



Immigration and Citizenship in Ireland

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Executive Summary

At present, every person who is born in the island of Ireland is automatically entitled to Irish citizenship. This entitlement is enshrined in Article 2 of the Irish Constitution. The government has proposed that this situation should be altered by amending the Constitution. The proposed changes would mean that the entitlement to Irish citizenship of children born in Ireland to non-national parents, neither of whom are entitled to citizenship, would be a matter to be determined in accordance with law.

If the changes are introduced, some children born in Ireland will be automatically entitled to citizenship of the state, while others will not. This entitlement will be decided on the basis of factors that include their parents' nationality and the length and categorisation of their parents' residency in Ireland. The government has stated that acquiring Irish citizenship entitles people to significant social, political and economic rights within Irish society. Given that any changes to the Constitution will affect the automatic entitlement of some children born in Ireland to acquire Irish citizenship and the benefits that it bestows, the arguments that have been set out by the government in favour of the amendment require careful scrutiny.

Included among the government's arguments is the issue that an increasing number of births are taking place to non-nationals in Dublin's maternity hospitals. The government states that this has implications for health and social policy, both in terms of short-term pressure on maternity services and medical services and in medium- and long-term patterns of social provision and expenditure. Additionally, it claims that maternity hospitals, especially those in Dublin, are experiencing a high incidence of the unannounced arrival of non-national women in late pregnancy or in the early stages of labour. It states that this phenomenon is directly related to the fact that Irish law presently gives children an entitlement to Irish citizenship, and thus to citizenship of the European Union. The government has also stated that despite a Supreme Court decision in 2003 that resulted in the removal of the process for considering claims from non-nationals to remain in the State on the basis of being the parent of a child born in Ireland, the proportion of pregnant women applying for asylum in Ireland remains high.

However, these arguments tend to obscure what is ultimately a more fundamental and complex issue, as they do not sufficiently take into account the overall and increasing impact of migration into Ireland. In recent years, Ireland has become a country of net inward migration for only the second period since the foundation of the state. The findings of the 2002 census show that there were 273,520 people usually resident in the state on census night who were not classified as Irish nationals. The increase in the number of non-nationals resident in Ireland is directly related to state policy. This includes, inter alia, the issuing of work permits, visas and authorisations, and the fulfilment of the country's obligations as a signatory of the Geneva Convention.

Given that Ireland now has an established non-national population, and that economic and demographic trends suggest that immigration will continue to be a feature of Irish society in the future, it needs to be considered whether the proposed Constitutional amendment would

satisfactorily address the main concerns the government has raised in relation to pressures on maternity hospitals.

1. Statistical information relating to births to non-Irish national mothers

An analysis of statistical information relating to births to non-nationals reveals the following:

- **No statistics have been provided that are in themselves sufficient to vindicate the claim that there are very large numbers of non-EU nationals coming to Ireland with the sole purpose of giving birth.** Immigrants in Ireland include a wide range of people who have come to the country for a variety of purposes, eg, on foot of a work permit, visa or authorisation; people seeking asylum; people with refugee status; students; and people who are the non-national spouses or partners of Irish citizens.
- **Comprehensive data are not available from Dublin's three main maternity hospitals relating to the residency status of women who present themselves for delivery.** As a result, it is not possible to draw any definitive conclusions about the numbers of women who come to Ireland with the sole intent of giving birth here and thus giving their children an entitlement to Irish citizenship.
- **It is not possible to definitively identify the number of women who have arrived in the country shortly before giving birth.** No statistical information has been provided by the government about mothers' length of residency in Ireland prior to giving birth.
- **Statistics relating to the nationality of fathers are not consistently collected by the maternity hospitals.** The nationality of a child's father will obviously have an impact on her/his citizenship entitlements, irrespective of whether the child is born in Ireland.
- **Statistics from the three maternity hospitals show that the total number of non-EU national women who arrived unannounced or at a late stage of pregnancy in 2003 was at most 548, or just under 2.4% of the total number of births at the three maternity hospitals.** This figure includes all non-nationals who arrived late or unannounced at the Coombe, some of whom may have been EU nationals. Even assuming that all of these women were non-EU nationals, the figure represents just under 2.4% of births in Dublin's maternity hospitals in 2003.
- **It is not possible to assume that all of these women arrived in the state with the sole intent of giving birth here. In 2003, a total of 174 Irish nationals also arrived late or unannounced at two of the maternity hospitals** (the Coombe and the National Maternity Hospital), which indicates that there can be other reasons for late arrivals.

Members of the government have referred to "anecdotal" evidence that non-national women are arriving here with the sole intent of gaining an entitlement to Irish citizenship for their children. However, anecdotal evidence is both uncertain and highly subjective. The information detailed above shows that it is not possible to demonstrate that the increase in births to non-national women is substantially attributable to the fact that their children are entitled to Irish citizenship. It is therefore difficult to argue that changing the citizenship laws will have a substantial effect on the number of births taking place to non-nationals. Nor is it possible to conclude that the proposed changes will eliminate the fact that non-national women arrive unannounced or at a late stage of pregnancy at maternity hospitals: statistics demonstrate that Irish women also arrive in these circumstances.

2. Asylum seekers

Throughout the debate, members of the government have repeatedly stated that despite a recent Supreme Court ruling that removed parentage of an Irish born child as grounds for residency, the proportion of pregnant women seeking asylum has not dropped. However, statistics issued by the government demonstrate that this is misleading:

- **Although the proportion of pregnant women applying for asylum remained constant between July-December 2002 and the same period in 2003, the actual number dropped by 59.5% between the two periods.**
- **In December 2002, 312 pregnant women applied for asylum. The corresponding figure for December 2003 was 79, which constitutes a drop of 74% between the two periods.**

If the issue under consideration is the impact on the maternity hospitals, then surely the total number of pregnant women is the main concern, rather than the proportion of women who are pregnant. It must also be noted that a combination of the Supreme Court decision in the L&O case and other government policies have had a significant effect on the numbers of people applying for asylum. Recent figures show that the Office of the Refugee Applications Commissioner had received a total of 1,633 asylum applications as of 30th April 2004. This is a drop of over 50% from the corresponding period in 2003, when 3,485 applications were received. The figures suggest that legislative and policy measures are an effective way of controlling immigration and that they offer an alternative to Constitutional change.

3. Immigration into Ireland

An examination of data relating to immigration in Ireland shows that the composition of Irish society has altered radically in recent years and the state is now experiencing in-migration rather than outward migration. Increases in in-ward migration by non-nationals will obviously have an impact on the number of children born to non-nationals.

- **The number of work permits issued by the government increased by 760% in the five-year period from 1999-2003.** Figures released by the Department of Enterprise, Trade and Employment indicate that the number of work permits issued to non-EEA nationals has increased enormously from 6,250 permits in 1999 to 47,551 in 2003.
- **According to the CSO (2003:23), 31,100 women aged 25-34 and 21,200 women aged 35-44 migrated into Ireland between 1996 and 2002.** Further statistics show that on Census night 2002, 69,856 women aged 15-44 who were not Irish nationals were usually resident in the state. Additionally, research by Eurostat has found that women of child-bearing age constitute a substantial number of migrants throughout the EU. It is reasonable to assume that the presence of non-national women of child-bearing age within the state will make some contribution to birth rates in the state, given that they could be considering the possibility of having children, regardless of their physical location.
- **Migrants may be coming from societies where it is more traditional to get married and have children at a younger age than is now the case in Ireland.** Some of the factors that will influence the demand for children include the cultural value of children, and background variables such as economic development, education and religion.

The changing composition of Irish society is a direct result of state policies, which include the active recruitment of migrant workers and fulfilling the country's obligations as a signatory of the Geneva Convention. It is likely that some of the people who come to Ireland will be considering the possibility of having families here, regardless of the citizenship laws that are in place. Ireland already has an established population of non-nationals, many of whom have come here to fill gaps in the labour market. The need for immigrant workers is unlikely to disappear in the future. These non-nationals will help to contribute to the Irish economy and to support an increasingly ageing population. While resident in Ireland, they will need to avail of various services, including maternity care services in the case of women who choose to give birth in the country.

5. The maternity care needs of migrant women

A further issue to be considered is whether the proposed Constitutional change will address the substantive underlying reasons why migrant women may first present at a maternity hospital at an advanced stage of pregnancy. Research suggests that there can be a number of reasons for this, none of which will be remedied by the suggested legislation. These include:

- **Language barriers, a lack of information about maternity services and about their rights and entitlements, child rearing responsibilities, and differing cultural practices in their countries of origin.**
- **Some women may also feel that they cannot take time off work to attend antenatal classes** because they are afraid of losing their jobs or cannot afford to forego the money they would have earned.
- **A particular issue for pregnant asylum seeking women and for health service providers is the fact that their mobility can affect the transfer of their medical records.**
- **International research has documented the fact that migrant women can have a poor and irregular uptake of antenatal care.** The reasons for this include the fact that mothers from different ethnic groups may have different expectations and knowledge of their own health and of the value of health services in the receiving country.

Changes in immigration patterns mean that health service providers are now encountering a new client group who will have different needs to those of the indigenous Irish population. Issues that have arisen include language barriers, differing cultural practices and an increasing incidence of diseases that may be more common in patients' countries of origin than in Ireland. Catering for a new client group with a range of differing needs will place pressures on health service providers that need to be addressed through the development of appropriate responses. It is important to note that none of these issues will be addressed by the proposed amendment to the Constitution. They require changes in the structure of health service provision that recognise the fact that non-nationals may have differing needs to that of the majority Irish population.

6. Pressures on maternity hospitals

Other issues highlighted throughout the paper relate to some of the possible reasons why Dublin's maternity hospitals may be experiencing pressures. These include the following:

- **According to the Master of the Coombe Women's Hospital, the elimination of births to non-nationals who give birth in Ireland for the sole purpose of gaining Irish citizenship would not result in a significant reduction of the pressure on the**

hospital. He stated that if the hospital got additional beds and staff, it could easily cope with the demand from non-nationals. He also stated that the projected number of births to non-nationals for 2004 is expected to be less than the numbers for 2003.

- **Although the total number of births in Ireland has increased since the lows reached in the early 1990s, the total number of beds available in Dublin's maternity hospitals was lower in 2003 than it was in 2000, and considerably lower than the number available in the mid-1970s to mid-1980s.**
- **The need for increased funding and staffing levels has been raised by the Master of at least one of the capital's maternity hospitals.**

These facts indicate that some of the pressures maternity hospitals are experiencing may be the result of insufficient funding and staffing levels. Additionally, pressures have been caused by the fact that hospitals are now encountering minority ethnic groups who may have differing needs to those of the majority Irish population. These are issues that may be dealt with through means other than introducing Constitutional change.

7. Other issues for consideration

Finally, the following issues also warrant consideration:

- **Women's motivations for giving birth in the country will obviously differ according to their residency status.** For example, a woman who has come to the country as a result of being issued a work permit, visa or authorisation may be considering the possibility of having a child, regardless of her physical location. In the case of pregnant women who are seeking asylum, the circumstances of conception need to be taken into consideration, as these may be a root cause of their seeking asylum.
- **The proposed changes will not eliminate the possibility that people with no real connection to the state will be entitled to Irish citizenship.** No proposals have been made to remove the "grandfather clause" from Irish legislation. This entitles people of Irish descent who may have no connection to the state to Irish citizenship, solely by virtue of having their name entered on the Foreign Births' Register.

The government has not demonstrated that the increase in the number of births to non-nationals is substantially attributable to the fact that their children are entitled to Irish and EU citizenship. When immigration patterns are examined in closer detail, it can be seen that state policy is a main causal factor of the increase in the number of non-nationals in Ireland. This policy includes, inter alia, the recruitment of workers to fill gaps in the Irish labour market, the granting of student visas, and the fulfillment of the country's obligations as a signatory of the Geneva Convention. The presence of these non-nationals in the state must be a considerable causal factor of recent increases in the number of births to non-nationals.

The above findings suggest that the proposed Constitutional amendment will not satisfactorily address the main concerns the government has raised in relation to pressures on maternity hospitals. On the basis of the statistics provided, it is not possible to establish how many women have come to Ireland with the sole intent of giving birth and gaining an entitlement to Irish citizenship for their children. It therefore cannot be concluded that changing Irish citizenship laws will have a significant impact on the number of non-nationals who are giving birth in Ireland. However, it can be stated that changes to the Constitution will not affect the fact that there are large numbers of non-national women resident in the

country as a result of official policy, and that it is likely that some of them will have children. The issue of births to non-nationals will therefore remain an issue for the foreseeable future, regardless of any changes to citizenship laws.

Immigration and Citizenship in Ireland

Introduction

I. At present, every person who is born in the island of Ireland is automatically entitled to Irish citizenship. This entitlement is enshrined in Article 2 of the Irish Constitution. The government has proposed that this entitlement be removed by amending the Constitution. The proposed changes would mean that the right to Irish citizenship of children born in Ireland to non-national parents, neither of whom are entitled to citizenship, would be a matter to be determined in accordance with law. As has been stated by the government, acquiring Irish citizenship entitles people to significant social, political and economic rights within Irish society.

II. If the suggested changes are introduced, some children born in Ireland will be entitled to citizenship of the state while others will not, depending on factors that include their parents' nationality and the length and categorisation of their parents' residency in Ireland. Given that any changes to Irish citizenship laws will affect the entitlements of some children who are born in the country to acquire Irish citizenship and the benefits that it bestows, the arguments that have been set out by the government in favour of the Constitutional amendment require careful scrutiny.

III. As noted by the government, anyone who is born in Ireland is entitled to Irish citizenship at present, no matter what their parents' connection to the country is. The government has stated that an increasing number of births to non-Irish national parents are taking place within the state. It says that Dublin's maternity hospitals are experiencing a high incidence of the unannounced arrival of non-national women in late pregnancy or the early stages of labour, and claims that this is directly related to the fact that Irish law gives Irish-born children an entitlement to Irish and EU citizenship. Furthermore, the government argues that the number of births to non-national women has implications for health and social policy, both in terms of short-term pressure on maternity services and in medium- and long-term patterns of social provision and expenditure.

IV. However, these arguments tend to obscure what is ultimately a more fundamental and complex issue, as they do not sufficiently take into account the overall and increasing impact of migration into Ireland. In recent years, Ireland has become a country of net inward migration for only the second period since the foundation of the state. Immigrants coming to the country are not a homogenous group. They include people who have been actively recruited by the government to fill gaps in the labour market; students; asylum seekers and refugees; the non-national spouses and partners of Irish nationals; and people who are rejoining their families under family reunification programmes. As will be discussed, many of these immigrants have come to Ireland as a result of state policies, such as the issuing of work permits.

V. Considering the recent changes in migration patterns, it is not surprising that the number of births to non-Irish nationals has increased. Indeed, it is easy to predict that an increase in the number of non-nationals resident in the country will result in an increase in the number of births to non-nationals. It therefore needs to be considered whether the proposed Constitutional amendment would satisfactorily address the main concerns the government

has raised in relation to pressures on maternity hospitals. In other words, will it have a significant impact on the number of non-nationals who are giving birth in Ireland? If not, it may be the case that the government's proposal to amend the Constitution and remove the automatic entitlement to Irish citizenship would prove to be a somewhat simplistic answer to a complex issue.

VI. The purpose of this paper is to examine several of the issues relating to immigration and citizenship that have been raised by the debate on the referendum. Section One sets out the current basis for citizenship in Ireland and looks at how the government has proposed that this be changed. It examines the government's arguments in favour of the proposed changes and notes some of the inconsistencies in the information that has been made available throughout the debate. Section Two considers the situation in Dublin's maternity hospitals and analyses statistical data relating to births to non-Irish nationals in these hospitals. The capital's maternity hospitals are selected as they have been repeatedly cited by the government as experiencing particular stresses due to births to non-national women. In Section Three, the question of whether changes to citizenship laws would eliminate the issue of non-national women arriving unannounced and unbooked at maternity hospitals is discussed. Section Four discusses wider patterns of immigration. The impact of increasing inward migration on the composition of Irish society and the potential effects of this on the number of births to non-Irish national mothers is outlined. Demographic changes within the EU and the impact that these are having on the debate about immigration are also discussed. Finally, Section Five provides an overview of the main points made throughout the paper and draws a number of conclusions from these.

Section One: Government's arguments in favour of the proposed Constitutional change.

1.1 What is the current situation in Ireland?

Citizenship in general is determined by one of two principles, which are commonly referred to by the Latin terms *jus soli* and *jus sanguinis*. According to the *jus soli* principle, citizenship is a birthright that is linked to birth within a state. The *jus sanguinis* principle is one of citizenship derived from blood descent. The proposed change to the Constitution will alter Ireland's approach to citizenship from a combination of the principles of *jus soli* and *jus sanguinis* to reliance on the latter. The *jus soli* approach has been used in Ireland since before the founding of the Republic. It was enshrined in legislation through the 1935 Irish Nationality and Citizenship Act and again in the 1956 Nationality and Citizenship Act.

1.2 In 1998, a majority of Irish people voted in favour of an amendment to Articles 2 and 3 of the Constitution, and a new Article 2 was included in the Constitution in 2000. According to this,

It is the entitlement and birthright of every person born in the island of Ireland...to be part of the Irish nation. That is also the entitlement of all persons otherwise qualified in accordance with law to be citizens of Ireland.

The inclusion of this change to the Constitution came about as part of the Good Friday Agreement, and was agreed to by a large majority of voters.

1.3 What is the government proposing?

The government is now proposing that the Constitution be amended again, through the addition of a new section, Article 9(2). This would remove the existing automatic entitlement to Irish citizenship of children who are born in Ireland to non-national parents, neither of whom are entitled to Irish citizenship. The twenty-seventh Amendment of the Constitution Bill 2004 proposes that a new section, Article 9(2), be added to the Constitution, to read as follows:

“Notwithstanding any other provision of this Constitution, a person born in the island of Ireland, which includes its islands and seas, who does not have, at the time of his or her birth, at least one parent who is an Irish citizen or who is entitled to be an Irish citizen is not entitled to Irish citizenship or nationality, unless otherwise provided for by law.”¹

1.4 The government’s draft Implementing Bill, which would obtain if the referendum is passed, sets out the new criteria for citizenship for children born in Ireland. It states that a person born in either Northern Ireland or the Republic of Ireland to non-national parents, either of whom has been lawfully resident in the State for at least three of the four years preceding the birth, will have an entitlement to Irish citizenship. The same will hold for people born to non-national parents, one of whom has been lawfully resident in Northern Ireland for at least three of the four preceding years. However, for non-EEA national parents, periods spent in the Republic of Ireland or in Northern Ireland for study purposes or while awaiting the determination of an asylum claim will not count. An entitlement to Irish citizenship will also apply to people born in the North of Ireland or the Republic of Ireland to a parent who is a British citizen or who has an entitlement to reside in the UK without any restriction on his or her period of residence. Additionally, a person who is born in either jurisdiction to parents, either of whom has an entitlement or permission to reside in the Republic without any restriction on his or her residence, will be entitled to Irish citizenship.

1.5 How will the changes affect children born in Ireland?

The proposed change to the Constitution will alter the current automatic entitlement to citizenship of some children who are born in Ireland. As noted by the Department of Justice (op.cit., pp 4-5), a person who becomes an Irish citizen and thus an EU citizen acquires significant rights throughout the territory of the EU. Additionally, they acquire “significant social, political and economic rights within Irish society” (ibid). If the Constitution is amended, Irish citizenship and the entitlements and privileges that it brings will no longer be automatically available to all children who are born in the State. Instead, children’s entitlement to acquire citizenship and the benefits that it bestows will be decided on the basis of the length and categorisation of their parents’ residency in the State, or, in some cases, on the basis of their parents’ nationality.

1.6 In recent years, advances have been made in Ireland to promote the rights of children, including the ratification of the UN Convention on the Rights of the Child and the development of the National Children’s Strategy. According to Article 2(2) of the UN Convention,

¹ Department of Justice, Equality and Law Reform, *Citizenship Referendum: The Government’s Proposals*, April 2004, available on < www.justice.ie >.

States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions or beliefs of the child's parents, legal guardians, or family members.

In light of these positive efforts to develop a rights-based approach for all children, regardless of their parents' status, it is an issue of concern that the proposed Constitutional amendment will result in some children being automatically entitled to the benefits bestowed by Irish citizenship, while others will not, solely on the basis of their parents' nationality or residency status in the State. According to Professor William Binchy, some of the most crucial human rights guarantees in the Constitution are expressly stated to apply to "citizens" or "the citizen"².

1.7 These concerns have been echoed by the Irish Human Rights Commission. According to the Commission³, a notable feature of the Irish Constitution is that some of the rights it contains are explicitly linked to citizenship, whereas others are not. Therefore, the proposed amendment will have the effect of creating a new category of non-citizens who are likely to be subject to a lower and more uncertain level of protection of rights than currently prevails for children previously born in the State in equivalent circumstances. Under a number of the international human rights treaties to which the State is a party, Ireland has accepted obligations to guarantee rights equally to all persons, and specifically all children, within its territory without discrimination on the basis of nationality, race, ethnic background or other status. The Commission has stated that "the differential treatment which is likely to result between citizen and non-citizen children may constitute unlawful discrimination under international law in respect of a new category of non-citizen children".

1.8 What arguments has the government made in favour of the proposed Constitutional amendment?

The government has formally set out a number of arguments in favour of the changes in two documents, as well as through statements made by individual members. The following sections set out a summary of the main arguments made in the two documents and highlight several statements that have been made to support these arguments. It is not within the scope of this paper to discuss the other issues that have been raised during the debate on the referendum, such as the values and definitions of citizenship.

1.9 The main arguments set out in *Citizenship Referendum: The Government's Proposals* (2004: pp.4-5) are:

- A person whose parents have no connection with Ireland can acquire an entitlement to Irish citizenship "simply by the happenstance of being born in Ireland"; and
- Maternity hospitals, especially those in Dublin, are experiencing a high incidence of the unannounced arrival of non-national women in late pregnancy or in the early stages of labour. This phenomenon is directly related to the fact that Irish law presently gives children an entitlement to Irish citizenship, and thus to citizenship of the European Union.

² "Binchy says poll an unknown threat to children's rights," *Irish Times*, May 10th, 2004.

³ Irish Human Rights Commission (27 April 2004), *Preliminary Observations on the Proposed Referendum on Citizenship and on the 27th Amendment to the Constitution Bill 2004*.

1.10 The context of the referendum is also set out in an information note on the proposed Constitutional amendment issued by the Department of Justice, Equality and Law Reform⁴. Arguments in favour of the changes include the following:

- Despite a Supreme Court decision in 2003 which resulted in the removal of the process for considering claims from non-nationals to remain in the State on the basis of being the parent of a child born in Ireland, the proportion of pregnant women applying for asylum in Ireland remains high;
- “Recent trends have indicated that the scale of the problem is even greater outside of the asylum seeker framework, with very large numbers of non-EEA nationals⁵ now coming to Ireland to give birth” (paragraph 12). It is stated that Dublin’s maternity hospitals estimate that two-thirds of births to non-nationals last year were to persons other than asylum seekers, many of whom arrive very late in the State to give birth;
- The government argues that these figures have implications for health and social policy, both in terms of short-term pressure on maternity services and medical services and in medium- and long-term patterns of social provision and expenditure.
- It asserts that the prospect of Irish citizenship, and thus of EU citizenship, for children born here seems to have an attraction independent of possible parental residence.
- According to the government, a non-national becoming the parent of a child born in Ireland attracts greater entitlements than would be the case if they were present in any other EU member state. This is in terms of the child’s entitlement to Irish and EU citizenship, and the perceived benefits of this for the parents, now or in the future:
This will inevitably remain an attraction for non-nationals to come to Ireland to give birth, placing strains on our hospital services, attracting illegal immigration and creating long-term commitments for the State. (paragraph 17);
- The government states that it is clear that the citizenship entitlements of children born in Ireland and the resulting claims to residence by their parents has been the single most important factor in bringing non-EU nationals to Ireland to give birth (Appendix 3.2).

1.11 Issues raised by the government’s arguments

These arguments raise a number of issues that require clarification before they can be demonstrated:

- In the two documents discussed above, a distinction is made between asylum seekers and other non-nationals who give birth in Ireland. Under the terms of the 1951 Geneva Convention, of which Ireland became a signatory in 1956, every person who applies for asylum in the state is entitled to have their application examined and to reside in the state while they are awaiting a determination of their case. The other non-nationals referred to throughout the document include a wide range of people who may have come to Ireland

⁴ Department of Justice, Equality and Law Reform, (2004) *Information Note: Proposal for Constitutional amendment and legislation concerning the issue of the Irish citizenship of children of non-national parents*, available at <www.justice.ie>

⁵ The distinction between EEA and non-EEA nationals is made because of their differing rights to residency within the EU. The EEA, or European Economic Area, comprises the EU member states and Norway, Iceland and Lichtenstein. As a result of the 1994 European Economic Area Agreement, nationals of these three countries have rights of residency similar to those of EU nationals. The Swiss Confederation Act, signed between the EU and Switzerland, extended these rights to Swiss nationals. Nationals of these countries have residency rights throughout the EU that are not extended to people who are not EEA or Swiss citizens.

for a variety of purposes and who will have differing rights and entitlements, depending on their country of origin and their mode of entry into the state.

- No figures are provided for the number of non-national mothers who are legally resident in the state on the basis of possessing a work permit or work visa/authorisation. There is no mention of the exact numbers of mothers who are here as students, as the non-national spouses or partners of Irish citizens, or as people who have been given permission to reside in Ireland under family reunification programmes. These figures are very relevant to the debate, as they will affect the reasons why a pregnant non-national woman may be present in Ireland at the time when she gives birth.
- No disaggregated statistics have been provided that are in themselves sufficient to vindicate the claim that there are very large numbers of non-EEA nationals coming to Ireland solely to give birth. There is no reference to how any such data may be collected.

1.12 The arguments are also misleading in relation to the position of non-national parents. For example,

- In Paragraph 17, reference is made to the “fact” that a non-national becoming the parent of a child born in Ireland attracts greater entitlements than would be the case if they were present anywhere else in the EU. It is then stated that these entitlements are based on the “perceived benefits” for the parents, either now or in the future, of the child’s entitlement to Irish and EU citizenship. As outlined in paragraph 3 of the *Information Note*, these are indeed only “perceived” benefits for the parents. Following the Supreme Court decision in the L&O case, the government has decided that there is no longer a process for considering claims from non-national parents to remain in the state on the basis of the birth of a child in Ireland.
- This argument is once more set out in Appendix 3.2, where it is stated that it is clear that children’s citizenship entitlements and the resulting claims to residence has been the single most important factor in bringing non-EU nationals to Ireland to give birth. Since there is no longer an automatic right to claim residency in Ireland on the basis of being the parent of a child born in Ireland, it is not clear on what this conclusion is based.

1.13 It should be noted that although the Minister for Justice⁶ has stated that the proposed law

will acknowledge the role that non-nationals established here play in society by ensuring that their children born here have the entitlement to be Irish citizens,

this will not be the case for all children of non-nationals who are established in Ireland. As noted above, the children of non-EEA national parents who have spent the requisite period of residency in Ireland as students or as asylum seekers will not qualify for Irish citizenship. The Minister for Justice has also stated that an entitlement to citizenship will not be retrospectively conferred on a child born to a recognised refugee while she or her was an asylum seeker. Rather, the question of naturalisation will be “considered favourably in suitable cases.”⁷

1.14 The “grandfather” clause.

⁶ Minister Michael McDowell, Dail Debates, April 21, 2004.

⁷ Minister Michael McDowell, quoted in *If June referendum goes ahead. FG will support it*, Irish Times, April 21 2004.

As outlined in *Citizenship Referendum: The Government's Proposals* (2004:4), the principle of *jus soli* entitles a person whose parents have no connection with Ireland to acquire Irish citizenship because they are born in the state. According to Deputy Hanafin⁸, citizenship “is inextricably linked to belonging to a community, to having a commitment to the society and of being loyal to a country.” However, the proposed changes to the Constitution will not ensure that everyone who is entitled to Irish citizenship fulfills these criteria. In some cases, the application of the principle of *jus sanguinis* will allow people with a negligible connection to Ireland to acquire citizenship. This is possible under what is commonly referred to as “the grandfather clause”.

1.15 According to the Department of Justice⁹,

“If you are of the third or subsequent generation born abroad to an Irish citizen (in other words, one of your parents is an Irish citizen but none of your parents or grandparents was born in Ireland), you may be entitled to become an Irish citizen by having your birth registered in the Foreign Births Register; this depends on whether the parent through whom you derive Irish citizenship had himself or herself become an Irish citizen by being registered in the Foreign Births Register *before you were born*. If you are entitled to register, your Irish citizenship is effective from the date of registration. The Irish citizenship of successive generations may be maintained in this way by each generation ensuring registration in the Foreign Births Register before the birth of the next generation.”

As a result, it is possible that a person who has no connection with Ireland, other than the fact that one of her or his parents is registered on the Foreign Births Register, is entitled to become an Irish citizen. The government’s proposals will not alter this situation.

1.16 The arrival in Ireland of non-national women at an advanced stage of pregnancy

The Minister for Justice, Equality and Law Reform has stated that he is aware “anecdotally” of women from eastern Europe and elsewhere in the world “who have come here on holiday visas, give birth, collect the birth certificate and the passport for the child and returned home”¹⁰. The Taoiseach reiterated this when he stated that “a different problem developed with non-nationals coming to Ireland for the purposes of the birth of the child and the acquisition of citizenship and then leaving the country”¹¹.

1.17 If these arguments are to be considered seriously as the basis for changing the Constitution, then surely reliable statistical evidence of the number of cases in which women come to Ireland solely for the purposes of giving birth, and leave as soon as they have acquired an Irish passport for their child should be provided. However, no detailed information of this nature has been issued. Rather than constituting a sound basis on which to change citizenship laws, the “anecdotal” evidence referred to is uncertain and highly subjective. As will be discussed in the next section, definitive evidence to back up the argument that people come to the state for the sole purpose of giving birth is not available.

⁸ Deputy Mary Hanafin, Dail Debates, April 22 2004.

⁹ Department of Justice, Equality and Law Reform, *Information Leaflet No. 1: General information on Irish citizenship*, available on < www.justice.ie >

¹⁰ Minister Michael McDowell, Dail Debates, April 21, 2004

¹¹ Taoiseach Bertie Ahern, Dail Debates, April 21, 2004

Maternity hospitals do not collect comprehensive data relating to mothers' residency status in Ireland or to the length of time they have been resident in Ireland. Additionally, the government has not produced any information to demonstrate how many women leave the country as soon as they have collected a passport for their Irish-born child.

1.18 Asylum seekers

The issue of asylum seekers who are pregnant on arrival in Ireland has been repeatedly stressed by the government to support the proposed changes. For example, throughout the Dail debates on April 21st and 22nd, the number of asylum seekers who were pregnant on their arrival in Ireland was mentioned by Deputies O'Donoghue, O'Dea, Martin, Ahern, Callely, and Moloney. The thrust of the government's argument is that despite the Supreme Court decision in 2003 that removed parents' automatic right to residency on the basis of having an Irish-born child, the proportion of pregnant women applying for asylum remains high.

1.19 The Minister for Health and Children has stated that "even though the asylum seeker numbers have fallen, about 60% of girls arrive pregnant and there has been no significant changes since the recent Supreme Court decision"¹². This was reiterated by Deputy Dermot Ahern, who stated that "in the 13 months since the L and O case, there has been no significant fall in the percentage of non-nationals arriving heavily pregnant into the state"¹³. Since statistics relating to the pregnancy rates of all women arriving in the state are not collected, it must be assumed that he was referring to women who are seeking asylum. It should also be noted that no figures have been released that detail the stage of pregnancy that these women are at when they seek asylum.

1.20 An examination of the statistics provided by the Department of Justice, Equality and Law Reform shows that these statements are misleading.

	Number of asylum applicants who stated they were pregnant
July-December, 2002	1,599
July-December, 2003	647

Source: Department of Justice, Equality and Law Reform, (2004) *Information Note*

While the percentage of pregnant women applying for asylum remained constant at 58% of all applications from females over 16 years of age throughout the two periods, the absolute numbers dropped dramatically. This table shows that while the percentage of pregnant women may have remained constant between the two periods, the overall numbers dropped very significantly by three-fifths (952, or 59.5%). This poses the question as to why asylum seekers are continually being referred to throughout the debate.

1.21 Issues relating to the provision of consistent information

¹² Minister Michael Martin, Dail Debates, April 21 2004

¹³ Deputy D. Ahern, Dail Debates, April 21 2004.

The difficulties involved in ensuring that accurate and consistent information is made available to the public were highlighted during the Dail Debates, as is illustrated by the following statement made on April 22, 2004:

I will repeat some of the figures already placed in the public domain *because they are accurate*. In 2003...32% of births in Dublin’s major maternity hospitals were to parents without Irish citizenship, an increase from 28% the previous year.¹⁴ [Emphasis added].

However, figures released by the government only the previous day stated that in 2003, 23.9% of births in the three hospitals were to non-nationals. The figures released stated that this was an increase from 19.9% in 2002. The provision of contradictory information does nothing to advance informed debate about the proposed Constitutional changes.

Section Two: The situation in Dublin’s maternity hospitals

2.1 As can be seen, many of the arguments made by the government have specifically related to the situation in maternity hospitals in Dublin, and the increasing number of births to non-national parents. According to the Minister for Justice¹⁵, “the evidence that we have a serious problem in terms of the integrity of our citizenship law is to be found in the fact that huge and unprecedented pressures have emerged in our maternity hospitals.” However, the wider issue of immigration and how this may have impacted on the numbers of non-nationals giving birth in Ireland has been ignored. A key question to examine is the extent to which pressures on the maternity hospitals would be alleviated by changing the Constitution. In order to do so, the first part of this section looks at birth rates and resources for maternity hospitals, while the second looks at statistical information relating to births to non-nationals.

2.2 Births in Ireland: An overview

The government has expressed concerns about the pressures maternity hospitals are coming under as a result of the increasing number of births to non-nationals. However, statistics demonstrate that the annual number of births in Ireland is now lower than in previous decades, when resources for medical care were scarcer.

Average annual births, deaths, and natural increase for each intercensal period, 1971-2002. (Figures stated are in thousands)

Period	Total births	Total deaths	Natural increase
1971-1979	69	33	35
1979-1981	73	33	40
1981-1986	67	33	34
1986-1991	56	32	24
1991-1996	50	31	18
1996-2002	54	31	23

Source: CSO, Principal Demographic Results (2003:12)

¹⁴ Deputy Moloney, Dail Debates, April 22, 2004.

¹⁵ Minister McDowell, Dail Debates, April 21, 2004.

2.3 Further figures compiled by the CSO for the Department of Health and Children illustrate that both the crude birth rate¹⁶ and the total fertility rate¹⁷ (TFR) have decreased since the 1970s.

Births in Ireland, 1971, 1981, 1991, 2001

	1971	1981	1991	2001*
Total number of live births	67,551	72,158	52,718	57,882
Crude birth rate (per 1,000 pop)	22.7	21.0	15.0	15.1
Total fertility rate	3.98	3.07	2.09	1.98

*Provisional figures based on year of registration. Source: Department of Health, *Health Statistics 2002*¹⁸

Despite the government's focus on the number of non-nationals giving birth in Ireland and the pressures arising from this, these figures demonstrate that the annual number of births is in fact lower than it was during the 1970s and early 1980s. Additionally, the intervening period has seen an unparalleled growth in Ireland's economy, coupled with advances in medical technology. This would suggest that the health services should be in a position to respond to the (now) lower number of births without reaching a crisis situation.

2.4 Resources for maternity hospitals

In recent years, the birth rate has started to increase again since the lows of the early 1990s. However, it can be seen from the following table that despite recent increases in the numbers of women presenting themselves for delivery at Dublin's maternity hospitals, the total number of beds available in the hospitals was lower in 2003 than it was in 2000. Additionally, it was considerably lower than the number of beds that were available in the mid-1970s to mid-1980s, when the numbers of non-nationals mothers in the country was less.

No. of beds in Dublin's maternity hospitals, 1975-2003

	Coombe		Rotunda		NMH		Total
	In-patient	Day bed	In-patient	Day bed	In-patient	Day bed	
1975	309	NA	236	NA	234	NA	779
1980	310	NA	235	NA	234	NA	779
1985	283	NA	235	NA	234	NA	752
1990	184	7	191	13	199	10	604
1995	197	30	182	12	191	12	624
2000	199	29	184	10	156	16	594
2001	206	29	181	10	156	16	598
2002	206	29	170	10	149	7	571
2003*	208	29	176	10	151	13	587

* Provisional figures. Source: Data supplied by the Department of Health and Children. NA indicates not available¹⁹.

¹⁶ The crude birth rate is defined as the number of births per year per 1,000 members of a population.

¹⁷ Total fertility rate is defined as the average number of children born to women surviving the reproductive period.

¹⁸ Department of Health and Children (2003:36), *Health Statistics 2002*.

2.5 The issue of funding for maternity hospitals has been raised by the Master of at least one of the Dublin's maternity hospitals. According to an article in the Irish Medical News²⁰, the Coombe's Master believes that the allocation given by the Eastern Regional Health Authority to the hospital for 2004 is inadequate and does not reflect activity needs. Additionally, the hospital is suffering from the continuing operation of a ceiling on staff recruitment. Dr. Daly noted that "already this year our delivery levels are up by four per cent and have increased by 12 per cent since I took over as Master five years ago." No extra staff have been provided to deal with the increase in deliveries, although additional staff are still required. Dr. Daly stated that unless extra beds were brought into the system this year, the hospital would not be able to cope.

2.6 In an interview on RTE Radio1 on April 22, 2004²¹, Dr, Daly was asked whether he felt that the Coombe would be under significantly less pressure in terms of resources if all births to non-nationals who come to Ireland with the specific intention of gaining Irish citizenship for their children were taken out of the equation. He stated that there would probably not be a significant reduction in pressure, and added that if the hospital got additional beds and staff, it could easily cope with the demand from non-nationals. Additionally, he stated that the projected number of births to non-nationals for 2004 was expected to be less than the numbers for 2003.

2.7 The arrival of people from other countries who have different needs to the majority population has major implications for service providers. As will be discussed in Section Four, immigration into Ireland is a relatively new phenomenon and one that has increased rapidly in recent years. It is reasonable to assume that the issues highlighted by maternity hospitals in relation to the increasing numbers of non-Irish nationals who are presenting themselves for delivery are in some way related to the particular needs of this group. It may be argued, however, that catering for their needs could be addressed through examining and tailoring the resources and structure of services, rather than by introducing Constitutional change.

2.8 Statistical data relating to births to non-Irish nationals in Dublin's maternity hospitals

In order to provide a proper analysis of statistical information relating to non-national parents, it is necessary to consider the following questions:

- **How are data relating to mothers' nationality collected?** The term "non-national" *inter alia* refers to people from the UK, from other EU15 countries and from the 10 accession states. Giving birth in Ireland in order to gain EU citizenship for their children will obviously not constitute a pull-factor for nationals of these countries.
- **How are data relating to the residency status of non-nationals who give birth in Ireland collected?** For example, a non-national could be a tourist, a person with

¹⁹ For the years up to and including 1990, the figures refer to the bed complement at 31 December. From 1995 on, they refer to the average number of beds available for use over the year taking beds that have been temporarily closed or opened into account.

²⁰ Irish Medical News, "Coombe Needs Urgent Guidance from Dept. on EWTD", <www.irishmedicalnews.ie/articles.asp?Category=feature&ArticleID=10736>

²¹ Interview with Dr. Daly, Morning Ireland, RTE Radio One, April 22 2004. Available on <www.rte.ie/news/2004/0422/morningireland.html>

refugee status, or a person who has been granted a work permit, visa or authorisation to fill a gap in the Irish labour market. Women in each category will have different reasons for their presence in Ireland at the time of giving birth.

- **Is the nationality of a child's father recorded?** This will have an effect on her or his possible citizenship entitlements, irrespective of whether the birth takes place in Ireland.

Any assessment of motivation for giving birth in Ireland needs to take all these factors into account, as they may impact on the reasons why a woman decides to give birth in Ireland.

2.9 Statistical data provided by two of Dublin's maternity hospitals, the Coombe Women's Hospital and the National Maternity Hospital, are discussed below in light of these questions. Detailed information regarding births in the Rotunda is not available, but some figures relating to total births to non-nationals in the hospital have been released and will be discussed below. Figures relating to women who presented themselves unbooked or within a short time of delivery will also be considered, as these have been presented as indicative of the fact that these women have recently arrived in the state with the sole intention of giving birth.

2.10 Information relating to births in the Coombe Women's Hospital²²

In the Coombe, information relating to the country of birth of expectant women is collected when they first register in the hospital. As part of a mandatory questionnaire, women are asked to state their country of birth, but they are not obliged to respond to the question²³. It should be noted that

- Women are not asked any questions relating to their residency status in Ireland; therefore, it is not possible to establish how many mothers who gave birth were present in the country as holders of work permits, as students, as asylum seekers, etc.
- The hospital does not collect information relating to the nationality of fathers; therefore, it is not possible to establish how many of the children born in the hospital will have an entitlement to Irish citizenship because of their fathers' nationality.
- The hospital does not collect information relating to a mother's length of residency in Ireland; therefore, it is not possible to establish how long women have been in the country for before giving birth.

Information relating to the women's country of birth is collated for the hospital's annual report and is then classified according to the following categories: Ireland, Britain, EU (excluding Ireland and Britain), the rest of Europe (including Russia), the Middle East, the Far East, the Americas (including Canada), Africa, and Australasia. The "rest of Europe" category will include the 10 EU accession states and the three EEA member states that are not in the EU. A breakdown of mothers' countries of birth for 2003 is not yet available, but will be included in the hospital's annual clinical report.

²² Source: Personal Communication, Coombe's Information Officer, April 2004

²³ It should be noted that a question relating to country of birth may yield a different response than a question relating to nationality.

Coombe: Mother's country of birth, 2001 and 2002

Country of birth/nationality	2001	2002
Ireland	6,049	5,927
Britain	398	389
EU (excluding Ireland and Britain)	55	66
Rest of Europe (including Russia)	191	222
Middle East	23	29
Far East	112	103
Americas (including Canada)	56	66
Africa	524	394
Australasia	15	112
Not stated/uncoded	128	100
Total	7,551	7,408

*Source: Coombe *Annual Clinical Report*, 2001 and 2002 editions.

Further information relating to births at the hospital has been provided as part of the debate on the referendum. Of the 7,848 women who gave birth at the Coombe in 2003, 22% (1726) were non-nationals. In interview on April 22²⁴, the Coombe's Master stated that 225 women presented themselves at the hospital unannounced and within three weeks of delivery. Of these, 116 were non-nationals and 109 were Irish nationals: in other words, nearly half were Irish.

While it is not possible to provide any detailed comment on the numbers of births to non-Irish nationals in 2003, an analysis of the above figures indicates that there was no increase in the percentage of births to non-EU nationals between 2001 and 2002. In both years, births to EU nationals, including Irish citizens, accounted for 86.1% of all births. This means that almost 14% of births were to non-EU nationals; of these, nationalities were not recorded for 1.69% of patients in 2001 and 1.34% of patients in 2002. It can therefore be seen that for the two years in question, the total number of non-EU national women presenting themselves for delivery was just under one in seven (14%) of the total number of patients, assuming that all the patients whose nationality was not recorded were non-EU nationals.

2.11 Information relating to births in the National Maternity Hospital (Holles Street)²⁵:

In the NHM, information relating to nationality is collected when a patient first registers with the hospital. This information is self-reported.

- Data relating to patients' residency status in Ireland are not exhaustively collected, and the residency status of patients is not recorded as part of the antenatal booking.
- No information is collected about the nationality of fathers.

²⁴ Interview with Dr. Daly, Morning Ireland, RTE Radio 1, April 21st 2004.

²⁵ Source: Personal Communication, NMH's Information Officer, April 2004.

Data are collated according to continent of nationality. For Europe, this is broken down into the categories of “Europe: Irish” and “Europe: Non-Irish”. Again, it should be noted that the latter category includes all citizens of the UK, other EU15 and accession states, and the three EEA countries that are not part of the EU.

NHM: Deliveries by mothers’ continents of nationality, 2003

Continent	Deliveries, 2003	% Deliveries
Africa	625	7.6%
Asia	426	5.2%
Europe: Irish	6479	78.5%
Europe: Non-Irish	571	6.9%
North America	53	0.6%
Oceania	19	0.2%
South America	12	0.1%
Unknown nationality	70	0.8%
Total deliveries	8,255	100%

Source: Statistics provided by the National Maternity Hospital, April 2004

According to the Minister for Health and Children²⁶, the number of non-national births at the National Maternity Hospital increased from 1,460 in 2002 to 1,707 in 2003. However, the hospital has stated that as the recording of patients’ nationality was not mandatory until early 2002, nationality reporting prior to this date is not accurate because a large number of patients have no nationality recorded.

Statistics are also available from the hospital for the nationality of patients who arrived unbooked or within 10 days of delivering for 2003. Again, these figures are categorised according to continent of nationality, and “Europe: Non-Irish” is not broken down to reflect EU or EEA citizenship. As can be seen, the largest number of patients in this category were from Africa (52.7%), with the next largest group consisting of Irish nationals (27.2%).

NMH: Patients who arrived unbooked or within 10 days of delivering in 2003, by continent of nationality

Continent	Deliveries, 2003	% Deliveries
Africa	126	52.7%
Asia	12	5.0%
Europe: Irish	65	27.2%
Europe: Non-Irish	23	9.6%
North America	2	0.8%
Oceania	1	0.4%
South America	1	0.4%
Unknown nationality	9	3.8%
Total deliveries	239	100%

Source: Statistics provided by the National Maternity Hospital, April 2004

²⁶ Minister Michael Martin, Dail Debates, April 21st 2004

The figures provided by the hospital differ slightly from those released by the Minister for Justice. In his written response to questions put by Deputy Jim O’Keefe, it is stated that the National Maternity Hospital had 251 deliveries that had not been booked or were booked within 10 days of delivery in 2003. Of these, 70 were to Irish nationals, 8 were to EU nationals, 163 were to non-EU nationals and 10 were unrecorded. Although the disparity between the two sets of figures is relatively small, the fact that any difference exists is indicative of the difficulties involved in accessing consistent information.

2.12 Further statistical information released by the government:

Further statistical information relating to births to non-national mothers in Dublin’s maternity hospitals has been made available by the government throughout the course of the debate on the referendum. It should be noted that an overview of this information has not been made available to the public through any government website, but has rather been released in the form of answers to Dail questions and through an appendix to the Minister for Justice’s Dail speech on April 21, which was circulated to TDs. The information released includes the following table with a breakdown of births by mothers’ nationality in Dublin’s maternity hospitals²⁷.

Year	Total births in Dublin Maternity Hospitals	Births to non-nationals	Births to non-nationals as a % of the total no. of births
2002	22,273	4,440	19.9%
2003	22,895	5,471	23.9%

2.13 However, the validity of making any comparisons between the number of births to non-nationals as a percentage of total births for the two years is called into question by the fact that the recording of nationality was not mandatory until early in 2002 in at least one hospital. Figures available in relation to births in the National Maternity Hospital for the first eight months of 2002 show that the nationality of 637 (12.18%) mothers was not recorded²⁸. As highlighted above, nationality was recorded for all but 70 mothers who gave birth in the NMH in 2003. The data on which any such comparisons could be made are therefore incomplete.

2.14 Of the 22,895 births recorded in the three Dublin maternity hospitals in 2003, 5,471 were to non-Irish national women: 970 of these were to EU nationals and 4,424 were to non-EU mothers²⁹. Again, this figure includes births to women from the three EEA countries that are not part of the EU and births to women from the 10 accession states. Aside from births to Irish citizens, the top five nationalities recorded were Nigerian (1,515), British (677), Romanian (469), Filipino (235) and Chinese (239)³⁰.

2.15 Further figures released indicate that 432 births took place at the Rotunda and Holles Street in 2003 to non-EU nationals who booked into the hospital late or arrived without

²⁷ Source: Replies issued on April 20th 2004 to questions put by Deputy Jim O’Keefe to the Minister for Justice on April 7th 2004, as provided by the Department of Justice, Equality and Law Reform.

²⁸ Statistics provided to the author by the office of Deputy Joe Costello, April 2004.

²⁹Source: statistical appendix to the Dail speech delivered by Minister Michael McDowell, April 21st 2004.

³⁰ Mark Hennessy, “If June Referendum goes ahead, FG will support it,” *Irish Times*, April 21st, 2004.

booking³¹. As outlined above, 116 non-nationals arrived either late or unbooked at the Coombe in 2003. Assuming that all of these were non-EU nationals, the total figure for non-EU women who were unbooked or late arrivals at the three hospitals is 548. However, as residency status is not comprehensively recorded by the maternity hospitals, it is not possible to draw the conclusion that all of these women had recently arrived in Ireland.

2.16 For example, 109 of the women who arrived unbooked or at an advanced stage of pregnancy at the Coombe in 2003 were Irish, while 65 women³² who arrived unbooked or within 10 days of delivering at the National Maternity Hospital were Irish. This suggests that there are obviously other reasons for people arriving late or without booking at all, eg, women may be transferred from other hospitals because of medical complications. In the case of non-national women, the reasons for late arrival can be more complex and can include factors such as a lack of information about maternity care services, a lack of knowledge about their rights and entitlements, and an inability to avail of antenatal care because of concerns about losing their jobs. It should also be remembered that some of these women are not coming from outside the state, but will have been resident in Ireland for some time and will have chosen to come to Dublin to give birth, as do some Irish mothers who are not resident in the capital. These factors will be discussed in further detail in Section Three.

2.17 A further issue to consider is the fact that airlines have very specific policies relating to passengers who are travelling at a late stage of pregnancy. Aer Lingus allows passengers to travel up to 32 weeks of pregnancy if they have a certificate of fitness from their doctor. For passengers who are between 32 and 36 weeks pregnant, the airline requires a form of indemnity to be completed and signed by their doctor. British Airways restricts travel for uncomplicated pregnancies beyond the end of the 36th week. In the case of twins, triplets, etc., it restricts travel beyond the end of the 32nd week. Ryanair does not carry women who are 36 weeks pregnant and over "under any circumstances". Air France and Cityjet have similar regulations. A doctor's certificate is required for women who are between 28 and 34 weeks pregnant, and passengers in later stages of pregnancy are advised not to fly for health and safety reasons³³. The existence of these regulations must cast some doubts on assertions that very large numbers of women are arriving in the country for the first time very shortly before giving birth.

2.18 Statistics relating to asylum seekers

The situation regarding applications for asylum from women who are pregnant has been highlighted throughout the debate on the referendum. As noted, government members have repeatedly cited statistics concerning the numbers of pregnant asylum seekers. In 2003, the Supreme Court ruling in *Lobe and Osayande v. the Minister for Justice, Equality and Law Reform* held that non-national parents of Irish citizens were not automatically entitled to reside in the state. Since this ruling, the number of people applying for asylum in the state has decreased, from 988 applications in January 2003 to 347 in December 2003. The

³¹Source: Replies issued on April 20 2004 to questions put by Deputy O'Keefe to the Minister for Justice on April 7, 2004.

³² Based on the figures issued by the NMH: those quoted by the government state that 70 Irish women arrived at the hospital unbooked or at an advanced stage of pregnancy.

³³ Fergus Black, "Pregnant visitors 'must have medical clearance'", *Irish Independent*, Friday April 23rd 2004.

government has noted that the overall reduction in numbers may also be attributable to policies such as the elimination of rent supplement for asylum seekers, the introduction of carriers' liability, the introduction of sanctions for the employment of illegal immigrants, and other changes in asylum legislation.

2.19 However, according to the Department of Justice³⁴,
while the total number of asylum seekers has dropped, the proportion of women who are pregnant remains very high...It is clear...that there has been no significant change in the situation since the Supreme Court Judgement and the implementation of the Government strategy on it.

In the appendix to his Dail speech on April 21 2004, the Minister for Justice made a comparison between the numbers of pregnant women applying for asylum from March to December 2002, and total numbers applying in 2003. He stated that in both years, 58% of female asylum applicants over the age of 16 were pregnant at the time of application. Statements such as these could lead to seriously misleading conclusions.

2.20 A comparison of the total figures for the two 10 month periods demonstrates that the number of pregnant women applying for asylum dropped substantially from 2,403 for the ten months of 2002, to 1,354 for the ten months of 2003. This represents a decrease of 1,049, or 43%, in the total number of pregnant asylum applicants. In December 2002, 312 pregnant women applied for asylum. The corresponding figure for December 2003 was 79, which constitutes a drop of 74% between the two periods. If the issue under consideration is the impact on the maternity hospitals, then surely the total number of pregnant women is the main concern, rather than the proportion of women who are pregnant. On the basis of these figures, it seems difficult to claim that a combination of the Supreme Court ruling and other government policies are not having a significant effect on the numbers of women who are pregnant when they apply for asylum.

2.21 Another issue that warrants consideration is the situation from which women who are applying for asylum may be fleeing. For example, pregnant women may be fleeing their country of origin because of concerns about the safety of their unborn child. The fact that women can be in a particularly vulnerable position has been recognised in Irish legislation, which acknowledges fear of persecution on the grounds of gender as one basis on which refugee status can be granted. It is not uncommon for rape to be used as a weapon in wars and internal conflicts, as has been clearly demonstrated in Rwanda and the former Yugoslavia. According to a British study of social care staff who worked closely with asylum seekers and refugees, 31% of them had encountered women who were pregnant as a result of rape³⁵. However, figures are not available that would establish whether pregnancy as a result of such circumstances is an issue for women who seek asylum in Ireland.

2.22 For the above reasons, it is not possible to definitively establish how many women are coming to Ireland solely for the purpose of giving birth. This point has been conceded by the Minister for Justice, who has stated that it is "impossible to demonstrate the motives of

³⁴ Department of Justice, Equality and Law Reform (April 2004: paragraph 11), *Information Note*.

³⁵ Ruth Winchester, *Professionals say services for asylum seekers are failing*, May 29, 2003, available on <www.communitycare.co.uk>

individuals who come to Ireland and have children to a point of mathematical certainty”³⁶. Some of the government’s arguments in favour of Constitutional change have centered on the assertion that births to non-nationals are placing maternity hospitals under strains. However, the statistics provided are not sufficient to demonstrate that a large number of women have (a) arrived recently in the country at a late stage of pregnancy and (b) come to the state with the sole intention of giving birth and acquiring citizenship for their children. If these conclusions cannot be clearly proven, then it is difficult to argue that Constitutional change will necessarily reduce the number of births to non-nationals to a level where they will not cause strains on maternity services.

Section Three: The maternity care needs of migrant women

3.1 This section considers issues relating to the health and maternity care needs of migrant women. In doing so, it seeks to answer the following questions:

- 1) What are the reasons why migrant women may avail of maternity care services at a late stage of pregnancy? Will an amendment to the Constitution address these issues?
- 2) Will the proposed changes to citizenship laws address the fact that health service providers are encountering a new client group with differing needs to the majority Irish population?

If the proposed changes will not address the substantive underlying causes of late arrivals at maternity hospitals, then alternative measures to deal with this issue will have to be introduced at some stage.

3.2 In making its case for the referendum, the government has repeatedly referred to the number of non-national women who arrive at Dublin’s maternity hospitals unannounced and within a short period of delivery. The inference is that these women have recently arrived in the state, with the intent of giving birth and gaining Irish citizenship for their children. However, as noted above, it is not possible to definitively establish how many of the women who arrive shortly before giving birth have come to the country for the sole purpose of giving birth. As will be discussed, some of these women may have been resident in Ireland for long periods before giving birth, but may not have availed of maternity care services until an advanced stage of pregnancy.

3.3. Additionally, it must be asked whether changes to the Constitution will affect the fact that non-national women, many of whom will have different health care needs to the majority population, are now established in Ireland and will continue to give birth here. As noted in paragraph 2.7, it is reasonable to assume that some of the “huge and unprecedented pressures” on maternity hospitals alluded to by the Minister for Justice are a result of the specific health needs of migrant women. These include differing cultural practices in women’s countries of origin, differing expectations of what health care services provide, and difficulties that can arise because of language barriers.

³⁶ Minister for Justice, Dail Debates, April 21st, 2004.

3.4 What are the factors that can affect the stage at which migrant women avail of maternity care services?

To date, research into the maternity care needs of migrant women in Ireland has primarily focused on asylum seekers and refugees. In 2002, the Northern Area Health Board published a report on the maternity care needs of asylum seekers and refugees³⁷. According to the report's authors, attending for antenatal care means, in practical terms, twelve appointments or situations where women have to present themselves either at the maternity unit or GP. They noted that attending antenatal care in hospital has several potential complications for asylum-seeking women, including (2002:70):

- transport difficulties, including costs;
- arranging childcare;
- being unaccompanied by a partner or friend;
- poor health: being too exhausted or stressed; and
- language.

3.5 Respondents who participated in the study cited exhaustion, ill health, lack of childcare and lack of finance as obstacles to attending antenatal care. It can be assumed that these problems may also be issues for pregnant women who are migrant workers from outside the EEA, especially the difficulties relating to language barriers and transport problems. For others, it may be difficult to get time off work on a regular basis. As a result, this may increase the likelihood that they will not attend all their antenatal care appointments, or delay the stage at which they first avail of maternity care services.

3.6 When asked how they discovered the name and location of the maternity hospital they attended, the respondents listed community welfare officers, friends and medical personnel in the Mount Street reception centre as the principal sources of information (ibid:67). However, women who are here on work permits/visas will not have contact with community welfare officers or personnel at the Office of the Refugee Applications Commissioner, which means that they will have to access alternative forms of information. Again, this may delay the stage they first register at hospitals.

3.7 At the time of publication of the study, there was no integrated document specifically written for women about maternity care and women's health services in the range of languages that would be needed for the asylum seeker/refugee population. It was additionally noted that any such information would have to take into account the fact of a possible lack of formal education and literacy skills amongst clients. The NAHB has since produced a video for asylum seekers that describes the entire health care system and that is available in several languages. Pregnant migrant women who are not asylum seekers may not be aware of such resources, as their sources of information about health care services will differ to those available for asylum seekers.

3.8 Further information relating to maternity care needs of refugees and asylum seekers was contained in a report published in 2002 by the Southern Health Board³⁸. The report

³⁷ Murphy-Lawless and Kennedy (2002), *The Maternity Care Needs of Refugee and Asylum Seeking Women*, Dublin: Northern Area Health Board.

³⁸ Foley Nolan, Sheahan, Cahill (2002), *A Better World Healthwise: A health needs assessment of immigrants in Cork and Kerry*, Southern Health Board.

included research with 210 asylum seekers living in the Southern Health Board region. Additionally, the report included a review of the outcomes of pregnancy for 224 asylum seekers and refugees during the period from January 2000 to December 2001. In terms of antenatal care, 3% of the women had not availed of any type of care, and 2% had attended a GP only. The authors stated that these figures needed further investigation, as the number of visits or the timing of the first visit were not recorded.

3.9 In relation to differences in birthing practices, it was noted that women from some rural areas in Africa are more accustomed to giving birth at home, and that many do not go to hospital to have their children. Other issues relating to accessing health services (including maternity services) identified were:

- A poor understanding of life in Ireland on the part of asylum seekers prior to their arrival;
- Little training in refugee culture for those charged with providing services for these groups;
- Language issues;
- Differences in cultural backgrounds and religious beliefs, leading to practices that are not always easy for service providers to understand.

3.10 A further issue relating to mobility was identified. Asylum seekers frequently move from centre to centre or out of the area, which creates difficulties for all service providers. It was noted that movement can create difficulties when trying to get the results of tests. Additionally, the “information transfer of medical records is an ongoing problem and in particular for pregnant women” (ibid: 27). It is therefore possible that pregnant asylum seekers may present themselves at maternity hospitals without their records, but having availed of antenatal care in a different location.

3.11 For migrant women who are not asylum seekers, other issues can affect the stage at which they first present themselves for registration at maternity hospitals. These include difficulties accessing information about services and not knowing their rights and entitlements. For example, staff of one organisation that works with migrant women cited a case in which a non-national student did not avail of any antenatal services until two weeks before her child was born because she was afraid that she could be deported if it was discovered that she was pregnant. Women’s attendance at antenatal classes can be affected by language issues, different cultural practices in their country of origin, and difficulties with getting time off work. According to staff of organisations that work with migrant women, some of these women cannot afford to take time off work because they would not get paid, and also because they are afraid of losing their jobs as a result of absenteeism. These issues will not be addressed by changing the laws on citizenship.

3.12 Will the proposed changes to citizenship laws remove the pressures on maternity care services that stem from catering for the needs of non-nationals?

Issues relating to increasing and changing demands on health care service providers as a result of migrant populations are not limited to Ireland. As noted by Bollini (2001)³⁹, many studies have been conducted into the issue of migrants’ access to health services in different

³⁹ Bollini, P (2001), “The reproductive health of immigrant women,” *Migration and Health Newsletter*, 2/2001, Geneva: International Organisation for Migration.

societies and among varied ethnic groups. Several of these have documented the poor and irregular uptake of antenatal care of immigrant women. Bollini states that although it is difficult to make generalisations, mothers from different ethnic groups may have different expectations and knowledge of their own health and of the value of health services in the receiving country. She states that this is particularly true for those with poor education and of recent immigration, who do not have the support of well-integrated communities from similar backgrounds.

3.13 Other factors that can affect pregnant women's uptake of antenatal services include language issues, and the fact that irregular migrants and temporary workers may have reduced, or no, entitlements to health care services. Additionally (ibid:3),

“racism within the health services may act in very subtle ways, by exacerbating poor communication between patients and health care providers, creating a hostile environment or disregarding specific needs of the patients.”

A report by the British Medical Association⁴⁰ noted that language and cultural differences can pose major barriers to health care for asylum seekers. The report stated that there were insufficient translation services in the UK to cope with the demand for services. Furthermore, issues can arise for asylum seekers who do not have English-language literacy skills and who therefore cannot read written health advice. It was noted that literacy can be a particular issue for female asylum seekers. The problem of mobility and the transfer of medical records was also raised in the report, as this may affect continuity of care.

3.14 Some specific issues for Irish health care services that have emerged as a result of the increasing number of immigrants were noted in the Southern Health Board's report (op.cit). Migrants tend to be a relatively young population, and because of this, they can place considerable demands on paediatric, maternity and reproductive health services. The report (pp. 26-27) noted some of the cultural differences that can arise when accessing health care services, which can be challenging for health care staff:

These are wide ranging and vary from breast feeding practices, to religious beliefs and this can cause problems when prescribing medication or for certain consultations.

3.15 The authors referred to reports about challenges to maternity services faced with the provision of healthcare for new populations, including increasing numbers of non-national women arriving late in pregnancy who are delivering babies who are at increased risk of developing complications. In response to this, the authors stated that there was a need for increasing resources in this area (p. 34). They also called for more epidemiological research in this area to monitor trends over time and identify how the health status of this population can be improved (p. 35). The report also stated (p. 37) that

our service providers require support and training to deal with cultural differences and traditions. Service developments to cope with these needs and demands are required.

⁴⁰ British Medical Association, (2002), *Asylum seekers: Meeting their Healthcare Needs*, BMA, available at <www.bma.org>

3.16 The proposed changes in citizenship laws will not address all of the reasons why migrant women may arrive at hospital at a late stage of pregnancy. Nor will they constructively address the fact that migrant women may have differing health needs to that of the majority Irish population. Calls for increased resources for hospitals, including cultural awareness training and epidemiological research, represent practical solutions to the health care needs of migrant populations. The need to plan and develop health care services that are appropriate for all sections of the population was highlighted throughout the consultative process for the development of the National Action Plan Against Racism (NPAR). A specific issue raised was the need for clear policy direction from the Department of Health and Children⁴¹. It was noted that issues relating to the health and well-being of minority groups can be significantly compounded by a failure to take into account cultural diversity when planning and delivering health and related services. As a result, it was suggested that the visibility of minority ethnic groups in existing and forthcoming health strategies should be significantly increased (ibid: 21).

3.17 As will be discussed in detail in the next section, an increasing number of people from non-EEA countries are coming to Ireland, many of whom are here for labour purposes. In light of general demographic trends within the EU that point to falling birthrates and an increasingly ageing population, it is likely that immigration will continue to be used to help fill gaps in the labour market supply in the future. Additionally, as a signatory of the Geneva Convention, Ireland is obliged to examine each application for asylum lodged within the state and to allow asylum applicants to remain here while their case is being determined. These factors suggest that births to non-national women will remain an issue in Ireland in the future. It can therefore be assumed that the maternity care needs of migrant women from different cultural backgrounds, and who have differing expectations of health care systems, will remain an issue, regardless of Irish citizenship laws.

Section Four: The impact of immigration on the composition of Irish society

4.1 This section discusses the changing migration pattern in Ireland since the late 1990s. It examines some of the reasons for the increase in inward migration, and looks at how migration has impacted on the number of births to non-nationals. Finally, demographic trends within the EU are considered, as these help to clarify the fact that immigration will play a major role in supporting the Union's social support policies.

4.2 The disaggregated figures made available by the maternity hospitals and by the government indicate that women from a variety of countries are giving birth in Ireland. It needs to be remembered that Ireland is now a country of net inward migration. The findings of the 2002 census show that there were 273,520 people usually resident in the state on census night who were not classified as Irish nationals. It is therefore to be expected that the number of non-Irish citizens giving birth will be greater than it was during previous periods when the state experienced net outward migration. This may cast doubts on the idea that amending the Constitution will significantly impact on the numbers of births to non-national mothers.

⁴¹ National Action Plan Against Racism Steering Group, (2003), *Diverse Voices: A Summary of the Outcomes of the Consultative Process and A Proposed Framework for the National Action Plan Against Racism*, Dublin: Stationery Office.

4.3 Immigration into Ireland

Since the mid-1990s, net migration (immigration less emigration) into Ireland has been increasing. According to Watt⁴² (2002:6), emigration levels have decreased significantly since the late 1980s and Ireland has become a country of net inward migration for only the second period since 1921. Economic growth ensured that the period between 1997 and 2001 saw significant labour and skills shortages emerging across many sectors of the Irish labour market. While many of the people who have come to the country since 1996 were returning Irish nationals, increasing numbers of migrant workers (both EU and third country nationals), students, asylum seekers and refugees have also contributed to net increases in the migration rate. As noted by Watt (ibid: 7), the pattern of inward migration into Ireland in relation to the origin of migrants has changed significantly in recent years and is continuing to alter. One significant trend is the increase in the share of migrants coming to Ireland from “the rest of the world.”⁴³

4.4 According to the Immigrant Council of Ireland⁴⁴, a recent figure for returning Irish immigrants is under 40% of immigrants, or less than two in five. It notes that the proportion of returning Irish migrants will continue to decrease in coming years because the available “pool” of would-be return migrants is shrinking, due to a fall in Irish emigration in recent years. As a result, future immigration is likely to consist of a higher proportion of foreign-born individuals (ibid:6).

4.5 The Immigrant Council’s report has highlighted some of the difficulties that exist in attempting to capture exact figures for immigration during intercensal periods. It notes that figures for emigration and immigration between census years should be taken as a guide only, and that there is some evidence that the real level of immigration in recent years may have been higher than suggested (2003:6):

We know, for instance, that the CSO data for immigration suggests that the January to December 2001 figure for immigration from outside the EU and the USA was of the order of 15,000 to 15,500. Yet in the same year more than 29,000 new employment permits were issued (excluding US citizens) and 10,325 persons applied for asylum. This is before foreign students, who do not require employment permits, are taken into account, or the spouses and children...of those admitted with employment permits, work visas or work authorisations.

As a result, the true figure for immigration from “the rest of the world” in this period could be considerably in excess of the CSO Intercensal estimate. If the figures for immigration are greater than those suggested by intercensal estimates, this causes difficulties when attempting to establish the exact numbers of non-nationals resident in Ireland. This has implications for any attempts to compare the number of births to non-nationals with the number of non-nationals who are resident in the country.

4.6 The fact that migration from other EU countries into Ireland is less than migration from outside the EU is in line with Union experience generally. A combination of better living standards and falling fertility rates throughout the region mean that mass migration from any

⁴² NCCRI (2002), *Migration Policy in Ireland: Reform and Harmonisation*, Dublin: NCCRI

⁴³ The “rest of the world” includes all countries except the EU15 and the United States.

⁴⁴ McEinri, Walley (2003), *Labour Migration into Ireland*, Immigrant Council of Ireland, Dublin.

of the current member states is effectively over. As a result, all EU countries are experiencing inward migration from third countries (ibid:8). In relation to immigration statistics (ibid:11),

The Census data for...1996 to 2002 shows an increase in “rest of the world” from 24,552 to 97,159 (including non-EU Europe, Asia, Africa, the Antipodes and the Americas apart from the US), a substantial increase of 72,607. Even allowing for the fact that many of these migrants may not be permanent, these figures are dramatic.

According to the CSO (2003:25), the number of immigrants from the rest of the world, in absolute terms, more than quadrupled between 1996 and 2002.

4.7 The following table illustrates the changes in Ireland’s foreign-born population between 1996 and 2002.

Changes in foreign born population, excluding Britain, 1996-2002

	1996	2002
EU (excluding UK)	19,232	32,801
Other European	3,605	26,235
Africa	4,867	26,515
Asia	8,150	28,132
America (including South America)	19,913	29,119
Antipodes	3,636	8,363

Source: Table adapted from Immigrant Council of Ireland (2003:10), based on CSO statistics

The first demographic estimates for 2003, as issued by Eurostat⁴⁵, confirmed the trends in terms of continuing inward migration. In addition to having the highest natural population growth rate in the EU15 (+8.3 per 1000 inhabitants), Ireland also experienced the largest net migratory flows (+7.0 per 1,000 inhabitants).

4.8 Why has the number of non-national immigrants increased in recent years?

Detailed statistics are available in relation to two groups of immigrants who have contributed towards the increase in Ireland’s foreign- born population. These are people from outside the EEA who come here for the purposes of work, and people who seek asylum in Ireland. It must be noted that these people are resident in Ireland directly as a result of state policy. The economic boom of recent years has resulted in the government actively recruiting workers from outside the EEA to fill gaps in the Irish labour market. In relation to asylum seekers and refugees, Ireland is a signatory of the 1951 Geneva Convention and is therefore obliged to examine each application for asylum made within the state.

4.9 *Labour migration:* People who require official authorisation to take up employment in Ireland (that is, non-EEA nationals) may either be issued with a work permit or a work visa/authorisation. Work permits are the standard type of permit, and have a maximum validity of 12 months, which is renewable. Figures released by the Department of Enterprise, Trade and Employment indicate that the number of work permits issued to non-

⁴⁵Eurostat, *First Demographic Estimates*, Eurostat News release 6/2004, January 9 2004, www.europa.eu.int/comm/eurostat/

EEA nationals has increased enormously from 6,250 permits in 1999 to 47,551 in 2003, an increase of 760% in five years.

Total Work Permits issued by Year and by category: 1999-2003⁴⁶

Year	New Permits	Renewals	Group Permits	Total
1999	4,328	1653	269	6250
2000	15,434	2,271	301	18,006
2001	29,594	6,485	357	36,436
2002	23,326	16,562	433	40,321
2003	21,965	25,039	547	47,551

As is illustrated by the above table, the number of new permits issued fell from 23,326 in 2002 to 21,965 in 2003. The number of renewals increased during the same period, from 16,562 to 25,039, which suggests an increase in the duration that many workers are spending in Ireland. It is likely that migrant workers who are resident in Ireland for sustained periods will be considering the possibility of having families here, and that this will contribute to the numbers of births to non-nationals.

4.10 In addition to the work permits, the Department of Enterprise, Trade and Employment has also issued work visas or authorisations. These are a relatively new development, and are only awarded to workers for high-skills occupations in which it has been decided that a labour shortage exists. Between 2000 and 2002, 7,742 of these were issued. A breakdown by age and gender for people who have been issued with work permits or work visas/authorisations is not available.

Total work visas/authorisations issued, 2000-2002

Year	Number
2000	1,383
2001	3,749
2002	2,610

Source: Adapted from information provided in Forfas, *Responding to Ireland's Skills Needs*, (2003:20)

4.11 *Asylum seekers*: Another source of immigration into Ireland is that of people who are seeking asylum. In the last decade, the numbers of people who apply for asylum in the state has increased. As noted above, Ireland is a signatory of the 1951 Geneva Convention and is therefore obliged to examine every application for asylum lodged within the state. While people are awaiting the determination of their application, they are legally entitled to reside in the state. In 2002, just over half (50.4%) of people who applied for asylum were female. The majority of all asylum applicants (64.7%) were aged between 18 and 35⁴⁷. The main countries of origin of people seeking asylum in 2002 were Nigeria (34.8%), Romania (14.4%) and Moldova (4.6%). In 2003, the main countries of origin were Nigeria (38.4%), Romania (8.8%) and DR Congo (3.2%).

⁴⁶ Source: Statistics supplied by the Labour Force Development Unit, Department of Enterprise, Trade and Employment. Available on <www.entemp.ie/labour/workpermits/Statistics.htm>

⁴⁷ Office of the Refugee Applications Commissioner (2003), *Annual Report 2002*, p.68

Number of asylum applications per year, 1999 to 2003

Year	Number of applications for asylum
1999	7,724
2000	10,938
2001	10,325
2002	11,634
2003	7,900

Source: ORAC *Annual Report 2002*; ORAC web site <www.orac.ie/Pages/Statistics.htm>

This table shows how the number of asylum applications has recently started to decrease, from 11,634 applications in 2002 to 7,900 applications in 2003. More recent figures show that the Office of the Refugee Applications Commissioner had received a total of 1,633 asylum applications as of 30th April 2004. This is a drop of over 50% from the corresponding period in 2003 when 3,485 applications were received⁴⁸. It can therefore be concluded that a combination of the Supreme Court decision in the L&O case and other government policies have had a significant effect on the numbers of people applying for asylum. The figures suggest that legislative and policy measures are effective ways of controlling immigration and that they offer an alternative to Constitutional change.

4.12 An examination of the above figures illustrates that the increase in the number of non-nationals resident in Ireland can be directly attributed to state policy. In the case of people who come for the purpose of labour migration, the number of work permits issued by the government increased by 760% between 1999 and 2003. Between 2000 and 2002, 7,742 work visas/authorisations were also issued. In the case of asylum seekers, Ireland is fulfilling its international duties as a signatory of the 1951 Geneva Convention by accepting and processing applications for asylum made within the state. As noted above, the total numbers of people applying for asylum have fallen since the start of 2003.

4.13 As can be seen, it is clearly government policy to encourage immigration. A tension exists between this policy and claims that non-nationals are exerting pressures on maternity hospitals. For example, 235 of the births in Dublin's maternity hospitals last year were to Filipino women. It is widely acknowledged that many of these women will have been working in the Irish health services and that their skills will continue to be required in the future. This raises doubts about the efficacy of proposed Constitutional amendment to remove the pressures caused by non-nationals who give birth here. Only a radical alteration in the government's position on immigration would ensure that births to non-nationals are not an issue for maternity hospitals.

4.14 In what ways can the arrival of immigrants be expected to impact on birth rates?

As highlighted above, there has been a huge increase in the numbers of non-nationals coming to Ireland in the past few years. Despite these changes, the Minister for Justice has stated that "a disproportionate number of non-national mothers are giving birth to children in Dublin maternity hospitals"⁴⁹. The Minister has not identified exactly why this number is disproportionate. Specific reasons why the number of births to non-nationals has increased include: a rise in the number of non-national women of child-bearing age; an increase in the

⁴⁸ Figures supplied by the Irish Refugee Council, May 2004.

⁴⁹ Minister Michael McDowell, Dail Debates, April 21 2004

numbers of people coming from cultures where high rates of early marriage and large family size are the norm; and an increase in the number of people from backgrounds that place a different cultural emphasis on the reasons for having children.

4.15 *Immigrants of child-bearing age:* Research by Eurostat has found that a significant number of non-EU nationals migrating into the EU are young people under the age of 30. For example, between 1995 and 1999, an average of 38% of all men and 42% of all women immigrants of non-EU nationality were aged 20 to 29. The pattern is also repeated among EU nationals moving between member states (2003:4)⁵⁰. This indicates that women of child-bearing age constitute a substantial proportion of migrants in EU member states.

4.16 Data from the CSO give some indication of the number of women of child-bearing age who are migrating into Ireland. According to the CSO (2003:23), 31,100 women aged 25-34 and 21,200 women aged 35-44 migrated into Ireland between 1996 and 2002. Further statistics show that on Census night 2002, 69,856 women age 15-44 who were not Irish nationals were usually resident in the state. It is not unreasonable to assume that these women will make some contribution to birth rates in the state, given that they could be considering the possibility of having children, regardless of their physical location. The figures also show that the number of non-Irish national women in the age range 15-44, or childbearing age, is proportionally greater than the number of Irish national women in this age range. For example, Irish females aged 15-44 constitute approximately 45% of all Irish females. By comparison, they constitute 74.2% of all African females, and 83% of all Asian females resident in the country. Proportionally, foreign-born women are more likely to have children than Irish-born because there are more of them in the child-bearing age-range.

4.17 *Fertility rates in migrants' countries of origin:* Todaro (1997:192)⁵¹ has stated that world population growth is now primarily the result of a rapid transition from a long historical era characterised by high birthrates and death rates to one in which death rates have fallen sharply, but birthrates, especially in developing countries are only just beginning to fall from their historic high levels. He further notes that birthrates in the less developed countries are substantially higher than they were in pre-industrial Western Europe, largely because of early and almost universal marriage in the developing countries. This assertion is illustrated by statistics relating to total fertility levels in the main countries of origin of one section of Ireland's immigrant population, namely, asylum seekers. In both 2002 and 2003, Nigeria was the main country of origin of people applying for asylum. In 2003, the Democratic Republic of Congo also featured as one of the main countries of origin of asylum applicants. UNFPA figures for these countries illustrate that they have a much total fertility rate than any country in Western Europe. For example, the total fertility rate for Ireland (2000-2005) is 1.9⁵², which is a considerably lower rate by comparison with either country.

⁵⁰ Thorogood and Winquist (2003), *Statistics in Focus: Population and Social Conditions, Theme 3-2/2003*, Eurostat, available at www.europa.eu.int/comm/eurostat/

⁵¹ Todaro, M (1997), *Economic Development, (Sixth Edition)*, Longman: London and New York.

⁵² UN Population Fund, *State of the World's Population*, (2003:76), UNFPA.

Total fertility rate, Democratic Republic of Congo and Nigeria

	Total fertility rate, 2000-2005
Democratic Republic of Congo	6.70
Nigeria	5.42

Source: UNFPA State of the World's Population, 2003, pp.74-75

On the basis of these figures and of general population trends in developing countries, it is not unreasonable to assume that many people coming to Ireland will be expecting to have children and possibly to have more than one child.

4.18 *Other factors that influence birth rates:* Fahey (2001:167)⁵³ notes that some of the factors which will influence the demand for children include the cultural value of children, and background variables such as economic development, education and religion. With an increasing number of people coming to Ireland from a range of countries and cultures, these factors become more complicated and less easy to predict using Irish models. Factors that may influence the number of children that women have include traditionally larger family sizes and earlier patterns of marriage, which are common features in developing countries

4.19 *Comparisons with trends in Ireland:* A high total fertility rate (TFR) and large family sizes are issues with which Irish people have much familiarity. As noted by Fahey (2001:157), the Irish TFR in 1960 was over 40% higher than the average for what later became the EU. Family sizes in Ireland were also extremely large during the 1960s by the standards of virtually all western countries, despite a low incidence of marriage. For example, one-third of births in Ireland in 1960 were fifth births or higher. The number of fifth-plus births had dropped to 15 percent of the total in Ireland by the 1980s, but “it was not until the late 1990s that higher order births in Ireland dropped to something approximating normal levels for developed countries” (ibid:164).

4.20 What are the main demographic trends within the EU and how will this affect the immigration debate?

Europe, and the EU specifically, are experiencing a combination of low birth rates and an increasingly ageing population. In tandem with declining population growth, the number of people aged 60 and over is increasing. According to the *Economist*⁵⁴, the rise in the proportion of the world's old will be the defining demographic trend of the 21st century: people aged 65 and over now make up 15% of the rich world's inhabitants. The predicted increase in dependency ratios has raised concerns about the financing of future social protection⁵⁵. A rising dependency ratio will be an issue for countries that are facing an ageing population, since it becomes difficult for pension and social security systems to provide for a significantly older, non-working population. Immigration is one suggested means of increasing the population of working age, and one that has been used throughout the EU in the past.

⁵³ Fahey, T, *Trends in Irish Fertility Rates in Comparative Perspective*, “Economic and Social Review, Vol. 32, No.2, July 2001, pp.153-180.

⁵⁴ *Economist*, *Forever Young*, special supplement pp.3-4, March 27th, 2004

⁵⁵ The dependency ratio is the ratio between the number of individuals aged below 15 or above 64 divided by the number of individuals aged 15 to 64, or those who are classified as being within the working age population.

4.21 A report delivered to the UN in 2000⁵⁶ noted that the ageing of the EU's workforce and the risk of growing imbalance in the financing of social protection will accelerate in the future and raise serious questions about the capacity of existing institutions to handle the impact (2000:2):

Immigration is considered as one of the potential means to address the demographic challenge...There is a growing awareness that restrictive immigration policies of the past 25 years are no longer relevant to the economic and demographic situation in which the Union now finds itself.

4.22 According to the report, labour capacity will be reduced in the EU over the next decades as a result of rapid decreases in the age group of 15-29, increases in the average age of the labour force, and increases in the number of people aged 65 and over. It states that by 2020, the majority of member states will be faced with pressures in their economic dependency ratios that could not be managed by employment growth, unless the EU increases its employment capacity by opting for either substantial reforms of its social protection system or a substantial growth of immigration (2000:5). Fertility rates throughout Europe have fallen to sub-replacement levels⁵⁷, which will also lead to long-term population decline and the ageing of the labour force. The 2004 European Population Forum noted that Europe was the only continent that experienced a population decline between 1999 and 2004⁵⁸. It was estimated that Europe may lose as much as 13% of its population between 2000 and 2050, "shrinking Europe's global demographic share from 12 per cent to 7 per cent" (2004:7).

4.23 The Forum noted that population growth in Western Europe is often fuelled by the rise in foreign-born populations. Projected increases in net immigration to meet labour needs means that these increases will become a feature of many societies in the region in the future. As a result, one of the key challenges for the future will be ensuring that the integration of immigrants is a success, "in order to maximise their positive contribution to society and to reduce possible tensions between the native and foreign populations" (ibid:8). Because the children of immigrants constitute a sizeable fraction of the younger European population, their position can be seen as a litmus test for the success or failure of integration policies.

4.24 What are the implications for Ireland?

The need for migrant workers to support an ageing and decreasing population are also concerns for Ireland. According to economist Moore McDowell⁵⁹,

in most of the countries of the current EU the birth rate in the indigenous population is now so low that by 2015 most will have falling indigenous populations. By 2020 that will include Ireland.

⁵⁶ Fotakis, C (2000), *Demographic ageing, employment growth and pensions sustainability in the EU: The option of migration*, UN/Pop/PRA/2000/21

⁵⁷ Replacement level fertility is defined as the number of children needed to keep the population at a stable size, and is generally considered to be an average of 2.1 children per woman.

⁵⁸ *Population challenges and Policy responses: Summary of deliberations, outcome of the European Population Forum 2004: 12-14 January 2004*; Geneva, UN Economic Commission for Europe; UN Population Fund; Swiss Government. UN: February 2004.

⁵⁹ *Why we need migrants for a better Ireland*, Moore McDowell, Irish Independent, January 6 2004 (reprinted in *Asylum*, Spring 2004)

He states that, broadly speaking, an ageing and declining population points towards lower economic growth and declining living standards. Although the entry of the 10 accession countries into the EU15 will probably result in a temporary increase in skilled labour migration into the latter, the problem of birth rates will remain unchanged:

Unless we sharply reverse the trend in the birth rate, our current standard of living depends absolutely on attracting immigrants, especially those with a high endowment of human capital...We must accept that immigration is a source of renewal and innovation, and that hard-working, skilled immigrants are needed.

4.25 The need for immigrants to support the Irish economy has also been noted by the Minister for Justice, who has outlined the necessity for comprehensive immigration legislation that is in line with best international practice. According to the Minister,

This is particularly important if we are to meet the future needs of our economy in relation to both skilled and semi-skilled labour given the anticipated decline in the population of working age in Ireland based on present demographic trends⁶⁰.

4.26 It can be seen that (a) Ireland already has an established population of non-nationals, many of whom have come here to fill gaps in the labour market and (b) the need for immigrant workers is unlikely to disappear in the future. These non-nationals will help to contribute to the Irish economy and to support an increasingly ageing population. While resident in Ireland, they will need to avail of various services, including maternity care services. Births to non-nationals will therefore continue to be an issue in the future, irrespective of any changes to citizenship laws.

Section Five: Conclusions

5.1 Argument in favour of the proposed Constitutional changes

A closer examination of some of the government's arguments in favour of the proposed Constitutional amendment highlights various inadequacies. No statistics have been provided that are in themselves sufficient to vindicate the claim that there are very large numbers of non-EU nationals coming to Ireland with the sole purpose of giving birth. Immigrants in Ireland include a wide range of people who have come to the country for a variety of purposes, eg, on foot of a work permit, visa or authorisation; people seeking asylum; people with refugee status; students; and people who are the non-national spouses or partners of Irish citizens.

5.3 It is inconsistent that there have been no proposals to remove the "grandfather clause" from Irish legislation. This entitles people of Irish descent who may have no connection to the state to Irish citizenship, solely by virtue of having their name entered on the Foreign Births' Register.

5.3 Reference has been made to "anecdotal" evidence that women are coming to the country with the sole purpose of giving birth and obtaining an Irish passport for their children. Anecdotal evidence does not constitute a sound basis on which to alter the Constitution.

⁶⁰ Minister Michael McDowell, address to the MacGill Summer School, 30 July 2002, as quoted in *Migration Policy in Ireland: Reform and Harmonisation*, (2002:8), Dublin: NCCRI

5.4 Members of the government have repeatedly made misleading statements relating to the numbers of pregnant women who apply for asylum. Although the proportion of pregnant women applying for asylum remained constant between July-December 2002 and the same period in 2003, the actual number dropped by 59.5%% between the two periods.

5.5 The situation in Dublin's maternity hospitals

The total number of births in Ireland is now lower than it was during the 1970s and early 1980s, which suggests that maternity hospitals are not in fact experiencing "unprecedented pressures", as has been suggested by the Minister for Justice. Despite the fact that the total number of births in Ireland has increased in recent years since the lows reached in the early 1990s, the total number of beds available in Dublin's maternity hospitals was lower in 2003 than it was in 2000, and considerably lower than the number available in the mid-1970s to mid-1980s. The need for increased funding and staffing levels has been raised by the Master of at least one of the capital's maternity hospitals.

5.6 According to the Master of the Coombe, the elimination of births to non-nationals who give birth in Ireland for the sole purpose of gaining Irish citizenship would not result in a significant reduction of the pressure on the hospital. He stated that if the hospital got additional beds and staff, it could easily cope with the demand from non-nationals. He also stated that the projected number of births to non-nationals for 2004 are expected to be less than the numbers for 2003.

5.7 Statistical information relating to births to non-national women

Comprehensive data are not available from the maternity hospitals relating to the residency status of women who present themselves for delivery. As a result, it is not possible to draw any definitive conclusions about the numbers of women who come to Ireland with the sole intent of giving birth here and thus giving their children an entitlement to Irish citizenship. Women's motivations for giving birth in the country will obviously differ according to their residency status. For example, a woman who has come to the country as a result of being issued a work permit, visa or authorisation may be considering the possibility of having a child, regardless of her physical location. In the case of pregnant women who are seeking asylum, the circumstances of conception need to be taken into consideration, as these may be a root cause of their seeking asylum.

5.8 No statistical information has been provided by the government about mothers' length of residency in Ireland prior to giving birth, despite the relevance of this to the debate. In at least one of Dublin's maternity hospitals, this information is not collected. It is therefore not possible to draw any definitive conclusions about the number of women who have arrived in the country shortly before giving birth.

5.9 Even though the nationality of a child's father will obviously have an impact on her/his citizenship entitlements, such statistics are not collected. A child whose father is an Irish citizen is entitled to Irish citizenship, irrespective of whether she or he is born in Ireland.

5.10 Statistics show that the total number of non-EU national women who arrived unannounced or at a late stage of pregnancy in the three maternity hospitals in 2003 was at most 548. This figure includes all non-nationals who arrived late or unannounced at the Coombe, some of whom may have been EU nationals. Even assuming that all of these

women were non-EU nationals, the figure represents just under 2.4% of births in Dublin's maternity hospitals in 2003. As discussed, it is not possible to assume that all of these women had recently arrived in the state with the sole intent of giving birth here. A total of 174 Irish nationals also arrived late and unannounced at two of the maternity hospitals (the Coombe and the National Maternity Hospital), which indicates that there can be other reasons for late arrivals.

5.11 The above information shows that it is not possible to demonstrate that recent increases in births to non-national women is substantially attributable to the fact that their children are entitled to Irish citizenship. It is therefore difficult to argue that changing the citizenship laws will have a substantial effect on the number of births taking place to non-nationals. Nor is it possible to conclude that the proposed changes will eliminate the fact that non-national women arrive unannounced or at a late stage of pregnancy at maternity hospitals: statistics demonstrate that Irish women also arrive in these circumstances.

5.12 The maternity care needs of migrant women

A number of issues can affect the stage at which non-national women may first avail of antenatal services. These include language barriers, a lack of information about maternity services and about their rights and entitlements, child rearing responsibilities, and differing cultural practices in their countries of origin. Some women may also feel that they cannot take time off work to attend antenatal classes because they are afraid of losing their jobs or cannot afford to forego the money they would have earned. A particular issue for pregnant asylum seeking women and for health service providers is the fact that their mobility can affect the transfer of their medical records.

5.13 These problems are not specific to Ireland: international research has documented the fact that migrant women as a group can have a poor and irregular uptake of antenatal care. The reasons for this include the fact that mothers from different ethnic groups may have different expectations and knowledge of their own health and of the value of health services in the receiving country.

5.14 Changes in immigration patterns mean that health service providers are now encountering a new client group who will have different needs to those of the indigenous Irish population. Issues that have arisen include language barriers, differing cultural practices and an increasing incidence of diseases that may be more common in patients' countries of origin than in Ireland. It is obvious that catering for a new client group with a range of differing needs will place pressures on health service providers that need to be addressed through the development of appropriate responses.

5.15 Suggestions for actions to meet the needs of pregnant non-national women include the provision of accessible 24-hour interpretation services, support and training for staff who are dealing with clients from different cultural traditions, the provision of extra resources to deal with infectious diseases, and increased epidemiological research to monitor trends over time and identify how immigrants' health status can be improved. In particular, the need for accessible information for migrants about health care services has been repeatedly stressed. None of these issues will be addressed by the proposed amendment to the Constitution. They require changes in the structure of health service provision that would reflect the fact that non-nationals may have differing needs to that of the majority Irish population.

5.16 The effects of immigration on the composition of Irish society

It has been claimed by the government that a “disproportionate” number of births are taking place to non-nationals in Ireland. However, the composition of Irish society has altered radically in recent years and the state is now experiencing in-migration rather than outward migration. The numbers of people coming into the country has increased, as a result of a rise in the number of work permits, visas and authorisations being issued, and as a result of increasing numbers of people applying for asylum. Figures released by the Department of Enterprise, Trade and Employment indicate that the number of work permits issued to non-EEA nationals has increased enormously from 6,250 permits in 1999 to 47,551 in 2003, which represents an increase of 760%. Further increases may be attributed to growing numbers of non-national students, non-nationals who are spouses of Irish nationals, and people admitted to the country under family reunification programmes.

5.17 As a signatory of the 1951 Geneva Convention, Ireland is obliged to examine every application for asylum lodged in the state. Recent figures show that the number of asylum applications is decreasing: between January and April 30th, 2004, the Office of the Refugee Applications Commissioner received a total of 1,633 asylum applications, which constituted a drop of over 50% from the corresponding period in 2003. It can therefore be concluded that a combination of the Supreme Court decision in the L&O case and other government policies have had a significant effect on the numbers of people applying for asylum. The figures suggest that legislative and policy measures are effective ways of controlling immigration and that they offer an alternative to Constitutional change.

5.18 Increases in inward migration by non-nationals will obviously have an impact on the number of children born to non-nationals. Research by Eurostat has found that women of child-bearing age constitute a substantial number of migrants throughout the EU. Data from the CSO give some indication of the number of women of child-bearing age who are migrating into Ireland. According to the CSO, 31,100 women aged 25-34 and 21,200 women aged 35-44 migrated into Ireland between 1996 and 2002. Further statistics show that on Census night 2002, 69,856 women aged 15-44 who were not Irish nationals were usually resident in the state. It is reasonable to assume that their arrival will make some contribution to birth rates in the state, given that they could be considering the possibility of having children, regardless of their physical location.

5.19 Other issues relating to birth rates that warrant consideration include the fact that migrants may be coming from societies where it is more traditional to get married and have children at a younger age than is now the case in Ireland. Some of the factors that will influence the demand for children include the cultural value of children, and background variables such as economic development, education and religion.

5.20 Demographic trends throughout the EU point to low birth rates and increasingly ageing populations. It has been predicted that the ageing of the EU’s workforce and the risk of growing imbalance in the financing of social protection will accelerate in the future and raise serious questions about the capacity of existing institutions to handle the impact. Immigration has been suggested as a possible means of increasing the population of working age. Within the Irish context, the important role played by immigrants in supporting the economy, and the continuing need for their labour, has been widely acknowledged.

5.21 It can be seen that (a) Ireland already has an established population of non-nationals, many of whom have come here to fill gaps in the labour market and (b) the need for immigrant workers is unlikely to disappear in the future. These non-nationals will help to contribute to the Irish economy and to support an increasingly ageing population. While resident in Ireland, they will need to avail of various services, including maternity care services in the case of women who choose to give birth in the state.

5.22 Conclusions

The government has not demonstrated that the increase in the number of births to non-nationals is substantially attributable to the fact that their children are entitled to Irish and EU citizenship. When immigration patterns are examined in closer detail, it can be seen that state policy is a main causal factor of the increase in the number of non-nationals in Ireland. This policy includes, *inter alia*, the recruitment of workers to fill gaps in the Irish labour market, the granting of student visas, and the fulfillment of the country's obligations as a signatory of the Geneva Convention. The presence of these non-nationals in the state must be a considerable causal factor of recent increases in the number of births to non-nationals.

5.23 The above findings suggest that the proposed Constitutional amendment will not satisfactorily address the main concerns the government has raised in relation to pressures on maternity hospitals. On the basis of the statistics provided, it is not possible to establish how many women have come to Ireland with the sole intent of giving birth and gaining an entitlement to Irish citizenship for their children. It therefore cannot be definitively concluded that changing Irish citizenship laws will have a significant impact on the number of non-nationals who are giving birth in Ireland. However, it can be stated that changes to the Constitution will not affect the fact that there are large numbers of non-national women resident in the country as a result of official policy, and that it is likely that some of them will be considering the possibility of having children here. The issue of births to non-nationals will therefore remain an issue for the foreseeable future, regardless of any changes in citizenship laws.

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