

An Coiste Comhairleach Náisiúnta
ar Chiníochas agus Idirchultúrachas

National Consultative Committee
on Racism and Interculturalism

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Submission to the Homeless Agency

on Homeless Agency Action Plan 2007-2010

**National Consultative Committee on
Racism and Interculturalism (NCCRI)**

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The National Consultative Committee on Racism and Interculturalism (NCCRI) welcomes this opportunity to contribute to the discussion on the Homeless Agency's Action Plan 2007 – 2010.

Role of the NCCRI

The National Consultative Committee on Racism and Interculturalism (NCCRI) was established in 1998 as an independent expert body focusing on racism and interculturalism. The NCCRI is a partnership body which seeks to build on consensus by bringing together government and non-government organisations. The NCCRI is funded by the Department of Justice, Equality and Law Reform, the European Union, and through research grants. Further information about the organisation can be found on our website - www.nccri.ie.

Ethnic diversity in Ireland

There has been a significant broadening of cultural and ethnic diversity in Ireland in recent years, in terms of numbers of people and their national and ethnic origin. This broadening of diversity has significantly added to the rich diversity that has always existed in Ireland, which includes the Traveller community, Jewish and Muslim communities, and growing Asian and African communities.

The 2002 Census of Population provides the most comprehensive breakdown of national diversity in Ireland to date and identifies five main regions of origin for ethnic diversity in Ireland. These are the UK and other EU nationals (3.4% of the total population), Asian (0.5%), African (0.5%) non EU Europeans (0.5%) and the United States (0.3%). However, demographics have changed considerably since the Census in 2002. Ireland was one of three countries to grant access to its labour market to people from the EU Accession States from May 2004. From 1 May 2004 - 30 September 2005, 133,258 PPSNs (personal public service numbers) were granted to people from EU Accession States. However, it should be noted that these figures represent 'flows', not 'stocks'. The Polish Embassy in Dublin estimates that about 120,000 Polish migrants are currently living in Ireland.¹

Homelessness among minority ethnic communities

There is growing evidence of an over-representation of people from minority ethnic backgrounds experiencing homelessness, particularly people from the EU Accession States; this increase has been linked to the Habitual Residence Condition (HRC).² Research has already been carried out in this regard and a number of recommendations have been made. The NCCRI's advocacy paper on the HRC is attached as an appendix, and a few of the recommendations therein have already been implemented.

Recommendations

Given the fairly recent demographic changes in Ireland and the hardship being faced by some members of minority ethnic groups, particularly people from the EU Accession

¹ Kropiwiec, K. & King-O'Riain, R.C. (2006), *Polish Migrant Workers in Ireland*, NCCRI, (in press), p.7.

² See for example: Migrant Rights Centre Ireland (2005) *Social Protection Denied* and Homeless Agency (2006) *Away from home and homeless: Quantification and profile of EU10 Nationals using homeless services and recommendations to address their needs*.

States, tackling homelessness must explicitly take the specific needs of this group into account. The NCCRI supports the recommendations from the Homeless Agency's report 'Away from home and homeless: Quantification and profile of EU10 Nationals using homeless services and recommendations to address their needs' and suggest that the relevant recommendations be reflected in the Action Plan 2007 – 2010.

There is a need to both mainstream the consideration of minority ethnic groups into planning, policy-making and service delivery; and to develop targeted initiatives to meet their needs. This is particularly important as research has indicated that the profile and needs of this particular group are different and distinct from indigenous homeless people in Ireland.³

It remains the fact that the action likely to have the most positive impact on reducing homelessness among people from EU Accession States is to discontinue the habitual residence condition:

- No substantive evidence has emerged to support the fear that the Irish Social Welfare System would have been overburdened by migrants coming to Ireland had the HRC not existed. This is supported by evidence from the Department of Social and Family Affairs that shows very few migrants have sought to access Ireland's social welfare system.
- The HRC is causing poverty hardship to vulnerable groups in Irish Society, in particular some recent migrants to Ireland and their children, and is contributing to homelessness.

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³ Homeless Agency (2006) *Away from home and homeless: Quantification and profile of EU10 Nationals using homeless services and recommendations to address their needs.*

Appendix 1: NCCRI Advocacy Paper on the Habitual Residence Condition

**Concerns About the
The Habitual Residence Condition
And its impact on recent migrants
And minority ethnic groups in
Ireland**

‘Without a Safety Net’

Advocacy Paper 4

Preface

This is the fourth paper in a new series of Advocacy Papers produced by the NCCRI on a wide range of issues related to public policy that impacts on minority ethnic groups in Ireland. This Advocacy Paper focuses on the Habitual Residence Condition and its impact on recent migrants and minority ethnic groups in Ireland.

The NCCRI wishes to acknowledge a wide range of stakeholders that contributed to the development of this Paper. In particular we acknowledge the organisations that are part of a consultative forum that meets on a regular basis with the Department of Social and Family Affairs, which is convened by the NCCRI. Many of these groups are working directly with recent migrants/minority ethnic groups and their input to this Paper has been invaluable. This Advocacy Paper does not necessarily reflect the views of individual organisations that have been consulted or which have contributed information.

Research for this Paper has been carried out by Anna Visser, Research and Policy Officer with NCCRI and by Philip Watt, Director of NCCRI.

The NCCRI also wishes to acknowledge and thank the civil servants in the Department of Social and Family Affairs who have at all times shown an openness to hear views and concerns in relation to the implementation of the HRC.

The NCCRI is an expert body that seeks to provide advice and technical assistance to develop initiatives to address racism and to support a more inclusive and intercultural Ireland (www.nccri.ie)

Introduction and Conclusions

This Advocacy Paper ‘Without a Safety Net’ contends that whatever the initial rationale that led to the introduction of the Habitual Residence Condition (HRC), the HRC is no longer necessary or justified and is causing hardship to vulnerable groups in Irish society. Of particular concern to the NCCRI is the impact that the HRC has had on an increasing number of people from minority ethnic groups and recent migrants to Ireland, including former Irish emigrants. In summary this paper contends:

1. The introduction and continuation of the HRC is contrary to evidenced based policy making. No substantive evidence has emerged to support the fear that the Irish Social Welfare System would have been overburdened by migrants coming to Ireland had the HRC not existed. This is supported by evidence from the Department of Social and Family Affairs that shows very few migrants have sought to access Ireland’s social welfare system
2. Many EU reports and the opinion of economists in Ireland have contended that Ireland has been a significant beneficiary of inward migration and economic growth would have been substantially less without migration
3. The HRC is causing poverty hardship to vulnerable groups in Irish Society, in particular some recent migrants to Ireland and their children, including returning Irish emigrants
4. There is increasing concern, including from those within the social welfare system itself, that the application of the HRC in respect of Child Benefit is contravening EU and international law. There is concern that migrant/asylum children will be more vulnerable to child poverty as a consequence of the HRC
5. The HRC at an administrative level proving intrinsically cumbersome to operate, resulting in administrative delays and inconsistencies in decision making.¹

¹ This is not a criticism of the civil servants who must implement the HRC, but of the HRC itself.

This Advocacy Paper Recommends:

- The Departmental review of Habitual Residence Condition (HRC) should be completed and the HRC discontinued as soon as practicable because of the issues and problems identified in this paper
- As an interim measure or in the event of the HRC not being ended, a new temporary social assistance payment should be introduced which could last up to a maximum of 10 weeks. This would allow those migrants who are in temporary difficulties to have enough time to find employment or other forms of support
- Child benefit should not be subjected to the HRC because of its direct impact on children and because of growing concerns, including from those within the social welfare system, that it contravenes EU and international law. Child benefit should revert to being a universal payment for every child in the State
- Greater resources should be provided to migrant advice, information centres and homeless agencies to help them cater for increased demands on their services arising out of the HRC
- A major new information and awareness programme should be targeted at ‘sending countries’ to ensure that potential migrants are adequately prepared before coming to Ireland to seek employment
- Additional resources and strategies need to be targeted at preventing workplace exploitation. See also commitments in the National Action Plan Against Racism Planning For Diversity (www.justice.ie).

What is the Habitual Residence Condition?

The Habitual Residence Condition (HRC) was introduced with effect from 1 May 2004 to protect Ireland's social welfare system from becoming overburdened and in particular to prevent potential abuse post EU enlargement by migrants from the 10 new EU States.

The social welfare payments affected by the HRC are:

- Unemployment assistance
- Old Age (Non Contributory Pension)
- Widow(er)'s and Orphan's Non Contributory Pensions
- One Parent Family payment
- Carers Allowance
- Disability Allowance
- Supplementary Welfare Allowance
- Child benefit

Applicants for the above payments must establish that they were 'habitually resident in the State', with the presumption that a person is not habitually resident until they prove otherwise. It affects all people regardless of nationality, ethnic origin or citizenship so it also applies to returning Irish emigrants. A successful applicant must prove that in the period prior to application they have a continuous period of residence for two years in the State or the Common Travel Area (United Kingdom, including Northern Ireland). Social insurance-based payments are excluded from the Habitual Residence Condition.

If a social welfare claimant does not satisfy the HRC s/he may qualify under the Supplementary Welfare Allowance Scheme for a payment to meet a once off exceptional or urgent need.² If they have come to Ireland from another country and do not have any means of support, the Reception and Integration Agency (RIA) can assist with return to their country of origin.

² See discussion in point 4 in this Advocacy Paper.

1. The introduction and continuation of the HRC is contrary to evidenced based policy making

While recognising that the Irish Government has the right and the duty to protect the Irish Social Welfare system from potential exploitation, this paper contends that there was insufficient evidence to support the introduction of the HRC in the first instance and since EU enlargement there is insufficient evidence to support the contention that Ireland's social welfare system would be overburdened by the removal of the HRC.

The first point that must be made is that far from being a burden, the vast majority of migrants coming to Ireland have been an essential part of the rapid economic growth that Ireland continues to enjoy. Dr Dan McLoughlin, Bank of Ireland's Chief Economist has stated that economic growth in the Republic would be about one-third slower without immigrant labour. He stated that in respect of a recent forecast growth of 5 per cent for 2005 in gross domestic product (GDP) terms the supply of labour from abroad would be crucial to this 'EU accession has boosted the Irish economy's potential to grow and its growth rate,' said Dr McLaughlin. 'Our growth rate without immigration wouldn't be 5 per cent; it would probably only be 3.5 per cent.'³

A recent report on the free movement of workers within the EU 25 contends that the main reasons why workers from the EU accession countries are attracted to one country and not another are the level of wages and flexibility in the labour market.⁴ This report is consistent with many other studies that have been commissioned on migration patterns. To our knowledge there have been no studies that have either contended or demonstrated that access to or the level of social welfare entitlement is a significant factor in attracting migrants from one country to another, including in the context of the present and previous EU enlargements.

Figures produced by the Department of Social and Family Affairs subsequent to 1 May 2004 have shown that whatever initial fears that lead to the HRC in the United Kingdom

³ Irish Times, 25 August 2005

⁴ European Citizen Action Service. Report of the Free Movement of Workers in EU 25. www.ecas.org

and subsequently in Ireland, these fears have not been realised and very few people from the EU accession countries have sought to access Ireland's social welfare system.

The HRC was introduced in Ireland following fears in Britain and subsequently in Ireland that there would be 'welfare tourism' as a consequence of EU enlargement. These fears were in large part fuelled by an alarmist and xenophobic media campaign mounted by the tabloid press in Britain, in particular the Sun newspaper, which contended that post EU enlargement that Britain's welfare system was going to be widely exploited by migrants from the 10 new accession countries.

As a consequence of this campaign, the British Government announced that it would introduce the concept of a 'Habitual Residence Test' and the Irish Government followed suit shortly afterwards with the introduction of the HRC.⁵

The fears that lead to the introduction of the HRC have not been realised. Government figures show that there were around 85,000 people from the 10 new EU member states were allocated a PPSN number between May 2004 and April 2005 (this figure is made up of people from those 10 countries who were *already* in Ireland prior to EU enlargement and those who since migrated into Ireland).

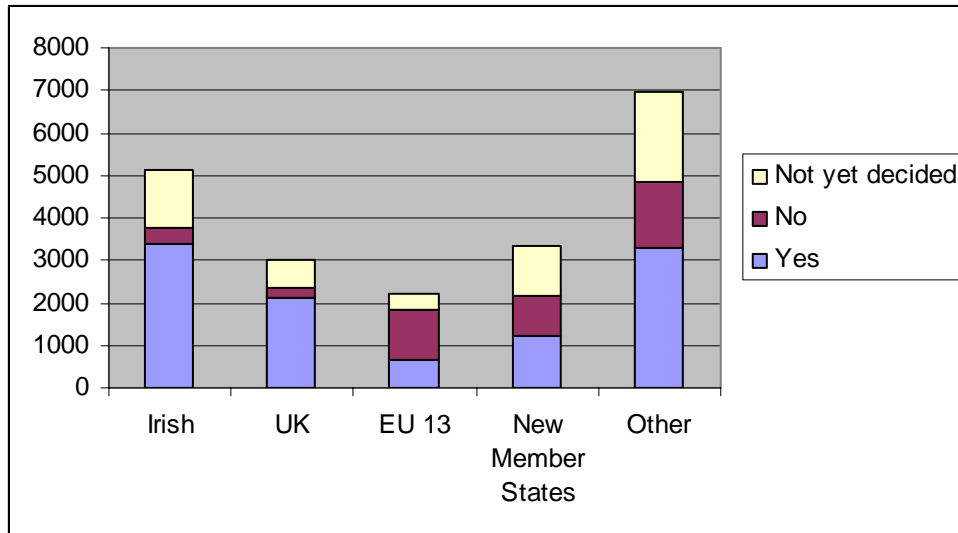
During roughly the same period, there were just over 3000 applications for social welfare assistance from people from new EU member States in Ireland of which approximately one third were granted social welfare assistance, one third were declined and one third were not determined (Figure 1).

⁵ In an article for the Irish Times (20 January, 2004) on the coverage of the Sun's newspaper in the run up to EU enlargement, the journalist, Peter Murtagh commented under a heading ' "Sun's" effort to export its poisonous views should be resisted'. He went on to comment:

'Looking for incitement to ethnic hatred in the guise of populist reporting? Then look no further than yesterday's *Sun*, specifically the incarnation sold here as the *Irish Sun*. On page one, labelled "Sun Special Investigation", there was the headline "See you in May" or rather, the shouted version "SEE YOU IN MAY". Its sub headline read: "Thousands of travellers are on their way."

Inside, under the banner "IRELANDS OUR DREAM" a Sun reporter stated 'that "hundreds of thousands" of poverty stricken people in eastern Europe "are preparing to flood" into "Ireland in Britain". Peter Murtagh concluded 'Migration of people always provokes tensions. But no service is done by whipping up fears where none exist or making scary predictions based on wider political or ideological antipathies'

Figure 1: Total HRC applications received from 1 May 2004 to 7 June 2005, Source: Department of Social and Family Affairs



In short, in the year following EU enlargement from May 2004, only 3.5% of people from the new EU accession countries sought social welfare assistance and at least one third of this figure were entitled to and where granted such assistance.

A similar picture has emerged in Britain. A report by the UK Home Office released on 7 July 2004 found that only a small number of immigrants for the new EU member States had attempted to access UK social security.

2. The HRC is causing poverty hardship to vulnerable groups in Irish Society, in particular recent migrants to Ireland and their children

There are a number of ways in which the HRC creates hardship to recent migrants to Ireland:

2.1 There is increasing evidence that some vulnerable migrants are relying on charitable institutions for food and shelter

Homelessness among some recent migrants, is presenting an increasingly serious problem for migrant rights organisations and as well as community and voluntary organisations working on housing and homelessness. The HRC is leading to additional pressure on voluntary and community sector organisations, particularly those who supply hostel accommodation and free or cheap food. Already limited resources are stretched even further to assist vulnerable migrants who have found themselves in extremely difficult situations. Cases have been reported of people being forced to live on the street or living in overcrowded accommodation with friends. People have been found sleeping in cars in shopping centre car parks or in tents in public parks and even in the ground of Dublin City Council's Municipal Offices. Cases have been documented both of recently arrived immigrants as well as those who have been here for some time but have lost employment for some reason (including seasonal work).

In short, there is hidden poverty emerging in Ireland among some recent migrants in particular from the new EU States. In many cases this poverty and homelessness is temporary. Advice centres are reporting that many of the migrants from countries such as Poland have informal networks of friends who can support them 'until they get fixed up' in much the same way that Irish emigrants used similar networks in the past. However this is an unsatisfactory situation. There is and there will inevitably be vulnerable individuals and families who will find support through informal networks and who will not know or who will be unable to access services for the homeless.

A number of organisations are reporting that EU Nationals laid off work after working less than two years in Ireland or who are in seasonal employment are finding themselves out of work for varying periods of time and are having great difficulty in paying rent and living day to day. They have no entitlement to unemployment assistance and rent supplement. Even for relatively short periods of time such hardship can result in considerable debt being built up or individual/families going without sufficient food for a

number of days. Many are young people who may be particularly vulnerable. Such difficulties will have implications for family life including additional stress on relationships that will have a direct impact on families with children.

Increasingly these vulnerable groups, denied state support other than perhaps an emergency once off exceptional needs payment, are turning to charities as their only other source of support in Ireland. The Homeless Agency is sufficiently concerned about this issue that it is currently conducting research into the impact on homeless services and food centres.

Interim issues arising from this research shows that NGO's such as Emigrant Advice, Migrant Rights Centre of Ireland; the Polish Information and Cultural Centre and Immigrant Council of Ireland have all reported people coming to them with no money and no accommodation. The incidence ranges from 1 or 2 people each day in some cases, or 1 or 2 each week in others.

The profile is mainly single young men, or men with families in their home countries, to whom they hope to remit some money earned in Ireland. In the occasional instance, a family will present to a charitable body. Many have language difficulties, and many have arrived in Ireland poorly prepared.

NGO's can refer people to food centres and to hostels such as Cedar House in Dublin, but report difficulties referring people elsewhere, in particular to the usual State supports that are available. Some homeless hostels or shelters contend they are insufficiently funded to cope with the additional demands. All NGO's cite examples of having to provide short-term accommodation from their own funds, sometimes even out of personal funds.

Food services such as Focus Ireland and Capuchin Centre on Bow Street all report an increased demand for services. Focus Ireland's coffee shop demand has increased daily from 120 to 140, largely as a consequence of nationals from the new EU member states.

Many migrants working at the lower end of the labour market are living in accommodation that is tied to their employment, so out of work also means out of home also. This has major implications for homelessness services in Ireland. A recent case in Coleraine in Northern Ireland illustrates what can happen in extreme circumstances. A Ukrainian woman lost her accommodation when she lost her job. She became homeless in mid-winter and had no one else to turn to in respect of the informal supports provided by other migrants. Without adequate information and without access to social welfare she became destitute and lost both her legs to frostbite.⁶

Under the present Supplementary Welfare Allowance Scheme, there is a payment to meet once-off exceptional or urgent needs.⁷ However many migrants are unaware of this payment and there are reports that some social welfare officers are applying the HRC to exceptional needs payments, with concomitant delays in processing applications.

Some vulnerable returning Irish emigrants, including those who are older and unable to access employment, are also failing the Habitual Residence Condition. Recent examples which, have been already highlighted by the media, include some returning Irish missionaries. More recently the difficulties experienced by Irish people fleeing Hurricane Katrina in the Gulf area of the United States who have returned to Ireland but who have been unable to access social welfare supports have been highlighted by RTE.

If the HRC is not scrapped, at the very least a social welfare payment system that would allow migrants to get over a particular difficulty should be introduced that might cover for example a ten week period. At a minimum, there is a clear need for more flexibility

⁶ Homeless Migrant had Legs Amputated After Frostbite (Irish Times, 12 January 2005)
'A migrant worker had both legs amputated after being found with frostbite on the streets of Coleraine, Co Derry, on New Year's Day. The young Ukrainian woman had been sleeping rough in sub-zero temperatures when an ambulance crew rushed her to hospital to be treated for hypothermia. It is understood she had been living in the open air close to vacant houses since being laid off from her job just before Christmas. Only once the freezing conditions became unbearable did she seek help from other immigrants. They immediately called for medical help, and she was taken to the Causeway Hospital in Coleraine before being transferred to Belfast, where surgeons amputated both legs'....

⁷ This has created concerns about inconsistencies in eligibility. See discussion on point 4 in this Advocacy Paper.

within the present system. However such flexibility should not create the conditions that would effectively discriminate against non-Irish applicants.

2.2 Workplace Exploitation

Recent migrants to Ireland who find themselves out of work through no fault of their own or who leave work because of poor or exploitative working conditions have in effect no safety net to protect them as they seek to find new employment and possibly new accommodation. This can lead to people becoming very vulnerable. This vulnerability can be multiplied where the HRC interacts with the administrative rules surrounding the Work permit system. This can be illustrated by the following example:

Example:⁸

A South African HGV driver was dismissed by his employer in Feb '05. He has taken a case for unfair dismissal. In the meantime he has held two other jobs (as a driver). Each Employer promised he would apply for a work permit for him; neither did. Each in turn used his (the driver) position as an illegal employee to force him to accept work conditions that he would not accept if he had a Work Permit

The Department of Enterprise Trade and Employment advise he should stop working illegally and get his employer to apply for a work permit. At that stage his case for unfair dismissal would assist him.

NCCRI Comment:

The employee is in an impossible situation; he cannot access unemployment benefit because of insufficient 'stamps' and cannot access unemployment assistance because of the HRC. It may take a number of weeks before he finds another employer who is prepared to employ him legally because of the red tape associated with the work-permit system. It may be weeks or months before his unfair dismissal case is heard.

⁸ Comhairle CIS/CIPS Social Policy Records Quarterly Report (forthcoming).

2.3 The HRC is impacting on people seeking to care or visit sick or dying relatives

The HRC is not only impacting on migrant workers. It is also impacting on carers and people seeking to visit dying relatives, both Irish emigrants seeking return to Ireland to support a relative and migrants in Ireland seeking to visit sick or dying relations abroad.

Examples:

- *A middle aged woman and her sister recently returned from America and Australia to care for their sick parents. The sisters are each caring for one of their parents. Their mother has cancer and is terminally ill. The father has dementia. As they have returned from the US and Australia after 15-18 years abroad they did not qualify for the Carers Allowance due to the HRC.⁹*
- *A woman, a Polish migrant, is waiting 6 months for her one parent family payment to be processed. She wished to visit her dying father in Poland but was told her application would be cancelled if she left the country.*

NCCRI Comment: *The failure to grant carers allowance impacts on both the returning emigrant and the person they are seeking to care for. In many cases information centres are, unsurprisingly, reporting deep resentment by those carers affected. Many of these potential carers were forced to leave Ireland in times of economic crisis. They feel that the State is sending out a message that they are no longer welcome in Ireland, even when they are here to help elderly and sick relatives. This has clear knock on implications for the State and relations of the family concerned. Failure to provide care in the home will inevitably transfer the cost of care to the State or will result in huge fees for nursing home being transferred to relatives who are unable to afford to live in Ireland.*

⁹ Comhairle CIS/CIPS Social Policy Records Quarterly Report (forthcoming). Limerick CIC.

2.4 Women experiencing domestic violence

There is concern as to the impact of the HRC on women who experience domestic violence. In particular women's organisations have highlighted the potential for migrant women who experience domestic violence to find their situation exacerbated by the HRC. Traveller organizations have raised similar concerns given anecdotal evidence that a number of Traveller women, who had difficulty proving residence in the CTA, could not access refuge support. Further research is needed on this issue.

3. The HRC may contravene EU and international law in respect of child benefit

The 2004 Report of the Social Welfare Appeals Office has highlighted key concerns by those working with the social welfare system concerning the application of the HRC to child benefit.

‘There are particular concerns in relation to the application of the HRC to the Child Benefit Scheme- including a view that Child Benefit should have been excluded from the remit of the HRC altogether. Under EU legislation Child Benefit is a ‘Family Benefit’ which confers rights to ‘migrant workers’ who are nationals of the European Economic Area (EEA) and resident in the State. What this means in effect is that the HRC cannot be applied in the manner envisaged for Child Benefit purposes to EU ‘migrant workers’¹⁰.

Appeals officers consider that there may be other grounds for excluding Child Benefit from the scope of the HRC. For example there is concern that the HRC Provision may be in breach of the United Nations convention on the Rights of the Child-to which Ireland is a signatory.

¹⁰ The NCCRI understands that exclusion of EU migrant workers may contravene EU law, specifically Article 73 of Regulation 1408/71.

The concerns of Appeals Officers have been conveyed to the Department of Social and Family Affairs and, it is understood, will be considered as part of a review of the operation of the HRC that is ongoing.’¹¹

It has recently been reported that the European Commission has raised concerns regarding the HRC with the Minister for Social and Family Affairs¹². It seems likely that these concerns relate to freedom of movement of EU nationals, and entitlement to social security for EU nationals.

The UN Convention on the Rights of the Child stipulates the right of ‘every child... to benefit from social security’.¹³

3.1 The removal of child benefit from asylum seekers

One of the most concerning developments of the HRC has been the removal of the universality of the child benefit payment. This has particularly impacted on asylum seekers, the vast majority of whom are in Direct Provision where they receive €19.10 a week per adult and €9.60 for a child. Prior to the introduction of the HRC, asylum seekers were entitled to Child Benefit. However as they are not habitually resident this payment was cut off from May 2004. As a result there are some families in receipt of child benefit with others that are not. Refugee and children’s rights organizations are reporting that the removal of child benefit from asylum seekers has significantly increased the potential for child poverty among this vulnerable group and many are turning to charitable organizations. Whatever the administrative rationale, the removal of child benefit from asylum seekers is widely perceived by NGO’s to be particularly mean spirited and seen to be contrary to the intent of the National Action Plan Against Poverty (NAPS/inclusion) which includes specific commitments in relation to migrants and ethnic minorities.

¹¹ Social Welfare Appeals Office, (2004). Annual Report, p10.

¹² Irish Times, 4 June 2005

¹³ UN Convention on the Rights of the Child. Article 26

Many of the organizations we have been in contact with concerning this issue contend that Child Benefit payment is not a social assistance payment and therefore should not be subject to the HRC in any circumstance. Before the introduction of the HRC it was a universal payment paid in respect of every child resident in Ireland. The introduction of the HRC and its application to child benefit marks a significant change in Government policy in relation to Social Welfare in Ireland

4. The HRC at an administrative level is still proving cumbersome to operate, resulting in administrative delays and inconsistencies in decision-making

The cumbersome nature of the HRC resulting in delays and inconsistencies in decision-making are a common feature of many complaints about the HRC. This is not a criticism of those who are charged with carrying out the HRC but is an inevitable consequence of operating a cumbersome and complex system.

A forthcoming Comhairle Quarterly Social Policy Report states

‘In the area of migration issues relating to migrant workers and difficulties with the Habitual Residence Condition (HRC) dominate.¹⁴ The HRC is causing difficulties for many people. Irish emigrants returning to Ireland are finding that there are long delays in making any welfare claims while they satisfy the HRC’.

Social Welfare appeals officers noted in their annual report ‘Appeals Officers were concerned about the adequacy of safeguards to ensure consistency of the decision-making process by the Department for example whether it would be possible for a person to satisfy the HRC for Supplementary Welfare Allowance purposes but not for Unemployment Assistance.

¹⁴ CIS/CIPS Social Policy Records Quarterly Report (forthcoming).

Example:

A man came into a local CIC Centre. He had been working and got laid off. He did not have enough contributions for Unemployment Benefit, so he had applied for Unemployment Assistance. He is an Irish National and has never lived outside of the Country. There were two gaps in his record over the past two years where he wasn't working or getting a Social Welfare payment, totalling approximately six months.

Because of this he was asked to fill out a Habitual Residence form and was told that his claim could not be dealt with until there was an answer from the Habitual Residence Section. The local CIC contacted the Social Welfare Office and were told that the waiting period for a response from the Habitual Residence Section was now six months. In the meantime he is not eligible for a payment from the Community Welfare Officer as they also cannot pay until there is a response from the Habitual Residence Section.

NCCRI Comment: *This case appears to show shows that some community welfare officers are strictly applying the HRC test to emergency supplementary welfare payments as well as other social welfare payments.*

A number of advice agencies are reporting that the significant additional bureaucracy associated with HRC is creating anomalies and inconsistent decision-making on a daily basis. For example, a new HRC form has to be filled in with every application to a different social welfare payment (e.g. separate HRC forms have to be filled in for someone seeking to access carers allowance and the disability allowance). Apart from the (apparently) unnecessary bureaucracy that this creates, some people find they are qualifying under one form of social assistance and not others, despite providing the same information.

4.1 Refugees

Those who have successfully come through the asylum process in Ireland are automatically identified as habitually resident, in recognition of the fact that while an individual is in the asylum process they are not able to establish habitual residence. This

principle is also applied to those granted temporary leave to remain including the parents of Irish children.

Nonetheless a number of the organisations that work with refugees have reported that individual refugees are being subjected to the HRC, and even failing it. This is likely caused by confusion on the part of the deciding officers however it is a very worrying trend, as it can lead to significant time delays in processing applications, particularly where decisions have to be appealed. According to the Vincentian Refugee Project one of the outcomes of this is that people are reluctant to take up temporary or contract work, for fear that they will not be able to access welfare should they need to. Whether these concerns are real or perceived they are having a serious impact on the communities in question and Irish society more generally (see also concerns about removal of child benefit from asylum seekers in section 3).

4.2 Returning Irish Emigrants from Britain

A recent case from an advice agency¹⁵ highlights the administrative problems associated with the implementation of the HRC in respect of Irish emigrants returning from Britain:

Example:

A recent returning emigrant from the UK was required to provide not just details of when he left his UK rented accommodation (to take up permanent residence in Ireland) but the date the tenancy started. Waiting for this information to come through held matters up and the man (who needed immediate help) suffered for this. The advice agency thought that having a full British State pension (proving he worked all his life in Britain as it is contributions based) along with full details of pension allocation and bank statements going back a long time should have been sufficient to prove his entitlement. The advice agency also noted that as having come from one part of the Common Travel Area to another he should not have been required to provide this level of proof.

¹⁵ Safe Home Ireland. Correspondence to NCCRI, August 2005.

NCCRI Comment

The application of the HRC is causing significant delays, even in respect of cases where the person has resided in the Common Travel Area. NCCRI is concerned that the level of documentation required in some cases is burdensome and unreasonable.

Conclusion

The numbers and the motivation of most migrants seeking access to social welfare assistance in Ireland is very different from the tabloid stereotype of migrants deliberately coming to Ireland to exploit a perceived open social welfare system. *First* very few migrants are seeking to access Ireland's social welfare system. All available research at a national and EU level shows that the vast majority of migrants are in Ireland to work and to contribute to Irish society. The reality of life is that people *do* get into difficulties, often temporary and often through no fault of their own. These are typically young men and women and many Irish emigrants may relate to their plight from their own experience of emigration. *Second*, the hidden (often temporary) poverty of those vulnerable migrants is beginning to emerge. These are migrants falling out of work and needing temporary support while they find new employment- some of whom are living in cars or tents; or may be carers seeking to come back to look after sick or dying parents only to find they cannot get support from the Government; or women finding it difficult to access supports for those experiencing violence in the home as they have no access to social welfare assistance; or recent migrants and asylum seekers are being denied child benefit. Many are concerned that the application of HRC to child benefit is both unjust and contrary to EU and international law. *Third*, migrants in difficulties are increasingly turning to charities as a last resort. NGO's predict that it will not be long before we see more visible cases of exceptional hardship in Ireland involving people not supported by friends and family or charitable bodies, where the absence a social welfare safety will be cited as a major contributory factor in creating homelessness, and contributing to creating the conditions for economic and other forms of exploitation. *Fourth*, there is an efficiency and resource issue. The HRC is very cumbersome to operate and is already causing inconsistencies in decision-making and is wasteful of resources. Whatever savings are being made through the HRC are likely being spent on increased bureaucracy.

Annex One: Background to the Habitual Residence Condition:

What is the Habitual Residence Condition?

Habitual Residence is a condition, which every applicant must satisfy in order to qualify for certain social welfare assistance payments and Child Benefit. This condition took effect from 1 May 2004 and affects all applicants regardless of nationality. 'Habitual Residence' means an applicant must have a proven close link to Ireland or other parts of the Common Travel Area (CTA). Five factors are considered when you are habitually resident:

1. Main centre of interest
2. Length and continuity of presence
3. Length and reason for any absence
4. Nature and pattern of employment
5. Future intention.

Immigration and Habitual Residence since May 2004

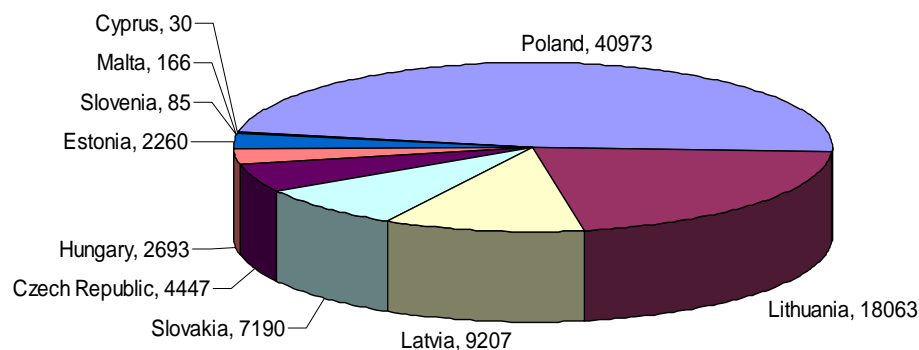
Even before the introduction of the HRC the existing evidence from the EU and the experience of earlier EU enlargements flatly contradicted the assertions that there would be a huge increase in migration to Britain, Ireland and the other existing 15 EU States.¹⁶

Experience of past enlargements indicates that emigration diminishes rather than increases, following membership of the European Union. For example, emigration from Spain to the other EU countries fell from over 200,000 in 1970 (establishment of free trade area) to 120,000 in the late 1970s (application for membership) and about 2,000 to 3,000 in the early 1990s (post-accession). The International Labour Organisation (ILO) has stated that there is no evidence to suggest that migrants engage in 'welfare shopping', by and large people migrate to ensure a better standard of living which can only be achieved through active participation in the labour force. In the first year since EU Accession this conclusion appears to underpin the experience in Ireland, in other words the motivation for migration is employment and not access to social welfare.

¹⁶See: <http://www.eurofound.eu.int/newsroom/migration.htm>

The only data available that gives an indication of inward migration from the EU-10 since 1 May 2004, are figures from the Department of Social and Family Affairs on Personal Public Service Number (PPSN) allocations. In the first year since accession it is difficult to assess whether these figures represent new migration or individuals already in Ireland. Neither is it possible to determine how much of this migration represents initial interest following Accession, as opposed to a long-term pattern.

Figure 2: PPSN Allocation May 2004 - April 2005, Total: 85,114, Source: Department of Family and Social Affairs (June 2005)



As of 7 June 2005 a total of 20,629 HRC applications had been submitted for decision; of which 52% were decided in favour of the claimant, 21% against, and 27% had not yet been decided. Of the total claims decided 72% were decided in favour of the claimant. 90% of applications by Irish nationals were decided in favour of the claimant, 90% of UK applicants, 36% of EU 13 applicants, 57% of EU 10 nationals and 68% of others. While the number of claims in favour of EU 10 nationals is lower than the average, it is significantly higher than claims by nationals from the old EU Member States.

As of April 2005 RIA had assisted less than 200 people to return to the new EU Accession State since May 2004. These figures support the view of migrant organisations that for many migrant workers returning to their country of origin is simply not an option.

This picture would seem to indicate while that there are significant numbers of migrants coming to Ireland to work from the EU 10, very few of them are attempting to access the Irish social welfare system. This experience can be paralleled with that in the UK and Sweden. In the later cases despite the fact that no new limitations were introduced to social welfare provision, in August the government announced that there was no evidence of ‘social welfare tourism’ (even though Sweden has one of the most generous social welfare regimes in the EU).¹⁷

The situation in the UK is a little different in that the Habitual Residence Test (HRT) does not apply to EEA nationals who are ‘workers’, though the UK government did introduce restrictive measures for citizens of EU Accession States prior to EU Accession. These people will have to be working as ‘registered workers’ in the UK for a minimum of 12 months before becoming entitled to some social welfare. A report by the UK Home Office released on 7 July 2004 found that there has been no dramatic increase in arrivals from the new EU Member States since accession, and that only a small number of immigrants attempted to access UK social security.

European Social Policy

Questions have been raised as to the legality of the review in the context of European Union social security provisions; according to the then Minister for Social and Family Affairs ‘the proposal is within EU Law’.¹⁸ The position is that changes to social welfare qualification can be made as long as they are applicable to all EU members. As stated by the Minister for Social and Family Affairs on 26 January 2005:

The application of the habitual residence condition has to be compatible with EU law and other international and national legal obligations. It is not possible in applying the condition to discriminate in favour of any particular group or nationality.

¹⁷ *EU Observer*, 25 August 2004

¹⁸ Dáil Debate, 10 March 2004

It has recently been reported in the *Irish Times* (4 June 2005) that the European Commission has raised concerns regarding the HRC with the Minister for Social and Family Affairs. It seems likely that these concerns relate to freedom of movement of EU nationals, and entitlement to social security for EU nationals.

According to the European Commission social security is a key issue for persons exercising their fundamental right to free movement in the European Union. But without coordination at European level national social security legislations may lead to disadvantages in the field of social security for European citizens and their families who move within the European Union. True free movement therefore needs protection of these rights. EU Regulation 1408/71¹⁹ and implementing Regulation 574/72²⁰ offer practical solutions to most of the cross-border problems that may arise in the field of social security.

These regulations do not harmonise but co-ordinate the social security schemes of EU Member States, i.e. they do not replace the different national social security systems by a single European scheme. Therefore, Member States are free to determine the details of their own social security systems, including which benefits shall be provided, the conditions of eligibility and the value of these benefits, as long as they adhere to the basic principle of equality of treatment and non-discrimination.

The rights and entitlement of EU nationals, and particularly nationals of the EU Accession States is a specific concern regarding the HRC, however the impact of the Condition is much broader, and a wide range of issues have been identified which particularly impact minority ethnic groups in Ireland.

Review

The HRC was a dramatic change in Irish welfare provision, a change which has been recognised as such by the Department of Social and Family Affairs. A few months after its introduction the Department indicated that it would be reviewing the HRC in order to

¹⁹ http://europa.eu.int/eur-lex/en/consleg/main/1971/en_1971R1408_index.html

²⁰ http://europa.eu.int/eur-lex/en/consleg/main/1972/en_1972R0574_index.html

ascertain its effectiveness. Since June 2004 the review has been highlighted by the Department, however the outcome is still pending.

On 6 October 2004 Minister Brennan stated that:

‘The habitual residence condition is a major new development in the social welfare system. As it has been in place for almost five months, a review of its efficiency and effectiveness is being carried out by my officials. The review will include an examination of the implications for various groups whose cases have come up for decision, including elderly missionaries returning to Ireland on holiday on a temporary basis.... I asked Department officials this morning to review the scheme, which has been in existence for some months, so that we can assess what we can learn from it’.

The NCCRI welcome this review. The commitment to the review was restated in November 2004 and February 2005. In addition in April 2005 the review was linked to the National Economic and Social Council (NESC) review of child income support: “The issue of any new child income support payment to tackle child poverty and whether the habitual residence condition should apply would be considered at that time.” It is expected that the NESC study was expected to be with the Minister by the end of July 2005.

The Minister has indicated that the views of interested parties, including the European Commission will be taken into account in the review, which is expected to be completed later in 2005.

The NCCRI and the HRC

The NCCRI has played a key role in respect of the HRC, including:

- Submitting policy papers to Government
- Disseminating information about the HRC

- Working to bring together NGO's and the Department of Social and Family Affairs to discuss problems arising from the operation of the HRC.

Following the introduction of the HRC in March 2004, the NCCRI wrote to the Department of Social and Family Affairs to express its concern that the HRC had been introduced in reaction to a xenophobic campaign in the British tabloid press, which fostered fears that there would be a 'flood' of migrants from the EU 10 following Accession, with the sole intention of engaging in 'welfare shopping'. Ireland is fortunate in that it has attracted significant numbers of migrant workers from the EU 10 over the last year, these migrants have come to work and contribute to the Irish society and economy, and there is no evidence that they are attempting to access social welfare in a significant way.

The NCCRI has welcomed the review of the HRC, and has actively engaged with it. We look forward to the speedy conclusion of the review and a frank discussion of how the HRC can be amended in order to ensure that the social welfare system achieves its objective of protecting the most vulnerable groups in society. The NCCRI believes that this review is an integral part of the overall strategy identified in the National Action Plan against Racism (NPAR) to: 'develop a more inclusive, intercultural approach to social service provision' (Measure 5.3).