

Review of Submissions on the Public Consultation on Immigration Policy

Foreword

by Mr Michael McDowell TD,
Minister for Justice, Equality and Law Reform

Last year my predecessor Mr. John O'Donoghue T.D. launched a public consultation process on immigration policy. The objective was to ensure that in developing our immigration system to the highest international standards the formulation of policy in this area should be as open as possible to public comment and debate. The comments and ideas submitted by members of the public and interested bodies, it was felt, would form an important input to this process.

The public consultation document set out the background to the current immigration legislation and system in Ireland. The document asked people to express their views on how immigration policy should be formulated and outlined the issues which an effective immigration policy and the new legislation would need to address.

I am now very pleased to be able to launch this document presenting the results of this consultative process. A considerable number of submissions were received from a number of representative bodies, NGO's and individual members of the public. These responses reflected a wide range of views on the objectives of immigration policy and the consequences of immigration for Irish society. This review summarises the outcome of the consultation process and analyses how the submissions addressed the questions identified in the consultation document. The comments and ideas received will now form an important input into the new immigration legislation.

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1. Background

The primary legislative base for the Irish immigration system is the Aliens Act 1935; some elements have of course been the subject of recent legislation. The Government has made clear its view that the 1935 Act is in need of comprehensive replacement. The Department of Justice, Equality and Law Reform, in cooperation with a number of other Government departments and bodies is currently involved in the development of immigration legislation that will be capable of responding to immigration policies as they continue to evolve. The approach to developing the legislation and the ongoing formulation of policy has four elements as follows:

- 1) A comparative study of international legislation and practice in the field of immigration. The International Organization for Migration (IOM) were appointed to undertake this project;
- 2) An internal review of practices and procedures within the Immigration and Citizenship Division of the Department of Justice, Equality and Law Reform. The aim of this review will be to improve service delivery to the public;
- 3) A Cross Departmental Group on Immigration, which examines immigration issues in a coordinated approach;
- 4) The public consultation process, the fruits of which are presented in this paper. The public consultation process was undertaken to ensure that the views and opinions of as wide a section of Irish society as possible were taken into account in the ongoing development of immigration policy and in preparing the proposed immigration legislation.

2. Methodology of Consultation Process

On 13 June 2001 Mr. John O'Donoghue, T.D., Minister for Justice, Equality and Law Reform launched the public consultation process on Immigration Policy. The consultation document set out the background to this process and identified a range of issues to be considered. The public consultation document asked interested parties to express their views on how immigration policy should be formulated. The document outlined the issues which an effective immigration policy and the new legislation will need to address.

Members of the public were invited to reply.

The focus of this consultation process was the regular migration system which deals with people who seek to come to Ireland for reasons other than asylum. Government Policy in the asylum area has been most recently expressed in the Refugee Act, 1996, as amended, which was commenced in November 2000. Submissions dealing with asylum legislation or asylum processes or policy generally were not considered as part of this process.

3. The Public Response

The Department received sixty six submissions. A list of those who made submissions to this process is included in appendix 1. Submissions were received from state agencies, business organisations, trade unions, non governmental organisations, the voluntary and community sectors, immigrant groups and individuals.

Not unexpectedly, the consultation process attracted a wide range of views on the objectives of immigration policy and the consequences for Irish society of immigration.

This review summarises the outcome of the consultation process and analyses how the submissions addressed the questions identified in the consultation document. [The issues and questions from the consultation document are included in appendix 2.] Members of the Public were invited to reply to the following issues;

- i. Who should be allowed reside in Ireland?
- ii. How many people should be admitted through the immigration system?
- iii. What entitlements should immigrants have?
- iv. What immigration procedures are necessary?
- v. Illegal entry
- vi. What general issues should be contained in the new legislation?
- vii. Visas/Pre-entry clearance
- viii. Administrative Arrangements
- ix. Entry controls
- x. Residence
- xi. Enforcement

4. Responses to the Issues

The following sections set out the questions posed in the consultation document and summarise the main lines of responses received. The views expressed in the following sections represent the opinions of those organisations and individuals who made submissions to the process and do not necessarily represent the opinions of the Minister for Justice, Equality and Law Reform or his Department.

4.1 Policy Issues to be Considered

4.1.1 Who should be allowed reside in Ireland?

The consultation document said the main routes of legal migration into Ireland at present are for work, study or to join family members already legally resident in Ireland. Apart from those legally entitled to come to Ireland (EEA nationals etc.) who else should be entitled to come and reside in Ireland and for what reasons? Should distinctions be made on the basis of nationality, skills or associations with Ireland?

- There were a number of submissions calling for labour market driven skills based immigration. It was felt by many that Ireland urgently requires high skilled immigrant labour to sustain economic growth.
- Several contributors expressed the opinion that low skilled immigration should be limited as this could cause problems in the event of an economic downturn.
- Several submissions stated that anybody without a criminal record should be allowed to enter and reside in Ireland.
- Some contributors expressed the view that the immigration system should not discriminate against persons on the basis of their nationality
- A number of contributions suggested that there be a quota system for immigrants from countries where there is serious poverty and civil unrest.

- Some contributions stated that immigration numbers should be kept to a minimum and policy should focus on preserving the distinct Irish culture and distinct ethnic Irish identity. There should be a strong focus on integration of immigrants at the assessment stage and only candidates who have a suitable profile should be allowed to immigrate.
- There was a call for greater ethnic diversity in the immigrant mix to counter growing racism and xenophobia.
- One submission called for a limit to be put on those immigrant nationalities with large established communities in Ireland.
- One contributor stated that persons who have been involved in genocide, slavery, torture, extra judicial killings, war crimes, crimes against humanity should be barred from the State and their deportation facilitated

4.1.2 How many people should be admitted through our immigration system?

The consultation document asked what policies should be followed for determining the number of immigrants allowed into Ireland. Should there be a centralised quota system for non EU nationals? Should there be a points system which grades factors such as skills, knowledge of English, links with Ireland? How can we determine a sustainable level of immigration which the infrastructure of Irish society can accommodate?

- A number of submissions supported quotas and points systems although there was a wide range of views on how these should operate in practice. Support was expressed for points systems that gave strong weighting to qualifications and English language skills, while other contributors support a stronger weighting for connections with Ireland and the economic situation of countries of origin (i.e. the system should favour poorer countries). Some contributions called for such a weighting system to favour individuals from more developed countries and to offer lower weightings for those countries with little in common with Ireland culturally.
- Several contributors suggested that quota numbers should be

based on economic needs and that immigration numbers should be based on surveys of labour market needs, linked to National Development Plan objectives or studies of countries with similar GDP or population.

- Other criteria suggested were wealth, age, nationality and willingness to learn the Irish language.
- There were contributions which suggested that a long term view of immigration policy should be taken, taking account of demographic factors and sustainability of immigrant communities in Ireland.

4.1.3 What entitlements should immigrants have?

The consultation document asked what entitlement should immigrants have to public services generally. Should there be distinctions between short term and longer term immigrants?

- Several contributors expressed support for family reunification rights for migrants. There was support for uniform family reunification rights for all categories of legal immigrants. Some called for spouses of legally resident immigrants to have labour market access rights.
- Several contributors called for reunification rights for un-married couples, in particular those in same sex relationships.
- Several contributors called for immigrants to have equal rights with citizens in terms of social welfare, healthcare, housing, education and employment conditions. One contributor called for immigrants to have voting rights.
- There was a number of suggestions regarding better communication with migrants on their rights and entitlements. Migrants should receive literature on their rights when they are granted their visas etc.
- There was a suggestion that the siblings of the Irish child of non-national parents should have the same rights to funded third level education as citizens
- There were several calls for a change in the law whereby any child

born in Ireland is entitled to citizenship.

4.1.4 What immigration procedures are necessary?

The consultation document said immigration procedures should be based on objective and transparent criteria and should treat the person concerned fairly and with dignity, balanced with the need to protect the State and existing Irish citizens and residents. How can this best be achieved?

- Several contributors called for a faster procedure for processing applications. There was some support for only issuing visas and work permits outside the State.
- One contributor called for renewals of immigration documentation to be done by appointment rather than by queuing outside immigration offices.

4.1.5 Illegal entry

The consultation document asked what additional measures are appropriate to tackle illegal entry and trafficking in human beings.

- There were several calls for more vigorous border control and vetting of immigrants at borders.
- Several contributors called for sanctions against employers caught hiring illegal immigrants and suggested that traffickers should receive severe penalties.
- There were several contributors who called for border control measures to respect the rights of individuals to claim asylum at Ireland's frontiers.
- One contributor suggested that all immigrants should have personal identification papers issued by the State.

1.2 Issues to be Considered in the New Immigration Legislation

4.2.1 General Issues

The consultation document asked what principles should be

contained in the legislation.

- Several contributors called for distinctions between short term and long term immigration. Some expressed the view that all immigration should be short term at first.
- Some contributions called for immigration not to be based solely on economic criteria but should have a broader development objective and a respect for human rights.
- Several contributors highlighted the importance of recognising the needs of women immigrants. New policies should be gender and equality proofed.
- There were a number of contributions which called for immigration policy to be more restrictive.

4.2.2 Visas / pre-entry clearance

The consultation document asked should there be an additional form of pre-entry clearance, other than a visa, for persons travelling to Ireland. Who should require a visa/pre-entry clearance and in what circumstances?

- There was some support for pre-entry clearance procedures although one contributor suggested that with well trained immigration staff this should not be necessary. Another contributor said that there should be no pre-entry clearances as the present system is working well.
- A number of submissions suggested that work permits should be issued to the worker rather than to the employer.
- One contribution suggested that the basis on which visas are granted and refused should be set out in legislation

4.2.3 Administrative arrangements

The consultation document said the delivery of various aspects of immigration-related services must be undertaken in a way that co-ordinates the various Departmental and other interests involved.

How can this best be achieved?

- Several contributors suggested that the Department of Justice, Equality and Law Reform should have sole responsibility for the immigration system while one contributor called for this function to be transferred to the Department Foreign Affairs.
- Several contributions called for one single immigration authority. One contribution said this could be set up as a public private partnership, while another called for the staff providing the services and their Unions to be involved in the development of appropriate services to meet the needs of immigrants.
- There was a suggestion for the establishment of a national observatory to include representatives of the social partners to monitor the impact of racism on the labour market, disseminate best practice and provide regular reports to workers and their trade unions as well as to employers and companies.
- There was a suggestion for a Policy Forum which would include church leaders, political representatives, social partners, community and voluntary representatives. The Forum would examine the philosophy of immigration, demographic research, future labour requirements and the level of immigration our infrastructure can support.

4.2.4 Entry controls

The consultation document asked what should be the procedures for entry into this State. Should they include a process for the review of decisions to refuse entry?

- Many contributions recognised the need for immigration controls.
- One contribution called for Senior Foreign Affairs officials to be available at ports of entry to review appeals against decisions.
- There were some suggestions that immigrants should have their documents stamped upon entry to and exit from the State.

4.2.5 Residence

The consultation document asked what form of registration should

be required of non-nationals.

There were several submissions concerning establishing differences between short and long term residence and a different set of rights with each status.

- One contributor suggested that immigrants should register with a local authority or a health board rather than with the Gardaí.

4.2.6 Enforcement

The consultation document asked what scheme of sanctions should be in place to deal with the broad range of infringements on immigration policy.

- Several contributors stated that immigrants found in breach of the law should be liable to loss of rights and ultimately deportation.
- One contribution called for the safeguards of the European Convention on Human Rights to be applied to deportation procedures.
- There was a suggestion for an agency to monitor the activities of recruitment agencies bringing migrant workers into Ireland.

4.3 Other opinions expressed

- Ireland should ratify the UN convention on the protection of migrant workers and their families
- There should be a pan European business visa to replace the Schengen visa with a minimum duration of one year.
- Introduce legislation to tackle discriminatory practices in service delivery (example of car insurance was cited)
- Given recent economic circumstances we should think very carefully whether we need immigration. Immigration can be lazy substitute for improving working conditions and pay in a tight labour market.
- With regard to the sustainability of immigrant communities there was a divergence of views expressed. Some submissions suggested that the Government would have to introduce policies to facilitate

the sustainability of immigrant Communities, e.g. provision of education on traditional culture and language, anti-racism programmes etc. Other individuals expressed the view that immigrant communities would never be sustainable in Ireland and that therefore we should actively discourage permanent residence by such communities. It was suggested by some that taxpayers money should not be spent on "preserving immigrants' culture". Assimilation policies are desirable. Non-criminal immigrants with large sums of money should be welcomed

- One contribution suggested that there should be special conditions for the horse racing industry
- Immigration Policy should not be driven solely by the demands for unlimited economic growth.
- Immigration should be strictly limited because of the social problems which it will create
- The Irish State should resource existing information providers and provide information to migrants on their rights and entitlements.
- The National Qualifications Authority of Ireland should be given a role in developing mechanisms whereby immigrants would have their qualifications recognised in Ireland.
- Immigrants should be given supported time off work to avail of English language classes.
- The Irish Government should reflect on the brain drain effect of pro-active immigration policies on the developing world.
- The Irish constitution should be amended so that it is clear its human rights protections apply to citizens and non citizens alike.
- Minority groups should be involved in the process of developing legislation.
- The government should devise anti discrimination public awareness campaigns.
- There should be adequate interpretation facilities for immigrants with more interpreters for people who speak minority African

languages. English language classes should be available to all immigrants.

- There should be a strictly enforced anti-racism code. There should be an effort to help children with a diverse cultural background to preserve their ethnic identity.
- The facilities in the IRO at Harcourt Square are very poor and need to be radically upgraded.
- There should be a comprehensive programme of training and awareness raising on multiculturalism and anti-racism.
- Partnerships should be built through bilateral agreements with countries of high emigration.
- A number of submissions referred to the asylum system, raising issues which are not being addressed in this process.

1. Conclusion

A wide range of views were expressed in the consultation process. They show the variety of opinion on immigration issues which exists in Irish society. The views expressed are being considered by all relevant Departments involved in the Cross Departmental Group on Immigration. The views will form an important input into the development of the proposed new immigration legislation.

Appendix 1

Submissions were received from the following:

Representative Organisations & NGOs

Amnesty International
Chambers of Commerce Ireland
Comhairle
Comhlamh
Dublin Corrymeela Cell Group
European Anti-Poverty Network Ireland
FOCUS Ireland (2)
Gay & Lesbian Equality Network
Grace Bible Fellowship (2)
Immigration Control Platform
Irish Business and Employers Confederation
Irish Centre for Human Rights
Irish Commission for Justice & Peace
Irish Congress of Trade Unions
Irish Council for Civil Liberties
Irish Refugee Council
Kosovo-Ireland-Solidarity
National Consultative Committee on Racism & Interculturalism
National Economic & Social Forum
National Lesbian & Gay Federation
National Women's Council of Ireland
Pavee Point Traveller's Centre
Partnership Tra Li
POBAL
Refugee Protection Policy Group
Small Firms Association
Special Project on Long-term Unemployment Tallaght
Tallaght Partnership
Union of Nigerian Citizens Resident in Ireland
Westport Refugee Support Group

Companies

BDO Simpson Xavier
M/A Com Eurotec

Individuals

34 Submission were received From individual members of the public

The full text of the submissions received is available on the Department's website www.justice.gov.ie

Appendix 2

Issues Raised in the Public Consultation Document

The following is an extract from the original Public Consultation document outlining the policy issues which need to be considered and the issues which need to be considered in the development of proposals for new immigration legislation.

9. Policy issues which need to be considered

This section sets out a range of general questions which need to be considered in relation to immigration policy in Ireland. Your views on these issues in particular would be welcomed.

9.1 Who should be allowed to come to reside in Ireland?

The main element of legal immigration to Ireland at present is for work or study purposes, or to join family members already resident in Ireland. Apart from those who already have an entitlement to come to Ireland (including Irish nationals and their families, other EEA nationals for work purposes, nationals of certain other states on foot of Association Agreements with the EU on certain conditions) who should be allowed to come to reside in Ireland and for what purposes?

Should distinctions be made on the basis of nationality, skills, educational qualifications, associations with Ireland or with people already in Ireland? For example, should countries with traditional links with Ireland get preferential treatment?

Apart from specific provisions in Association Agreements, on what conditions should non-EU nationals be able to come to Ireland to set up businesses?

On what conditions should non-nationals be allowed to reside in

Ireland for purposes other than work, e.g. retirement, family reunification, other long term visitors?

There is an issue as to whether immigration has a role to play in development aid to less developed countries through, for example, short-term immigration for training purposes of persons from the countries concerned. However, there are potential dangers in such an approach if were to result in, or give rise to a perception of, a "brain drain" from the countries concerned.

9.2 How many people should be admitted through our immigration system?

Because of strong growth in the economy in recent years, Ireland has required a significant number of immigrants for work purposes. Issues arise regarding the numbers of immigrants which will be required by the Irish economy in the future and the numbers which Irish society can sustainably accommodate. While many persons come here to work temporarily under the work permit system, it must be expected that some proportion of them will become long term residents.

Should there be, for example, a centralised quota for immigration of non-EU nationals? How should a quota be allocated? Should there be a points system including factors such as skills, links with Ireland, knowledge of the English language?

At present the immigration of persons for work purposes is largely determined by the needs of employers. Is this an appropriate way to continue? Would a more centralised approach looking at particular skills needs across the economy as a whole be preferable to the current system?

Should immigration of non-skilled workers be encouraged? How would such workers fare in the event of a less buoyant economy? What displacement effects on existing residents may be anticipated?

Are infrastructural capacity issues relevant to the immigration debate? For example, while foreign workers are required for the construction industry, they may not be self sufficient in terms of accommodation.

What is the appropriate balance between short term and longer term

immigration? Should all immigration be short term in the first instance, with opportunities for extension of residence?

Are there particular issues affecting women immigrants in Ireland? What are they and how can they be addressed?

Is there a spatial distribution issue within Ireland? Are there issues if immigrants tend to cluster in a limited number of larger urban centres (as, indeed, Irish emigrants overseas have done)?

There are also issues of the capacity of Irish society to assimilate or integrate a significant number of new arrivals from a diverse range of countries and cultures. Is there an appropriate and sustainable level of immigration into Ireland?

9.3 What entitlements should immigrants have?

What entitlements should immigrants have to public services generally? Should there be distinctions between short term immigrants and longer term immigrants?

9.4 What immigration procedures are necessary?

Immigration procedures should be based on objective and transparent criteria with fair treatment of the person concerned, balanced with the need to protect the State and existing Irish citizens and residents. How can this be best achieved?

How can immigration procedures and practices be improved to provide a better service to customers? For example, is there a need for some form of pre-clearance of persons coming to Ireland, rather than the current system where a person's position is assessed on arrival at the frontiers of the State?

9.5 Illegal entry

Combined with an improved legal immigration system, we must ensure that illegal entry into Ireland, and in particular the trafficking of human beings, is firmly tackled. What additional measures are appropriate in this area? How can immigration controls be improved?

10. Issues to be considered in proposed new immigration legislation

The following is a broad indicative outline of issues which need to be considered in the development of proposals for new immigration legislation. Your views on any of these issues are welcome.

10.1 General issues

The proposed legislation will contain a general statement of principles and policies to be observed in operating and developing the Irish immigration system. This is in line with the requirement, identified by the Courts in the *Laurentiu* case, that an Act which gives a power to make subsidiary legislation should indicate the principles and policies which the subsidiary legislation must observe. What principles and policies should be contained in the legislation?

10.2 Visas / pre-entry clearance

Should there be an additional form of pre-entry clearance, other than a visa, for persons travelling to Ireland? The effect of visas and other forms of pre-entry clearance is to give persons an entitlement to present for entry into the State. An issue to be considered is who should require a visa/ pre-entry clearance and in what circumstances? There may be a need for conditions to be included (such as duration of validity, number of entries, purpose of stay, etc.). Legislation may also set out procedures for applying for a visa/ pre-entry clearance and for determining applications.

10.3 Administrative arrangements

The legislation may also set out the roles of the relevant Government Departments and Agencies in the immigration process. For example the Minister for Foreign Affairs has responsibility for embassies and consular missions, which act as agents in the issuing of visas at present. As regards employment and self-employment, there is the role of the Minister for Enterprise, Trade and Employment. The Minister for Education and Science and FÁS have roles in relation to visits for academic or vocational educational purposes. The delivery of the various aspects of immigration-related services must be undertaken in a way that co-ordinates the various Departmental and other interests involved. How can this best be achieved?

10.4 Entry controls

What should be the procedures for entry to the State? Should they include a process for the review of decisions to refuse entry? To ensure effective entry controls, any review mechanism should not suspend the return of the person refused entry. Obligations on persons seeking entry will include requirements for a current passport or identity document and a visa or other pre-entry clearance. There will be obligations on carriers to ensure the presentation of passengers and crew to immigration officers; to ensure their possession of appropriate documents and to ensure return journeys for persons refused entry. Such provisions are important in tackling illegal immigration. The Common Travel Area arrangements with the UK and the freedom of movement entitlements of EU/EEA nationals would also need to be considered.

10.5 Residence

What form of registration should be required of non-nationals? This may involve a system of residence permits. The entitlements and obligations of residence permit holders may need to be set out.

10.6 Enforcement

While experience is that people are generally law-abiding and observe the conditions of their stay, sanctions are necessary to deal with those who are not compliant e.g. those overstaying their permission, those in employment without permit, and those using false documents, or misrepresenting documents, etc. Sanctions must also address those involved in trafficking in human beings. The range of sanctions necessary include criminal sanctions and removals from the State. Recent provisions in this area were in the Illegal Immigrants (Trafficking) Act, 2000."