

Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking

This Statement does not purport to be a legal interpretation of immigration legislation.



General

1. This notice provides information on the administrative arrangements which apply where a foreign national is identified as a person suspected of being a victim of human trafficking and the Minister for Justice and Law Reform is required to consider that person's immigration status in the State¹. In particular, this document sets out the administrative arrangements whereby such a person may be granted a period of recovery and reflection in the State and may also, in certain circumstances, be granted one or more periods of temporary residence in the State.
2. This notice came into operation on 7 June 2008 (the date of commencement of the Criminal Law (Human Trafficking) Act 2008) and is amended from time to time having regard to the work of the High Level Group on Combating Trafficking in Human Beings, the development of a National Action Plan to Prevent and Combat Human Trafficking and the development of relevant provisions for future immigration legislation.
3. This notice applies to a foreign national who is identified as a suspected victim of human trafficking, that is, where there are reasonable grounds for believing that he or she is a victim of an offence under sections 2 or 4 of the Criminal Law (Human Trafficking) Act 2008 or section 3 (other than subsections (2A) and (2B)) of the Child Trafficking and Pornography Act 1998. Whether there are reasonable grounds for that belief in any particular case is determined by a member of the Garda Síochána not below the rank of Superintendent at the Office of the Garda National Immigration Bureau (GNIB) at 13-14 Burgh Quay, Dublin 2. For the purpose of this notice a 'foreign national' means a person from outside the European Economic Area
4. Whereas, this notice applies to a foreign national who is identified as a suspected victim of human trafficking the process outlined in paragraph 3 may also be applied in a like manner to nationals of the European Economic Area ('EEA nationals'). Having regard to the free movement rights of EEA nationals such nationals do not require an immigration permission to facilitate a period of recovery and reflection nor do they require a temporary residence permission. An EEA national who has been identified as a suspected victim of human trafficking will be treated no less favourably than a person from outside that area. In this regard, certain administrative arrangements may be put in

¹ It is a fundamental principle of the immigration system that permission to remain in the State is binary. A person either has permission or does not and it is not possible to have two permissions at the same time.

place from time to time which will apply to persons from the European Economic Area. Nothing done in this regard will interfere with the entitlements such persons have under European Union law.

Recovery and Reflection period

5. Subject to paragraph 10, a person who has been identified by a member of the Garda Síochána not below the rank of Superintendent in GNIB as a suspected victim of human trafficking may be granted a permission to remain lawfully in the State for a period of 60 days (a ‘recovery and reflection period’). The purpose of the recovery and reflection period is to allow the person -
 - a) time to recover from the alleged trafficking, and
 - b) to escape the influence of the alleged perpetrators of the alleged traffickingso that he or she can take an informed decision as to whether to assist Gardaí or other relevant authorities in relation to any investigation or prosecution arising in relation to the alleged trafficking.
6. The Minister will issue or cause to be issued to a person who has been granted a recovery and reflection period a notice confirming the fact that he or she has been granted permission to be in the State for 60 days.
7. A person who has been granted a recovery and reflection period will not be the subject of removal proceedings for so long as his or her recovery and reflection period remains valid.
8. A recovery and reflection period may be terminated in circumstances where the Minister for Justice and Law Reform is satisfied that -
 - a) the person has actively, voluntarily and on his or her own initiative renewed contact with the alleged perpetrators of the trafficking,
 - b) it is in the interest of national security or public policy (“*ordre public*”) to do so, or
 - c) victim status is being falsely claimed .
9. The granting of a recovery and reflection period does not of itself create any entitlement for the person to assert a right to reside in the State following the expiry of that period.
10. A foreign national to whom this notice applies who is the holder of a valid permission to be in the State shall not require further immigration permission for the purpose of availing of a recovery and reflection period save where their permission expires. Where the valid permission expires, the Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking apply.

11. Where a person below the age of 18 years is identified as a suspected victim of human trafficking a recovery and reflection period of a duration greater than 60 days may be granted having regard to the arrangements in place for the care and welfare of the child. In considering the duration of such a period the Minister will have regard to whether the child is in the care of the Health Service Executive or in the care of a parent or legal guardian who is taking responsibility for him or her and the status of his or her parent or legal guardian in the State.

Temporary Residence Permission

12. In circumstances where the Minister is satisfied that -
 - a) the person has severed all contact with the alleged perpetrators of the trafficking, and
 - b) it is necessary for the purpose of allowing the suspected victim to continue to assist the Garda Síochána or other relevant authorities in relation to an investigation or prosecution arising in relation to the trafficking,the Minister will grant to the person concerned a temporary residence permission valid for a period of 6 months.
13. A temporary residence permission may be granted during the recovery and reflection period, on foot of a written request to INIS, or following the expiry of that period as the Minister considers appropriate. A temporary residence permission will be renewed in circumstances where the Minister is satisfied that the person has not renewed contact with the alleged perpetrators of the trafficking, and it is necessary for the purpose of allowing the suspected victim to continue to assist the Garda Síochána or other relevant authorities in relation to an investigation or prosecution arising in relation to the trafficking.
14. The Minister may revoke a temporary residence permission in the following circumstances -
 - a) the person concerned has actively, voluntarily and on his or her own initiative renewed contact with the alleged perpetrators of the trafficking,
 - b) the person concerned no longer wishes to assist the Garda Síochána or other relevant authorities in relation to any investigation or prosecution arising in relation to the trafficking of the person,
 - c) the allegation of trafficking is fraudulent or unfounded,
 - d) any investigation or prosecution arising in relation to the trafficking has been finalised or terminated, or
 - e) the Minister is satisfied that it is in the interest of national security or public policy (“*ordre public*”) to do so.
15. Where a person below the age of 18 years is identified as a suspected victim of human trafficking a temporary residence permission granted under this paragraph may be

granted having regard to the arrangements in place for the care and welfare of the child. In considering the conditions of such a temporary residence permission the Minister will have regard to matters including whether the child is in the care of the Health Service Executive or in the care of a parent or legal guardian who is taking responsibility for him or her and the status of his or her parent or legal guardian in the State.

16. A person to whom this notice applies who makes an application to be declared a refugee and who is refused such a declaration may seek to have the fact that they have been identified as a suspected victim of human trafficking taken into account in any consideration of whether a proposal to make a deportation order should now be made under section 3(3) of the Immigration Act 1999.
17. The granting of a temporary residence permission does not of itself create any right to long-term or permanent residence nor does it create any entitlement to be joined by family members in the State.
18. A foreign national to whom this notice applies who is the holder of a valid permission to be in the State shall not require further immigration permission for the purpose of availing of a temporary residence permission save where their permission expires. Where the valid permission expires, the Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking apply.

Voluntary Repatriation

19. The Minister will make arrangements to facilitate a person to whom this notice applies in returning to his or her country of origin at the end of any period of residence granted under this notice, or before that period expires if the person so wishes. Assistance in this regard can also be arranged through the offices of the International Organisation for Migration.

Change of Status

20. A person over the age of 18 years who is resident in the State as the holder of a temporary residence permission granted in accordance with these arrangements may apply for permission to remain under any other scheme of permission to remain in the State. An application shall be assessed in accordance with the terms of the particular scheme. Applicants shall be granted a change of their status where appropriate.
21. A person over the age of 18 years who has continued to assist the Garda Síochána or other relevant authorities in relation to an investigation or prosecution arising in relation to the trafficking and who is resident in the State on foot of a temporary residence permission granted in accordance with these arrangements for –

- a) a period of three years in the State as the holder of a temporary residence permission, or
- b) a continuous period as the holder of a temporary residence permission during the investigation or prosecution of acts of trafficking, and a determination has been made by An Garda Síochána that the investigation is complete,

whichever period is the shorter, may apply for a change of status in accordance with this paragraph.

22. In considering an application for a change of status under paragraph 21 the Minister will have regard to –

- any matter arising under paragraph 13;
- the family and domestic circumstances of the person;
- the employment (including self employment) record of the applicant;
- the character and conduct of the person both within and (where relevant and ascertainable) outside the State (including any criminal convictions);
- any other matters that may be set out in the application form, if any.