contact with the local Society of St. Vincent de Paul conference who put them up in a youth hostel over Christmas. The conference sent them to Cork city where they came into contact with another SVP conference. This conference also paid for hostel accommodation, but felt they could only do so on a limited basis;

- A Latvian woman came to Ireland in April 2005 in search of work. She urgently needed work in order to pay back a loan she took in order to travel to Ireland. She spent some time living in a hostel where her passport was stolen. She quickly ran out of money and became homeless. She came to Ireland on a one way ticket believing that work could be found quickly. She needs to work in Ireland in order to pay back the loan she received to come here and went to the MRCI for support with job finding.

As homeless services are generally not available to migrant workers not considered habitually resident in the state, charities are the main providers of food and shelter. The SVP is the largest voluntary provider of housing and accommodation in the state, and their role in housing migrants is providing challenges for them. SVP homeless hostels in Cork, Limerick, Wexford, Dublin, Longford and Carlow have housed many people who have found themselves homeless and without support. However, due to the restraints of the HRC the hostels are in a bind as to whom they should house and for how long. The difficulties for SVP are:

- Non-habitually resident migrants cannot contribute towards their rent as they may not receive SWA. All other residents do contribute from their welfare benefits. This might be viewed as inequitable, and cause difficulties in the relationship between

homeless migrant workers and the existing homeless population;

- Not contributing towards rent is in breach of the hostels licence agreements; and
- Conferences are concerned that if they permit migrant workers to stay, they may be undermining government policy. Conversely the SVP's mission is to help those in need and experiencing social exclusion.

4.8 Migrant Workers Unprepared for Living and Working in Ireland

Previous case studies point to being unprepared for the time it takes to find work in Ireland and as a route into homelessness. Other dimensions of being unprepared for living and working in Ireland impact on the worker's ability to find employment.

A substantial number of clients of the NGOs contributing to this report are coming to Ireland to work in the construction industry. They require 'Safe Pass' courses before they will be allowed on site due to health and safety regulations. Migrant construction workers need to enter the workplace quickly in order to support themselves and often cannot afford to take the Safe Pass training. Local NGO's have recognised this gap in provision and have found a practical solution through funding and providing the training. Where Safe Pass courses are available, they tend to be delivered in the English language. This can be a difficulty for newly arrived migrant workers so some agencies provide courses in the required languages.

José

José came to Co. Galway from Brazil to work in July 2004. He works with heavy machinery and his employer sought a work permit to employ him.

In June 2005, José seriously injured his fingers in the machinery at work. He was sent to hospital for treatment, and then to attend his local doctor for further treatment. His doctor gave him a certificate stating that he was to remain off work for twelve weeks to allow his fingers to heal. José went to his local Social Welfare Office to apply for a disability payment to support him while recovering and returning to work. José had insufficient social insurance contributions to qualify for Disability Benefit. He was denied social assistance payments under the HRC as he had been living in the country for less than one year. The local Social Welfare Office tried to help José access another payment and he filled out a form in their offices. He does not know what payment the form was for, and he did not attend, nor was he referred to, the local health centre. During this time, José's friends from his home country supported him and helped him pay his rent and buy food. José's is still learning English, so a friend helped him communicate with the local Social Welfare Office staff.

José was under a lot of pressure from his employer to return to work early, or run the risk of losing his position. José returned to work seven weeks after his injury, despite having a doctor's certificate for twelve weeks as he was afraid that he would lose his job, and he also had no money due to the HRC decision.

The SVP's conferences around the country identify that migrant workers who end up requiring social assistance often come to Ireland with insufficient funds and over optimistic hopes of finding work. In 2005, the SVP in Cork supported a Polish woman who came to Ireland on a non-changeable six month flight with €100 in her pocket and found that she had no sense of the cost of living in Ireland.

The MRCI identify that there is no support structure available or policy response to nationals from the new member states who are unprepared for the realities of finding work and living in Ireland. Workers arrive with little or no information on the cost of living in Ireland or how to go about finding work in Ireland. The only intervention provided by the state is repatriation through the IOM and the Reception and Integration Agency. As previously identified, CWOs may give a once off ENP in repatriation cases. The need for further support to be provided for migrant workers by embassies in Ireland was identified as an ongoing issue.

NGOs recognise that returning home may be the best course of action for individual migrant workers and NGOs will support their clients in making that decision. NGOs are grappling with how long they should support individuals and families in this situation. SVP conferences, while wishing to alleviate poverty and deprivation, are aware that they cannot commit to long-term assistance to people in difficulty who have no chance of receiving State assistance. The SVP assist people by giving them the time to make their decision.

The decision made by a migrant worker to return home is a difficult one and that for many due to financial responsibilities, going home is not an option. A Slovakian man in Co Cork with little English could only access physical labouring jobs. He was not suitable for this type of work and was in and out of employment and was not eligible for social assistance under the HRC. A local NGO helped him apply for jobs, provided him with some financial support and negotiated with the SVP on his behalf. His family at home were depending upon him to be the main earner in the family and he felt that leaving Ireland was not an option for him. Eventually, he found employment through a contact in Dublin.

4.9 Migrant Workers Let Go from their Employment

While some migrant workers in Ireland end up without employment due to exploitation or discrimination, others are laid off from their job or their work contract is not renewed. Jobs undertaken in essential work sectors by migrant workers tend to be short term and insecure in nature,

Natasha

Natasha came to Co. Cavan from Latvia in May 2003 to work in a mushroom factory on an annual renewable work permit. Natasha worked 6 days a week for 16 hours per day. After working for the company for 17 months, Natasha found herself without employment as the factory closed down. Natasha then found employment with a pet food manufacturer in Co. Longford on a five month contract. Her contract was not renewed as her employer told her that they had no further need for labour. Yet following her lay-off, more workers from Latvia were taken on at the factory.

Natasha sought unemployment assistance in February 2005 while job searching and was refused payment on the grounds that as Natasha had returned to Latvia for a one week holiday during her residence here in Ireland to finalise her divorce from her husband, she was considered by the Deciding Officer that her centre of interest was not in Ireland and so she was not considered habitually resident.

Longford Partnership supported Natasha in ensuring that her P.45 was issued to her. Further difficulties arose for Natasha in relation to her social insurance contributions. Social welfare found that the initial six months of social insurance contributions were missing from her record despite Natasha having had a work permit for the mushroom factory and having had income tax and PRSI contributions deducted from her pay. Longford Partnership also clarified and explained the Department of Social and Family Affairs decision on the Habitual Residence Condition to her and assisted her in lodging an appeal to Social Welfare Appeals.

Natasha is now without income or employment, although she continues to search and her appeal is ongoing. She lives with her son in Longford, and he is currently providing her with food and accommodation. Natasha approached the Community Welfare Officer for financial support and was given a once-off payment to be used to return to Latvia. In her appeal, and her communications with the DSFA, Natasha has asserted that it is her intention and that of her adult son to make Ireland their home.

Brigita

Brigita's husband came to Dublin in December 2005 to work in the construction industry. He found private rented accommodation with other tenants and Brigita and their child followed him to Ireland the following June.

But Brigita's husband is violent and she is frightened of him. Brigita sought help and advice from Women's Aid and the MRCI. In September 2005, Brigita received a temporary barring order barring her husband from their home. Her fellow tenants supported her in this action. MRCI assisted Brigita in successfully applying for Free Legal Aid to take her case. Brigita, at the time of writing, was pursuing a full barring order.

Brigita was not in employment, had no access to her husband's wages, and still had to pay her family's share of the rent and support herself and her child. She was referred by MRCI to a Health Centre where she applied for social assistance. She explained her situation to the CWO and received an Emergency Needs Payment.

At the time of writing Brigita is looking for a part-time job to support herself and her child, and is also going to apply for One Parent Family Payment. When she asked the CWO that gave her the ENP if she was eligible for the OPFP, the CWO told her that she was not under the rules of the HRC. Brigita is going to apply for OPFP anyway under the Family Benefit regulation. However, the OPFP criteria state that an applicant must be separated for at least three months before application. This leaves Brigita in a situation where she must rely on receiving supplementary welfare allowance payments.

e.g., agricultural work and factory work. It is the experience of the MRCI that as migrant workers have travelled to Ireland specifically to work, they will begin the search for new employment immediately. Their request or social assistance is usually short-term while they are seeking work. Unfortunately, without short-term support, deprivation can follow very quickly.

It is possible that Natasha may be entitled to UB, and the Social Welfare Inspectorate have a role in investigating issues relating to non-compliance with PRSI payments by employers. But while awaiting the outcome of investigations, SWA payments could be made. In Natasha's case the application of the centre of interest HRC criteria barred her from receiving further SWA payments.

4.10 Women Experiencing Domestic Violence

Migrant women experiencing domestic violence in Ireland is an emerging feature of the MRCI's caseload. The vulnerability of women in domestic violence situations is deepened by the discretion associated with the HRC. In Brigita's case, given the implications of the new ruling on OPFP as a Family Benefit for EEA nationals have yet to be determined.

EMERGING POLICY ISSUES

5.1 Social Welfare Policy Issues

Given that the rationale behind the introduction of the HRC has not come to be in that new member state migrants are continuing to come to Ireland to work rather than flood the social welfare system, it is time to reconsider the aims and objectives of the HRC. Given the high numbers of new member state nationals fulfilling the terms of the HRC, it would appear that their needs are appropriate to the Irish system. The attention being focused on the HRC by the European Commission also suggests that the current approach to meeting the social assistance needs of migrant workers may be untenable, especially in relation to Family Benefits regulations and the Common Travel Area criteria. It is clear that the HRC has negatively affected returning Irish emigrants, 'old' EU nationals, and migrant workers already resident in Ireland prior to May 2004 rather than newly arriving new member state migrant workers.

The outcome of the introduction of the HRC has been, not to deter 'welfare tourists', but to increase homelessness and poverty and deprivation for some migrant workers in Ireland. The social security safety net that previously existed in Ireland has been removed for migrant workers in Ireland as the onus is on the applicant to prove that s/he is habitually resident. The HRC criteria means that guarantee of the basic minimum of support previously provided by the SWA system and emergency homeless services is gone. The case studies in this report show that, for migrants already working in Ireland, the denial of or slowness in processing social assistance and Child Benefit applications can result in homelessness for individuals and families. Migrant's lives can fall apart very quickly without state support. Indeed, the case studies show how the interaction of immigration and the HRC criteria can cause homelessness.

A three-tier system of rights and entitlements to social assistance is emerging in Ireland; entitlements for Irish people, for EEA nationals and for non-EEA nationals. At a policy level, the diminishing of social rights and welfare entitlements is significant. For those affected by this trend, the results can mean poverty and deprivation. While the HRC may appear to be blind to race and nationality because all applicants for assistance must satisfy the condition. The reality is that migrant groups

and ethnic minorities are disproportionately affected by the application of the HRC and are being pushed further into poverty and deprivation.

The HRC criteria are complex and subjective, and the circumstances of each case are taken on their own merits. A degree of discretion has also been introduced to the social welfare decision-making process that did not exist prior to May 2004. As no single factor in the five HRC factors is conclusive, it can be very difficult to concretely establish why applicants in similar circumstances can have different outcomes. The HRC process relies on guidance regulations and departmental circulars from the DSFA. While the 2004 social welfare legislation states that the time period for habitual residence is two years, the regulations provide that 2 years alone is not enough to satisfy the HRC and an applicant may pass due to the other criteria despite having been in Ireland for CTA for less or more than 2 years. Accountability in social welfare decision making for migrant workers is lessened due to the fluidity of the HRC criteria and the subjectivity in the decision-making.

Given that the certainty of a social security safety net previously provided by the SWA system no longer exists for migrant workers, charities and NGOs are now the providers of last resort. This is evidenced in the referrals made by state bodies and embassies to charities like MRCI and SVP when social assistance payments or emergency accommodation cannot be provided by the state. It is also clear that the Society of St. Vincent de Paul is providing a supplementary income to migrant workers, those working and unemployed, who find that their income is inadequate to meet their needs and obligations. It is also apparent from the case studies in this report that the financial support provided by friends is vital in sustaining migrant workers while they take their legal cases or search for new employment in the absence of regular social assistance payments.

Conversely, the application of the HRC to payments such as Unemployment Assistance highlights the importance of the SWA system as a speedy flexible system that can meet the short-term needs of migrant workers while they are searching for new employment or taking a case through the Labour Relations Commission or the Equality Authority. It is clear from the case studies and interviews with the NGOs that migrant workers come to Ireland to work and, despite the breakdown of their employment and their ineligibility for social assistance or emergency accommodation, will try to find new employment rather than leave. Providing a short-term safety net payment to them while undertaking this process is vital.

The implementation of the HRC increases the burden of social welfare bureaucracy on applicants and administrators. There is an increase in bureaucracy for applicants, as they are required to submit further information to prove residency and complete the HRC1 form. The challenges faced by the HRC Unit is evidence of the increase in bureaucracy for the DSFA, and local social welfare offices will shortly have their work load increased when the complex decision making is devolved. Changes in the profile of social welfare clients as a result of immigration to Ireland and the introduction of the HRC create information difficulties for DSFA personnel at local level. While the devolution of HRC is one issue, the requirement for DSFA staff to understand basic immigration law/work visas/permits came through in this report.

Migrant workers in the case studies lacked knowledge on the Irish social welfare system and the payments available. This was a particular difficulty where the applicants did not have sufficient English. The finding that migrant workers in need of social welfare may not be applying is worrying. Given the complexity of the social welfare system and the HRC, it is not surprising that migrant workers do not understand that applications are treated on a case-by-case basis or that an applicant may pass the HRC over time.

5.2 Employment Rights and Equality Issues

While the HRC dilutes the social rights of migrant workers in Ireland, it also weakens their legal rights. The implementation of the HRC exacerbates the risk of exploitation for migrant workers by employers. Being denied, or the fear of being denied social assistance can leave employees in a weak bargaining position as they cannot leave their work due to the fear of being left without any income at all. Inability to qualify for social assistance payments also means that migrant workers not eligible for sick pay from their employer and with insufficient social insurance contributions find it difficult to take even certified sick or injury leave.

The HRC may not allow the state to support migrants undertaking cases in the LRC or the Equality Authority and results in one system working against another system. The implementation of the HRC in such cases weakens the employment and equality rights infrastructure that has been developed, as the social welfare system becomes a barrier to the utilisation of the various employment rights bodies by migrant workers. The increasing incidence of exploitation of migrant workers is an issue of serious concern to the LRC and the Equality Authority Tribunal. Not

having access to social assistance payments and emergency accommodation while taking a case hinders migrant workers in asserting their employment rights. The breathing space provided by social assistance payment allows workers to find a new employer, and if required, apply for a new work permit.

Employers withholding employment documents such as P.60's, P.45's, pay slips and written contracts arose frequently in the case studies and in interviews with agencies advocating on behalf of migrant workers, as did the non-payment of social insurance contributions to DSFA by employers. All of these documents are vital when applying for social insurance based and social assistance payments. Not being able to show proof of employment and PRSI contributions paid causes great difficulties for migrants when they are trying to prove habitual residence. The use of the DETE and the Social Welfare Inspectorate in pursuing such employers was not as evident as expected in this report.

5.3 Immigration Policy Issues

Migrant workers can find themselves in a catch 22 situation when the operation of immigration policy and the HRC criteria come into conflict. There are three key difficulties for migrant workers in proving that their 'centre of interest' is in Ireland and that they are habitually resident namely, (1) work permits, (2) contract work and (3) family reunification. Annual work permits or short-term work contracts may result in social assistance applicants being refused payment. The difficulty for migrant workers is that the work permit time period is totally out of their control. 'Stable' employment, as envisaged in the HRC guidelines is, by virtue of the work permit system in Ireland, difficult to achieve. Even for those not requiring a permit, the reality is that a succession of work contracts is generally what is being offered to them by employers in essential work sector such as agriculture and factories.

Given the limited opportunities provided for family reunification for workers on work permits, the lack of family life in Ireland is a catch 22 for some migrant workers as the HRC criteria looks favourably on the spouses and children living in Ireland with the worker. Again, permission for family reunification comes from the DJELR and is outside of the control of the migrant worker.

Migrant workers having been unfairly dismissed or having to leave their job due to exploitation run the risk of becoming undocumented in Ireland if they cannot find a new employer and get a new work permit and residency stamp. Undocumented workers cannot receive social

welfare payments, even social insurance based payments, despite having clear need. The experience of MRCl indicates that workers that have been let go from employment or have left due to exploitation end up in the catch-22 situation of requiring further stable employment to be considered habitually resident for social assistance, even if their unemployment is through no fault of their own, but require social assistance to exist and to enable them to keep their home while job searching.

5.4 Anti-Poverty and Children's Policy Issues

Until the introduction of the HRC, Child Benefit was a fully universal payment. The introduction of the HRC has introduced a distinction between Irish citizen children residing in the State. It served a number of very important functions; not least of which is an anti-poverty measure. Many of the migrant workers approaching MRCl for support exist on minimum wage. Child Benefit is a substantial payment and can make the difference between poverty and participation for children in migrant families. There are migrant families in Ireland, both EEA and non-EEA nationals needing Child Benefit but not receiving it. Caseworkers suggest that EEA nationals working in Ireland may not always be applying for or receiving Child Benefit due to the ongoing lack of clarity on the Family Benefit regulation. The inclusion of CB in the list of payments within the scope of the HRC may also be in breach of the United Nations Convention on the Rights of the Child.

The implementation of the HRC is causing poverty and deprivation for some migrant workers in Ireland. While this may be an unintended policy outcome, increasing poverty and social exclusion in Ireland is not coherent with the vision and aims and objectives of the National Anti-Poverty Strategy 2002-2007 or the National Action Plan Against Poverty and Social Exclusion 2003-2005 developed as part of an EU wide attempt to end poverty.

RECOMMENDATIONS

6.1 Review the rationale for the HRC

- 1. The HRC should be abolished given that the rationale underpinning its implementation is no longer valid. While awaiting its abolition, the DSFA should review the rationale for the HRC. The current review of the Habitual Residence Condition being undertaken by the DSFA provides a space within which to revisit the reasons for the introduction of the HRC and assess their current applicability.**

While awaiting such changes in the HRC, there are a series of steps that should be taken to ensure that migrant workers and their families have access to a level of social protection necessary to support even the most basic level of survival and participation in society. Given that meeting the rights and welfare of migrant workers in Ireland is a multi-agency issue and immigration policy and social welfare policy interact, the recommendations are for the attention of the Departments of Social and Family Affairs, Enterprise, Trade and Employment and Justice, Equality and Law Reform.

6.2 Amending the Habitual Residence Condition

- 2. Remove Child Benefit from the list of payments for assessment under the HRC**

The inclusion of Child Benefit in the HRC related payments is causing hardship for children and families and is creating inequalities amongst children in Ireland. While most recent evidence indicates that applications for Child Benefit are being considered favourably, restoring Child Benefit to its universal status would also be in keeping with Ireland's commitments under the United Nations Convention on the Rights of the Child. The UN Committee on the Rights of the Child will be deliberating on Ireland's progress in implementing the UNCRC in 2006.

- 3. Allow access to SWA and social assistance payments for non-habitually resident migrant workers reporting exploitation in the work place and wishing to pursue their case in the Labour Relations Commission, Equality Authority etc.**

The cases outlined in this report illustrate how difficult it is for migrant workers to assert their employment rights. The current situation where workers are taking cases without being able to access social assistance is creating a barrier to the assertion of rights for the most vulnerable of workers. A specific time period could be specified for receipt of the payment.

4. Allow access to SWA payments for non-habitually resident migrant workers finding themselves laid off from work or who cannot work due to illness or injury.

A specific time period could be specified for receipt of the payment, and, in the case of illness or injury, for the time period of the sickness certificate.

5. Allow access to homeless services and SWA for non-resident migrant workers reporting themselves as homeless

To not allow even short-term access to homeless services and SWA to migrant workers finding themselves homeless leaves migrant workers in Ireland without the most basic of rights; the right to shelter. While acknowledging progress in this area it still stands that basic SWA should be paid to homeless migrant workers on an interim basis irrespective of whether they are classified as job seekers or as workers.

6.3 Breaking the catch-22 between Immigration Policy and Habitual Residence

6. For the 'centre of interest' criteria, the fact that the work permit is valid for one year should not be used as justification for the applicant not being considered as having sufficient future interest in Ireland.

The work permit time period is totally outside of the control of the migrant worker. Stable employment, as envisaged in the HRC guidelines is, by virtue of the work permit system in Ireland, difficult for workers still requiring a work permit. Even for those not requiring a permit, the reality is that a succession of work contracts is generally what is being offered to them by employers. A similar situation applies to the situations where migrant workers are employed under short term work contracts.

7. Given the limited opportunities provided for family reunification for workers on work permits, the lack of family life in Ireland should not be used as grounds to deny HRC due to the centre of interest criteria.

Again, permission for family reunification comes from the DJELR and is outside of the control of the migrant worker.

6.4 Changing the Administration of the HRC

8. Further resource the DSFA Habitual Residence Condition Unit.

Given the impact on migrant workers and their families of the sometimes long waiting periods for decision making in the HRU, clearing the backlog of cases in the HRC Unit is vital.

9. Provide social welfare information in the main migrant languages and ensure translation services are provided in local DSFA offices nationwide.

Language barriers present significant challenges to both migrant workers and to officials administering the social welfare system. The model developed in the North of Ireland should be applied here in principle. Under the Race Relations (N.I.) Order 1997, Section 75, N.I. Act 1998. public bodies have a statutory duty to ensure they deliver services that are accessible and appropriate to service users.

10. Ensure that the Social Welfare Inspectorate is adequately resourced and supported in safeguarding and enforcing migrant workers employment rights, and that in specific HRC cases, the investigations of the Inspectorate are taken into account in HRC decision making.

This recommendation is in line with the National Action Plan Against Racism which seeks the enhancement of the capacity of bodies and agencies responsible for the enforcement of employment rights policy.

11. Ensure that DSFA central and local decision making offices are trained in the implementation of the HRC immediately prior to the devolution of decision making from the HRC Unit.

Information on the immigration procedures, e.g., visa/permit systems and the implications for migrants of working under such systems should be included in this training.

6.5 Supporting Existing and Potential Migrant Workers to Ireland

12. Provide pre-departure information to migrant workers coming to Ireland to work.

Pre-departure information should be made available at Irish embassies in the sending countries as Non-EEA migrant workers coming to Ireland

are in contact with Irish embassies and consulates, as they tend to require an entry visa. Embassies and support agencies in new EU member state should also be encouraged to develop such resources. The lessons from the Irish experience of developing predeparture support and information channels should be drawn on and in particular the work of Emigrant Advice supported.

13. Provide additional resources to information, advice and advocacy groups supporting migrant workers in urban and rural areas.

Community based organisations and information centres are usually the first point of contact for migrant workers seeking social protection or/and experiencing exploitation. These organisations play an essential role in supporting migrant workers access their rights, become informed about their entitlements and in many instances advocate on their behalf. Most are working with few resources and without any recognition of the essential role they play.

6.6 Bridging the Gap between Immigration Procedures and the HRC

14. Introduce a 'bridging visa' for migrant workers who can demonstrate that they have been exploited by their employer and who have become undocumented through this process i.e., an employer not renewing their work permit.

The visa would allow a migrant worker to change or seek employment within a defined period. The worker remains documented, in a position to make an official complaint, seek new employment and apply for social assistance/benefit.

15. Regulate and monitor the operation of recruitment agencies in Ireland to protect migrant workers

There is a need for greater regulation and monitoring of recruitment agencies to protect job-seeking migrant workers from abuse and to bring to an end the illegal practices of passing the work permit fee onto the employee.

16. Change employment legislation to ensure that migrant workers own their own work permit

The recently published Employment Permits Bill 2005 proposes to continue the practice of placing responsibility for the work permit in the hands of the employer. The case studies presented in this report indicate that for some workers, ownership of their permit is a key factor in their efforts to avoid exploitation and seek legal redress.

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APPENDIX

HABITUAL RESIDENCE CONDITION FORM (HRC1)

Habitual Residence Condition

questionnaire

HRC 1



Thank you for your application for on .

However, we need more information to decide whether you are habitually resident in Ireland. Please answer the following questions to help us decide this issue. Where relevant, please place a tick () in the boxes provided.

We will check all information provided by you. Please attach any documents to support your answers to the questions.

If you fail to answer all questions, your application will be delayed.

Part 1

Your details

1. What is your full name?

First name(s)

Last name

2. Where do you live?

Address

3. What is your telephone or mobile number, if any?

Code

Local number

4. What is your Personal Public Service Number (PPS No.)?

Figures

Letter(s)

5. What is your date of birth?

Day

Month

Year

6. What country were you born in?

7. What is your nationality?

Part 2 continued

6. Does your spouse or partner live in Ireland with you? If 'Yes', give date their current stay in Ireland began.

Yes No

Day Month Year

If 'No', please state where they are and any plans you have made for them to join you:

7. Do you have children or other dependants?

Yes No

If 'Yes', please give details:

Name	Date of birth

8. Do your children or other dependants live in Ireland with you?

Yes No

If 'No', please state where they are and any plans you have made for them to join you:

9. Are your children in school in Ireland?

Yes No

If 'Yes', please give details:

Child's name	School	Start date

10. Does any of your close family, for example parent, brother, sister or child, live in Ireland?

Yes No

If 'Yes', please give their details here:

Name, Address and Date of Birth	Relationship to you	When they came

Part 2 continued

11. Do you have close family living outside Ireland?

Yes

No

If 'Yes', please give details here:

Name	Address	Relationship to you

12. Do you have bank accounts in other countries?

Yes

No

If 'Yes', please give details:

13. How do you plan to support yourself in Ireland? Include details of funds you can access.

14. (a) Did you arrange employment prior to coming to Ireland?

Yes

No

If 'Yes', please give details:

(b) Have you looked for work since coming to Ireland?

Yes

No

If 'Yes', please give details:

Part 2 continued

15. Are you now working in Ireland?

Yes No

If 'Yes', please state:

Who you work for:

Employer's name

Address

When employment started?

Day Month Year

Type of work you do:

Type of employment:

Full-time Part-time

How long the job is likely to last:

Have you a written contract of employment?

Yes No

16. Have you always worked since coming to Ireland?

Yes No

If 'Yes', please give details:

17. Do you have any links abroad?

Links include membership of professional bodies, clubs or societies:

If 'Yes', please give details:

18. Do you own property abroad?

Yes No

If 'Yes', please give details about this property and what is happening to it now:

Part 2 continued

19. (a) Have you sold or given up any property that you owned abroad?

Yes

No

If 'Yes', please give details about this property, why you sold it or gave it up and provide proof of sale.

(b) Have you sold or given up any property rented or leased abroad?

Yes

No

If 'Yes', please give details and provide proof of termination of lease/rental agreement.

20. (a) Please give details of where you are living now. For example do you own the property, are you renting it or are you living with relatives or friends?

(b) How did you arrange your present accommodation?

21. Do you belong to any professional bodies, clubs or organisations in Ireland?

Yes

No

If 'Yes', please give details:

Part 3

Complete this part only if you have lived in Ireland before.

1. (a) When did you last leave Ireland?

(b) Why did you leave Ireland?

(c) Where did you live?

(d) How did you support yourself when abroad?

2. What dates were you in Ireland before? How did you support yourself and what work did you do?

3. Why have you returned to Ireland?

4. Do you own or have you ever owned property (a house, a flat, an apartment, a building or land) in Ireland?

Yes

No

If 'Yes', please give details of where it is, if anyone is living in it or using it, whether it was rented when you were away or if it has been sold, when this happened.

5. Did you maintain links with clubs or professional bodies while you were away from Ireland?

Yes

No

If 'Yes', please give details of who you kept in touch with and how:

Part 3 continued

6. Did you keep accounts in any financial institutions when you were away?

Yes

No

If 'Yes', please give details of each account and how you used it:

Part 4

Declaration (all cases)

I fully understand the questions and I declare that the information I have given on this form is correct and complete.

Your signature

(not block letters)

Date

Official's signature

Date

(Where form is completed or witnessed by Department or Health Board official)

Data Protection and Freedom of Information

We, the Department of Social and Family Affairs and the Health Boards, will treat all information and personal data which you give as confidential. We will only disclose it to other bodies in accordance with law. We are responsible for your information under the Data Protection Act and Freedom of Information Act.

Explanations and terms used in this form are intended as a guide only and do not purport to be a legal interpretation.