



Volume 34: Issue 9
ISSN 0790-4290

Contents

Page No.

- 1 Introduction**
- 2 Passports and visas**
Everyone needs a valid passport or identity card and citizens of certain countries also need visas when travelling to Ireland.
- 3 Permission to land in Ireland**
Foreign citizens need permission to land in Ireland. This can be refused for various reasons.
- 3 Rights of residence**
The right to live in Ireland depends on your nationality and why you are coming to Ireland.
 - EU/EEA/Swiss nationals
 - Non-EU/EEA/Swiss nationals
 - Refugees
- 7 Immigration, Residence and Protection Bill 2007**
A new Immigration Bill has been published which would codify the current arrangements and put visas and rights of residence on a statutory basis.

Relate

The journal of developments in social services, policy and legislation in Ireland

Immigration

In recent years, a considerable number of people have moved from other countries to live in Ireland. The majority of these immigrants come here to work, some come as students, some come as asylum-seekers and some come to retire.

The majority of workers who come to Ireland come from the European Union (EU) member states. They and their family members have specific rights under EU laws to come to Ireland and to work and live here. These rights apply in a broadly similar way to people from the other European Economic Area (EEA) countries – Iceland, Norway and Liechtenstein – and to people from Switzerland. People from outside the EEA and Switzerland have much more limited rights to come to Ireland and are subject to different residence rules when they are living here.

Asylum-seekers may get permission to stay in Ireland if they meet the requirements for asylum (that is, they get refugee status) or if they get leave to remain for other reasons. Their rights and the rights of their family members are different again. Here we look at the different rights which attach to the different groups of immigrants.

The legislation currently governing entry to and the right to remain in the country is quite complex and some aspects of the system (notably the granting or refusal of visas, and the residence rights of non-EU/EEA/Swiss nationals) are not covered by legislation at all.

The Immigration, Residence and Protection Bill 2007 has been published. This aims to set out a legislative framework for the management of all immigration into Ireland. It proposes some changes, particularly to the system of applications for

asylum. It proposes to put the present visa arrangements on a statutory basis and to codify and update the rules on entry and residence, and on removal from the country. It is not clear what will happen to the Bill when the new Dáil and Seanad meet.

Passports and visas

Passports

Most foreign nationals – including citizens of the EU/EEA and Switzerland – need a valid passport or identity card in order to land in Ireland. Irish and UK citizens travelling within the Common Travel Area (Ireland, the UK, the Channel Islands and the Isle of Man) do not, in theory at least, need a passport or ID card. They may, however, be asked for some form of proof that they are Irish or UK citizens and passports are generally the best form of proof available. In practice, you need some form of photo ID for security purposes when travelling by air.

Visas

Nationals of certain countries (for example, USA, Australia, a number of African countries) do not need visas to enter Ireland. They are subject to the same rules about permission to land as nationals of countries which are subject to visa requirements – see below. If you are required to have a visa and you do not have one, you are likely to be refused permission to land. However, having a visa does not guarantee that you will get permission to land – you may still be refused permission as described below.

The countries whose nationals do not require visas are set out in Statutory Instruments; changes are made from time to time. The current list is contained in the Immigration Act 2004 (Visas) (No. 2) Order 2006, SI 657/2006. You need a visa if you come from a country which is not listed. The basis on which visas may be granted or refused is not set out in legislation. Application for visas is usually made to Irish embassies and consulates abroad. The decision on whether or not to grant a visa is made by the Department of Justice, Equality and Law Reform. You must be given a reason for the decision. Visa decisions are listed on the Irish Naturalisation and Immigration Service website (without the applicant's personal details). These show that the reasons for refusal of visas include insufficient documentation supplied by the applicant, inadequate funds available to the applicant and inadequate evidence of a relationship with a person in Ireland whom the applicant wishes to visit or join.

There are some general policy reasons for refusing to grant a visa. It is not the general policy to grant a visa to allow you to join or visit a person whose permission to live in Ireland was granted under the "Irish Born Child Scheme" or who is in Ireland on a student visa. It is also not the general policy to grant a visa to dependent family members over the age of 18 to join or visit people who have been granted residency in Ireland. You may be able to make a case as to why you should be an exception to these general policy rules.

In general, visitors' visas are for a maximum of 3 months. If you then want to stay on in the country, it is very difficult to get the visa extended. The grounds on which such a visa may be extended include humanitarian grounds such as caring for a sick relative. Extensions to visitors' visas are not granted if a change of status is involved. If you want to change status from a visitor to a student or a worker, you have to return to your country of origin and make the application to the nearest Irish embassy or consulate. Similarly, students who are granted visas to study in Ireland and who wish to remain on in the country have to leave and apply from outside Ireland for a resident visa.

An exception to this rule is the Graduate Scheme, which allows non-EEA students who have acquired a primary, masters or doctorate degree from an Irish third-level educational institution to apply to the Irish Naturalisation and Immigration Service for permission to remain in Ireland for 6 months after the receipt of their examination results. This period will allow them to look for work and, if appropriate, apply for an employment permit.

You may appeal the refusal of a visa to a Visa Appeals Officer at the following address:

Visa Section

Department of Justice, Equality and Law Reform

13/14 Burgh Quay

Dublin 2.

Permission to land in Ireland

Irish citizens and other nationals of the Common Travel Area are entitled to land in Ireland. EU/EEA and Swiss nationals may be prevented from landing in Ireland only in very restricted circumstances. Nationals of other countries need permission to land. The rules about permission to land are the same whether or not you are required to have a visa in order to come to Ireland.

EU/EEA/Swiss nationals

If you are an EU/EEA/Swiss national, you may be refused permission to land in Ireland only if

- You are suffering from a specified disease or disability or
- Your conduct has been such that it would be contrary to public policy or would endanger public security.

Nationals of other countries

If you are not an EU/EEA/Swiss national, the Immigration Officer may give you permission to enter the State and stay for up to 90 days. After that, you must have the permission of the Minister for Justice, Equality and Law Reform – see "Rights of residence" below.

The Immigration Officer may refuse you permission to land for any one of a number of reasons. For example, permission may be refused if the Immigration Officer has reason to believe that:

- You are not in a position to support yourself and any dependants arriving with you.
- You intend to take up employment or self-employment

and you do not have an employment permit or a business permission.

- You suffer from certain specified conditions. These include TB, other infectious diseases, drug addiction and profound mental disturbance (this is defined as "manifest conditions of psychotic disturbance with agitation, delirium, hallucinations or confusion").
- You have been convicted of an offence which carries a penalty of a year's imprisonment or more.
- You are obliged to have a visa and you do not have one.
- You are the subject of a deportation order, an exclusion order or similar order.
- You do not have a valid passport.
- You intend to travel to Great Britain or Northern Ireland and you do not have a right to enter there.
- Your entry or presence in Ireland could pose a threat to national security or be contrary to public policy.

If you are refused permission to land you must be given the reasons in writing. You may be given permission to land but with conditions attached.

Rights of residence

The rights of residence of EU/EEA/Swiss nationals and of their family members are set out in legislation and are quite clear. The granting of refugee status is governed by legislation and such status gives refugees and their family members the right to live in Ireland. The right of residence of any other person is largely at the discretion of the Minister for Justice, Equality and Law Reform and is not covered by legislation at present. The description given here is of the current administrative practices in this area.

EU/EEA/Swiss nationals

Free movement of people throughout the EU is one of the basic rights of EU citizens. It is provided for in the treaties governing the EU and in various EU Directives and Regulations. The main EU legislation at present is set out in Regulation No 1612/58 and Directive 2004/38/EC. The 2004 Directive is implemented in Ireland by the European Communities (Free Movement of Persons) Regulations 2006 (SI 226/2006). Most of the EU law on free movement also applies to citizens of the other EEA countries – Iceland, Norway and Liechtenstein. The 2004 Directive has not yet

been applied to the other EEA countries but it is expected to be in the near future.

This Directive came into effect in 2006 and it involved, among other things, a change in the definition of family members to include the possibility of registered partners and some changes in registration requirements. In practice, these did not involve significant change in Ireland so there is no major difference between the rights of EU nationals in Ireland and the rights of nationals of the other EEA states. There are agreements with Switzerland which mean that Swiss nationals are treated in broadly the same way as EU nationals.

Citizens of Bulgaria and Romania have the same general rights to free movement as all other EU citizens, but for a transitional period they are required to have employment permits. (Those who were working in Ireland on a work permit for a continuous period of 12 months or more prior to 31 December 2006 do not need an employment permit.)

Free movement of people means the right to move to and live in another of the countries where the rule applies. This right is not absolute but it is fairly extensive.

In summary, if you are an EU/EEA/Swiss national then you and your family members have the right to come to Ireland for 3 months with no conditions attached. You then have the right of residence for longer than 3 months if:

- You are working or self-employed.
- You have enough resources so that you and your dependants do not become a burden on the social assistance system and you have comprehensive sickness insurance. or
- You are a student, you can maintain yourself, you have a place in an educational institution and you have sickness insurance.

Family members

Certain family members have the same right to free movement within the EU as the EU citizen even if they themselves are not EU/EEA/Swiss citizens. The 2004 Directive defines family members as:

- Spouses
- Registered partners if the host member state treats such partnerships as equivalent to marriages (Ireland does not recognise registered partnerships and so registered partners do not have an automatic right to live in Ireland)
- Direct descendants – for example children or grandchildren – who are

aged under 21 or are dependants (of the EU citizen and the spouse or partner)

- Direct ancestors – for example parents or grandparents – who are dependent.
- Other family members who do not have an absolute right may be able to move to Ireland. The Directive requires member states to facilitate the entry and residence of:

- Family members who are dependants or members of the household of the EU citizen or where serious health grounds strictly require the personal care of the family member by the EU citizen and
- A partner with whom the EU citizen has a durable relationship. The Irish authorities consider applications for residence cards from partners of EU nationals who can establish that the relationship has existed for at least two years.

The immigration authorities are required to undertake an extensive examination of the personal circumstances in these cases and must justify any refusal of entry or residence.

In general, your family members retain the right to live here if you die or if they cease to be a spouse or partner.

Registration requirements

EU/EEA and Swiss nationals (including nationals of Bulgaria and Romania) are not required to register with the immigration authorities.

Family members of EU citizens who are not themselves EU/EEA or Swiss nationals are required to get a Residence Card. They cannot be refused this card if they come within the definition of family members with a right to live here. If you have this residence card, you no longer need a visa to land in Ireland even if you come from a country whose nationals usually need visas.

After 5 years living in Ireland, EU citizens and their families may apply for a Permanent Residence Certificate (EU citizens) or a Permanent Residence Card (family members who are not EU citizens). You have the right to get these certificates and cards but there is no requirement that you have them.

Rights while resident in Ireland

If you are a citizen of one of the EU/EEA countries or of Switzerland, you and your family members have the right to:

- Move to Ireland and live here while looking for work
- Get help from FÁS to find work
- Work without needing an employment permit (except for Bulgarian and Romanian citizens moving to Ireland)
- Establish yourself as a self-employed person (this does apply to citizens of Bulgaria and Romania)
- Transfer your unemployment benefit or equivalent to Ireland for 3 months (up to 6 months in some cases), if you are eligible for that benefit in the country you are leaving
- Have your qualifications recognised under the EU rules
- Not be treated less favourably than citizens of Ireland
- Qualify for the same social and tax benefits as Irish citizens
- Combine the social security contributions from the relevant countries in which you have worked in order to qualify for benefits
- Come to Ireland to study if you get a place in an educational institution and you are able to support yourself; you are not entitled to help with maintenance costs
- Retire to Ireland if you are able to support yourself.

Non-EU/EEA/Swiss nationals

As already stated, the rights of non-EU/EEA/Swiss nationals (third-country nationals) to live in Ireland are not set out in legislation.

Registration requirements

The Immigration Officer may give you permission to enter the country and stay for up to 90 days. After that, you must have the permission of the Minister for Justice, Equality and Law Reform. You must register with the Garda National Immigration Bureau (GNIB) in Dublin or with the local Garda Superintendent in other parts of the country and apply for permission to remain in Ireland.

In order to get permission to remain, you need documents such as a valid passport and an employment permit if you are coming here to work. If you are coming here as a student, you must show evidence that you have enough money to maintain yourself, that you have registered with a college, that you have paid the fees and that you have private medical insurance. If you are not economically active and not a student, you must be able to show that you can maintain yourself and that you have private health insurance. There is no general requirement that third-country nationals who are legally employed or self-employed in Ireland have private health insurance. It is possible for the immigration authorities to impose this as a condition in particular cases.

If you wish to send your children to a primary or second-level school in Ireland, the policy at present is to grant visas and permission to remain only to students who are attending fee-paying schools. (This does not apply to school-age children who are living in Ireland with their families.)

If you get permission to remain in Ireland, your passport is stamped with the necessary stamp showing the period of time and the conditions under which you have been allowed stay. The main categories of stamp are:

- Stamp no. 1 for people who have an employment permit or business permission.
- Stamp no. 2 for students who are attending a recognised full-time course of at least one year's duration. They are permitted to work for 20 hours a week during term-time and full-time during holidays.
- Stamp no. 2A for students attending a course of less than one year's duration. They are not permitted to work.
- Stamp no. 3 for people who are not permitted to work. This includes visitors, tourists, retired people and the spouses and dependants of employment permit holders.
- Stamp no. 4 for spouses and dependants of Irish and

EEA nationals; Convention and Programme refugees; and people granted humanitarian leave to remain. They are allowed to work without an employment permit or business permission.

- Stamp no. 4 (EU FAM) for spouses and dependants of EU nationals who have exercised their right to move to and live in Ireland. They are allowed to work without an employment permit or business permission.

You also get an Immigration Certificate of Registration – generally known as a GNIB card.

The following third-country nationals are not obliged to register:

- Those who are visiting for less than 3 months
- Those under the age of 16
- Those who were born in Ireland.

Your permission to stay is normally for the length of your course or the duration of your employment permit.

Long-term residence

If you are legally living and working in Ireland for 5 years, you may apply for a 5-year extension of your permission to remain. Your spouse and dependants who have been legally living in Ireland for at least 5 years may also apply for long-term residence. Time spent in Ireland as a student or an asylum-seeker does not count for long-term residence. After 8 years of legal residence you may apply for indefinite permission to remain. If you have an employment permit, you may get this indefinite permission earlier.

Employment permits

The law on employment permits was described in the March 2007 issue of Relate. Foreign nationals need an employment permit in order to work legally in Ireland **unless** they are in one of the following categories:

- Citizens of EU member states (other than Romania and Bulgaria) and their spouses and dependants (regardless of their nationality)
- Citizens of the other EEA member states (Norway, Iceland and Liechtenstein) and Switzerland and their spouses and dependants
- People who have been granted refugee status in Ireland
- People who have been refused refugee status but have been given leave to remain on humanitarian grounds
- People who have been given leave to remain because they are the spouse or parent of an Irish citizen
- Postgraduate students where the work is an integral part of the course of study being undertaken.

In summary, there are now four different kinds of permit:

- **Green Card Permits** are for highly skilled migrant workers in specific occupations or earning more than €60,000 a year.
- **Work permits** are for those occupations to which the Green Card Permit does not apply and where the salary is €30,000 or more and, in very limited circumstances, where the salary is less than this.
- The **Intra-Company Transfer** scheme is designed to facilitate the transfer of senior management, key personnel or trainees who are foreign nationals from an overseas branch of a multinational corporation to its Irish branch.
- **Spousal/dependant permits** may be issued to the spouses of employment permit holders and to their dependent family members aged under 18.

The general rules on registration apply to all employment permit holders. Rights of residence and rights to bring family members to Ireland vary with the kind of permit.

Green Card permits are issued initially for 2 years. After that they may be issued for an indefinite period. You may get long-term residence in Ireland after 2 years. You may bring your family to live with you in Ireland immediately. Your spouse and dependants may then get spousal/dependant work permits.

Work permits may be issued for an initial period of up to 2 years and may then be renewed for a further 3 years. After that, the permit may be renewed for an indefinite period. You may get long-term residence in Ireland after 5 years. You may be able to bring your family to live here after you have been legally working here for a year. You also have to be able to show that you will be able to support them. In practice, you need to be earning an income above the limits for Family Income Supplement.

Your spouse and dependants aged under 18 may apply for a spousal/dependant work permit once they are legally resident in Ireland on the basis of being your spouse or

dependant. The spousal/dependant work permit has the same duration as that of the main employment permit holder and may then be renewed if the main permit is being renewed.

Marriage to an Irish citizen

Marriage to an Irish citizen does not confer an automatic entitlement to live in Ireland. You have to apply in the normal way for permission to remain. If you are granted permission to remain you receive a stamp no. 4 on your passport and are allowed to work without needing an employment permit.

Parents of Irish-born children

Special arrangements were made in 2005 for the parents of Irish-born children (where the children were born before 1 January 2005 and are Irish citizens) to get leave to remain in Ireland. A number of aspects of this scheme are currently the subject of High and Supreme Court proceedings.

Rights while resident in Ireland

You are obliged to abide by the terms of your permission to remain in Ireland. You must inform the immigration authorities if you move from one Garda District to another – that means that you must register at the Garda Superintendent's office in the new district. Otherwise, you have broadly the same rights and obligations as Irish citizens.

If you are working, you are entitled to the same terms and conditions as Irish workers. You are covered by all the employee protection legislation. You may not be discriminated against on grounds of nationality or racial origin. You are entitled to health services on the same basis as Irish people living in Ireland. Your children are entitled to education services up to the age of 18 on the same basis as Irish children. They need to have been living legally in Ireland for at least 3 years in order to be eligible for third-level education on the same basis as Irish citizens.

Refugees

You may apply for refugee status to an Immigration Officer when you arrive in the country or you may make your application directly at the Office of the Refugee Applications Commissioner (ORAC). You may appeal a decision to the Refugee Appeals Tribunal (RAT). You have the right to stay in Ireland until a decision is made about your application. The Reception and Integration Agency (RIA) organises your accommodation and provides directly for you. This means that you are placed in an accommodation centre run by the RIA and you get all your meals there and a small amount of pocket-money. You are not entitled to work.

If you are not granted refugee status, you are no longer entitled to live in the country and you may be deported. When you are told that you are to be deported, you may then apply for leave to remain. Leave to remain is at the Minister's discretion and is usually granted for humanitarian reasons or it may be granted because of the *non-refoulement* principle, which protects people from being returned to places where their lives or freedoms could be threatened. When deciding, the Minister must take into account a number of factors including the common good and your individual family and domestic circumstances. If you are granted leave to remain, you have broadly the same rights as a refugee.

If granted refugee status, you are then entitled to live and work in Ireland. You do not need an employment permit. You have the same rights as Irish citizens to services such as education, welfare and health.

You may apply for members of your family to be given permission to come and live in Ireland. In general, the Minister must grant permission to your spouse and dependent children aged under 18 and, if you are under 18, to your parents. The Minister has discretion to grant permission to other dependent members of your family.

Immigration, Residence and Protection Bill 2007

This Bill provides for a legislative framework for immigration. It has been promised for some time.

Comhairle – now the Citizens Information Board – made a submission on the issues involved. This is available at www.citizensinformationboard.ie.

The current immigration rules are set out in the Aliens Act 1935, the Immigration Act 1999, the Immigration Act 2003 and the Immigration Act 2004. This Bill would repeal and replace all of these Acts and put some of the current administrative arrangements on a statutory basis.

Inherent executive power of the State

The Bill provides that nothing in the legislation shall be taken to affect the executive power of the State, exercised by the Government, to make overall policy decisions in relation to immigration and decisions about whether a foreign national or a foreign national of any class may enter, be present in or be required to leave the State. In effect, the discretion of the Government in this area would remain significant. The Bill provides that the Government may make statements of immigration policy which would set out criteria and guidelines on various matters – these would broadly have the same effect as legislation.

Visas

At present the arrangements for visas are not on a statutory basis and the Bill addresses this. It sets out provisions on the issuing of visas. It provides that a visa may contain any information including biometric information. A visa would not confer an entitlement to enter the country. The granting of a visa would still be subject to Ministerial discretion and the Government or Minister would also have discretion about imposing any conditions. A bond or guarantee could be required as part of the application process.

People who are refused visas must be told the reason but the Minister is not obliged to disclose certain information – information given in confidence or other information the disclosure of which would be prejudicial to public security or

public policy. The Minister will have the power to revoke a visa.

The Bill sets out in broad terms the reasons why visa applications may be refused. These include that the applicant may be unable to support him/herself and his/her dependants while here.

The Bill provides for visa review application where a visa has been refused or revoked. This review would be conducted internally. This process would not apply to all refusals or revocations. For example, it would not apply to visa decisions made personally by the Minister or to refusals or revocations where false information was given.

Entry and residence

It is not proposed to significantly change the current rules on permission to land or on rights of residence. The Bill provides for the issuing of long-term residence permits to foreign nationals – they would then have broadly similar rights to Irish citizens.

Everyone (including Irish citizens) arriving in or leaving the country would be obliged to provide immigration officers with any information they need for the performance of their functions.

Foreign nationals would be obliged to provide biometric information to an immigration officer or a member of the Gardaí when required to do so.

The Bill provides that there would be restricted entitlement to State services in the case of foreign nationals unlawfully present in the country. Any foreign national who is unlawfully in the country would not be entitled to take up work, engage in business or avail of any state-funded benefits or services. Certain essential services are excluded. These are essential medical treatment, medical or other services necessary for the protection of public health, education services for those under 16, legal aid in relation to the person's entry into or presence in the country, exceptional or urgent needs payments under the Supplementary Welfare Allowance scheme and other help of a humanitarian nature or for dealing with emergencies or for repatriation.

The Citizens Information Board is the statutory body which supports the provision of information, advice and advocacy on the broad range of social and civil services to the public. It provides the Citizens Information website and supports the voluntary network of Citizens Information Services and the Citizens Information Phone Service.

Head Office

7th Floor t + 353 1 605 9000
Hume House f + 353 1 605 9099
Ballsbridge e info@ciboard.ie
Dublin 4 w www.citizensinformationboard.ie

Asylum

The Bill also deals with the asylum process. It proposes to repeal the current rules governing asylum, that is, the Refugee Act 1996 and the European Communities (Eligibility for Protection) Regulations 2006 (SI 518/2006). The functions carried out at present by the Refugee Applications Commissioner (RAC) would be among the functions of the Minister for Justice, Equality and Law Reform – effectively the office of the RAC would be abolished. The Bill would also implement Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in member states for granting and withdrawing refugee status ("Procedures Directive"). The Bill refers to "protection" and covers people who are applying for refugee status and those who are eligible for subsidiary protection.

A person looking for protection may be either:

- A refugee
- Not a refugee but eligible for subsidiary protection
- Not eligible for protection but will be given a residence permit (other than a protection residence permit) or
- Not eligible for protection and must leave the State.

The decision would be made by the Minister and not by the RAC as at present. An applicant could appeal to the Protection Review Tribunal (which would replace the Refugee Appeals Tribunal) against a decision by the Minister that he/she is not a refugee or a decision that he/she is not eligible for subsidiary protection.

Register

The Bill provides that a register of people who have been granted residence permits and protection residence permits would be maintained.

Marriages of foreign nationals in Ireland

The Bill deals with the marriages of foreign nationals in Ireland. Marriage to an Irish citizen would not confer an automatic right to enter or be present in the State. A foreign national who wishes to marry in Ireland would have to give 3 months' notice to the Minister and, at the time of the marriage, be the holder of an entry permit or a residence permit (other than a protection temporary residence permit or a non-renewable permit).

Further Information

Irish Naturalisation and Immigration Service

13/14 Burgh Quay
Dublin 2
Lo-call 1890 551 500
Telephone from outside Ireland: + 353 1 616 7700
www.inis.gov.ie

Information on Irish embassies and consulates is at
www.dfa.ie

Immigrant Council of Ireland

2 St Andrew Street
Dublin 2
Information service: (01) 674 0200
www.immigrantcouncil.ie

Migrant Rights Centre Ireland

55 Parnell Square West, Dublin 1
Tel: (01) 889 7570
www.mrci.ie

National Consultative Committee on Racism and Interculturalism

Third Floor
Jervis House
Jervis Street
Dublin 1
Tel: (01) 858 8000
www.nccri.ie

Citizens Information 

LOG ON
www.citizensinformation.ie

LO-CALL
1890 777 121 Open Mon to Fri, 9am to 9pm

DROP IN
For your local centre see Golden Pages listing