

Immigration and Residence in Ireland

Outline policy proposals for an Immigration and Residence Bill

A discussion document

Summary



DEPARTMENT OF JUSTICE, EQUALITY AND LAW REFORM
AN ROINN DLÍ AGUS CIRT, COMHIONANNAIS AGUS ATHCHÓIRITHE DLÍ

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Foreword by the Minister



For centuries Ireland has traditionally been a country of emigration. The people of this island have long sought new lives in other countries in order to escape adverse economic and social conditions prevailing in Ireland. The Irish “diaspora” has made a valuable contribution to the societies in which they settled. They have become actively involved in the economic and political life of their adopted homelands and in doing so have underpinned the strong political and cultural bonds between Ireland and nations such as the United Kingdom, the United States of America, Australia, Canada and New Zealand.

Now, at the beginning of the twenty first century, Ireland is a very different place. Unprecedented levels of economic prosperity which we have enjoyed in recent years are the result of a range of factors including good economic policy and sound management of the public finances; a favourable demographic profile and high quality education; and our embracing of the opportunities of the international marketplace. High levels of investment in Ireland by Irish and overseas companies have created abundant work opportunities for Irish people and foreign nationals.

Our society and economy require people with specific skills and energies to ensure that we have a dynamic labour market and continued economic growth. Foreign nationals are fulfilling a real need within our nation and work here as, for example, medical professionals, engineers, information technology specialists, construction professionals and service providers.

It is a tribute to the progress we have made as a nation that for many people in other parts of the world Ireland has become one of the most desirable places in which to live and work. Just as the Irish enriched the countries in which they settled, we too are experiencing the positive influence of people from all over the globe choosing to settle in Ireland. We have much to gain from our continuing development as a diverse but coherent society. That diversity which has always existed in Irish society has now become even more varied and complex and has the capacity to benefit all our communities.

In order to maximise the benefits of diversity, migration needs to be managed and proper structures and procedures need to be established. In the Programme for Government of June 2002 there is a commitment to prepare a new Immigration and Residence Bill which will consolidate legislation in the area and provide for future developments. The Department of Justice, Equality & Law Reform has been engaged in extensive preparation and research for the new Bill. As a further step I am now publishing this discussion paper which outlines the

range of issues that will need to be addressed in legislation and details the current thinking on those issues. I hope that this paper will stimulate public debate on the complex issues relating to immigration as I continue the work of preparing legislation for publication later this year.

It gives me great pleasure to present this document as I believe that a dynamic immigration policy combined with the necessary supporting infrastructure is crucial to the continued economic and social prosperity of our nation and for the wellbeing of the society we pass on to future generations.

A handwritten signature in black ink, reading "Michael McDowell". The signature is written in a cursive, flowing style.

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

Introduction

Background

Over the period of a few short years Ireland has moved from being a country of emigration to being a country of immigration. It is accepted by all commentators on the Irish economy that immigration will continue to be an important feature for the foreseeable future. The contribution which immigrants make to Irish society is substantial. The diversity which immigration brings enriches us all. The Irish immigration system has been able to facilitate the significant levels of legal migration to Ireland in recent years using a pragmatic approach to the issue. It has however been based on a legislative framework which was designed in very different times and to deal with a much smaller level of international movements of persons.

In the last five years over 100,000 persons from outside the European Economic Area have been admitted to the State for employment purposes. This is in addition to the substantial numbers of nationals of the European Union or other European Economic Area Member States who have also come to Ireland. In addition migration for study purposes has also been at a significant and increasing level. The immigration system has been able to facilitate these movements within the current legislative framework. Additional resources have had to be assigned to deal with the increasing workloads and a lot of experience has been gained in dealing with non-national customers by immigration staff and by the Irish administrative system as a whole. There is an opportunity now to build on this experience and to bring forward changes in our legislative structure and our administrative practices to allow the immigration system to deal more effectively and efficiently with the many and varied issues which arise within the immigration system.

The Irish immigration system touches in some fashion on every person who travels to or from Ireland, whether as a tourist, a migrant worker, an international student or, indeed, an illegal immigrant. It represents in many cases the first contact which a non-national has with the Irish State and it may therefore create the important “first impression” of Ireland and of our administrative system to the first-time visitor. It also plays an important role in protecting the State and its citizens from those who seek to abuse our immigration systems, such as people traffickers with links to organised crime, and terrorists. The immigration system must therefore play the dual roles of being welcoming to bone fide visitors and also of deterring those who have malevolent intentions in seeking to come to Ireland. This is the delicate balance which the Irish immigration system, in common with all such systems worldwide, must try to achieve.

In drawing up new legislation for the immigration system a similar balance must be achieved. The legislation must be capable of dealing with the currently projected migration needs of the economy and allowing for flexibility and responsiveness in attracting qualifying migrants to Ireland. The Enterprise Strategy Group Report of July 2004 estimates that demand for new

workers over the period up to 2010 could be in the region of 420,000 of which a large proportion may be filled through immigration. There will therefore be an ongoing requirement for significant immigration levels. There will be a range of issues arising as immigrants become more settled in Ireland, such as the status of persons who are long term residents and the issue of family reunification. The system will also need to be able to respond to the ongoing threats of illegal migration and trafficking in human beings. An immigration system which allows large numbers of legal migrants will also be a target for those who wish to come for criminal and terrorist purposes. The legislation and the administrative system must provide the means for dealing effectively with such threats.

Development of an Immigration and Residence Bill

The Programme for Government of June 2002 contains the following commitment:

“We will prepare a new Immigration and Residence Bill which will consolidate legislation in the area and provide for future developments.”

This paper represents an assessment by the Department of Justice, Equality and Law Reform of what is required in the proposed Immigration and Residence Bill. This assessment is based on wide ranging discussions within the Department and with other interested Government Departments and with other interested bodies. It represents an outline of the major issues which need to be addressed in legislation and an indication of the manner in which it is proposed to address them. It is not a definitive document. It does not set out in detail the legislative provisions proposed or the form which the exact provisions will take. It is intended to act to focus public discussion among the wider community on the important issues which the Immigration and Residence Bill will contain.

The Bill will seek to review, amend, consolidate and enhance the current body of legislation which dates from the Aliens Act 1935. In general, the Bill will not deal with the area of asylum, an area where policy is well developed and where legislation has been substantially revised in recent times in the Refugee Act 1996 and subsequent amendments. However, certain areas where the immigration system and the asylum process interact, particularly in the area of removals, will be dealt with in the proposed legislation.

The Minister for Justice, Equality and Law Reform would like to hear the views of anyone who wishes to comment on the proposals contained in this document. All comments made will be taken into consideration in the preparation of the legislation which the Minister aims to publish in 2005. Comments marked *Immigration and Residence Legislation* should be sent, before the end of July 2005, to;

**Immigration & Citizenship Policy Unit
The Department of Justice, Equality & Law Reform,
13-14 Burgh Quay,
Dublin 2.**

Comments can also be e-mailed to [*immigrationpolicy@justice.ie*](mailto:immigrationpolicy@justice.ie)

Summary of Key Proposals

The Immigration and Residence Bill is intended to provide a comprehensive framework within which immigration policy can be developed and implemented.

Overall objectives and basic principles — chapter 2

The overall objectives and basic principles on which the immigration system will be based are as follows:

- *to maintain the safety and security of the State and its residents and to promote the common good;*
- *to manage migration in an orderly fashion to serve the economic and social needs of the State and its residents;*
- *to protect human rights;*
- *to protect and develop Ireland’s international relations;*
- *to ensure fair treatment of persons;*
- *to achieve reasonable standards of clarity and transparency; and*
- *to provide satisfactory standards of service.*

The Immigration and Residence Bill should reflect these principles.

The structure of the Bill — chapter 3

The Bill will set out principles for the guidance of—

- *the Minister for Justice, Equality and Law Reform when formulating immigration policies and*
- *staff making immigration decisions under the legislation in fulfilment of declared immigration policies.*
- *The Bill will provide a process for the promulgation by the Minister of statements of immigration policy from time to time.*
- *It will be an obligation on immigration decision-makers to observe the statutory principles and any relevant statements of immigration policy in their day-to-day work.*
- *The Bill will respect the principle of Ministerial discretion.*

Visas and pre-entry clearance — chapter 4

Control of the entry of foreign nationals to any State is an inherent element of national sovereignty. It is necessary for the protection of the fundamental rights of citizens and residents and for the defence of the immigration system and of the State itself. Visa and pre-entry clearance systems are a crucial element of such immigration controls and allow States to apply such controls in advance of a person arriving at the borders of a State to seek entry. Key proposals in this area include:

- *The visa system will be provided with a new legislative basis specifying the nature of the visa and enabling the Minister to make necessary secondary legislation.*
- *The re-entry visa requirements for holders of a valid registration card (residence permit) should be reviewed.*
- *The Minister should set customer service standards for the visa service, but this should not be a matter for legislation.*
- *There should be provisions to permit the prioritisation of certain categories of visa application.*
- *A scheme for the sponsorship (with financial guarantees) of certain categories of visa application should be developed.*
- *Customers should be given reasons for refusals and details of review or appeals procedures, if any, applicable.*
- *Reviews or appeals of refusals should be limited, for example, to cases involving those seeking to join family members who are long term residents in the State and those seeking to enter for more than 3 months.*
- *Upfront checking of visa applications with applications with insufficient information being returned to the applicant rather than refused, should be provided for.*
- *There should be automatic refusal of visa applications where false information is supplied.*
- *The legislation should provide for the development of visa computerisation including the sharing of data where appropriate.*
- *The organisation of processing work within the public service bodies involved in the visa process should be streamlined.*
- *There should be provision to allow the delegation of visa processing / decision making to other public bodies or to other outside bodies where appropriate.*
- *There should be provision for international co-operation in the visa area, including the sharing of information on visa application with systems abroad such as the proposed EU Visa Information System (VIS) and other national systems.*

Border controls — chapter 5

Effective border controls are a key element of the general security of any State. If a State cannot control the movements across its own frontiers it will be unable to implement any

immigration policies as well as leaving itself susceptible to significant criminal and terrorist threats. Key proposals in this area include:

- *There should be a review of the provisions of the Immigration Acts 2003 and 2004 in relation to border controls, and the granting and refusal of entry — to ensure that they are operating effectively.*
- *The effectiveness of the carriers liability provisions should also be reviewed in the light of experience and any improvements necessary should be provided for.*
- *The increased use of active border controls is to be encouraged, including the use of advance passenger data.*
- *Legislation should provide for immigration officers to request biometric data, such as fingerprints from persons seeking to enter the State.*
- *Secondary legislation should set out in detail conditions which may apply to persons granted permission to enter the State.*
- *A person may be refused permission to enter the State for reasons to be set out in the legislation.*
- *A person refused permission to enter the State should be given reasons for that refusal*
- *There should be provision for an immediate review of a refusal by a more senior Immigration Officer, if requested.*
- *There should be provision for the detention of persons refused permission to enter.*
- *There should be an obligation upon carriers to return persons refused entry and to bear the costs of that return. The legislation should consider extending the period in which carriers can be required to return illegal entrants from the present limit of two months.*
- *The appointment of public servants dealing with non-national arrivals, such as customs officers, as immigration officers should also be considered.*
- *There should be an obligation on airport and port authorities to provide appropriate facilities for immigration purposes and for immigration issues to be taken into account in the planning and design of airports and ports.*
- *There should be provision for exit controls to be implemented where deemed necessary by the Minister.*

Entry to the State — general principles — chapter 6

General principles for the admission of persons to the State for a variety of reasons will apply. Key proposals in the area include:

Short term visits (up to 3 months)

- *The existing system of checking applications for entry from short term visitors through the visa application process and at points of entry to the State is a practical and pragmatic approach and should continue.*

- *A requirement for financial guarantees as an additional safeguard in certain cases should be provided for.*
- *The possibility of non-visa-required nationals being able to apply for a form of advance clearance before travel should be considered.*

Longer term entry (over 3 months)

- *The Minister, and where necessary in consultation with other Ministers, should have the power to prescribe schemes for longer term admission to the State for a range of purposes. These should be clearly set out in secondary legislation or other form and be publicly available.*
- *The Minister should have the power to regulate entry through such schemes: for example, by setting quotas and by introducing points systems for assessing applications.*
- *The possibility of non-visa-required nationals being able to apply for a form of advance clearance before travel should be considered.*

Admission for the purposes of work, self employment and research — chapter 7

The growth of the Irish economy in recent years has resulted in significant numbers of foreign nationals being required to meet demands for skilled and unskilled labour across various sectors of economic and social life. Economic migration policy is a matter for the Minister for Enterprise, Trade and Employment and the Immigration and Residence legislation should be fully consistent with Employment Permit legislation. The legislation should facilitate the future requirements of the State in this area as well as accommodating those who travel to Ireland to fill key economic functions on a permanent or temporary basis. Key proposals in this area are as follows:

Employment

- *A range of approaches to economic migration is required — there is no single best solution. There is a need for co-ordination of legislation relating to economic migration and the Immigration and Residence Bill. Legislation should provide powers for the Minister (or the Minister for Enterprise, Trade and Employment, as appropriate) to set out in secondary legislation schemes for economic migration*
- *The development of the Immigration and Residence Bill to be undertaken in conjunction with the development of employment legislation being brought forward by the Department of Enterprise, Trade & Employment.*
- *Streamlining and simplification of the current administrative systems should be considered.*
- *A permanent migration system, with a primary focus on attracting skilled people to Ireland, could be considered which would select people as potential future citizens, not just workers.*
- *A fast-track scheme of temporary skilled labour migration should be considered based on sponsorship by the employers.*

- *Employer sanctions should be strengthened. Consideration should be given to, for example, barring employers who have been in breach of immigration or employment law from bringing non-national workers to Ireland.*

Self-employment

- *The Minister should have the power to set out in secondary legislation schemes for entry for self-employment purposes.*
- *A possible scheme should be considered for individuals with innovative business ideas but without capital.*
- *Penalties should be set for individuals who start businesses without the relevant permission*

Researchers

- *A scheme for the admission of researchers should be set out in secondary legislation. It should facilitate and support the attraction of international researchers to Ireland.*

Admission for the purpose of study — chapter 8

In recent years there has been a significant level of migration to Ireland for the purposes of studies. At present there are some 28,000 non-EEA national students registered with the Garda National Immigration Bureau. The growth of this sector in both the public and private spheres will necessitate special attention in any new immigration proposals. Key proposals in this area include:

- *The immigration system should support the education sector in attracting overseas students to Ireland, while also safeguarding the integrity of the immigration system.*
- *Future arrangements for the admission of non-national students will be determined by the arrangements which arise from the implementation of the Report on the Internationalisation of Irish Education Services.*
- *In the proposed new regulatory framework there will be scope for streamlined procedures for the handling of applications from approved educational institutions.*
- *The implementation of the short term measures proposed in the Internationalisation report (access to employment and the renewal of short term courses) should limit the scope for abuses within the system and reduce the attractions for those who seek to circumvent immigration controls in the labour market.*
- *The question of whether students should be entitled to move between educational institutions during the period of their approved courses should be considered.*
- *Consideration should be given to whether new educational institutions should be precluded from recruiting outside the EEA for, an initial period after they have been established.*
- *Consideration should be given to increased co-operation with schools to monitor the attendance of students. It should be possible to withdraw recognition or cease granting visas*

in respect of schools with low attendance rates or high drop out or early transfer rates or which have given rise to overstayers.

Admission for the purpose of family reunification — chapter 9

The admission of a foreign national family member of migrants established in Ireland is a very important issue. Family reunification has been the chief form of legal migration into EU Member States for some years. In most cases it accounts for almost 60% of migration. As well as addressing the current practice in Ireland and internationally, we shall also need to consider the Constitutional provisions relating to the family and the relevant international conventions. Key proposals include:

Family reunification

- *Family reunification provisions to be set out in an accessible and transparent fashion in secondary legislation or practice instructions*
- *A non-national entitled to reside in Ireland on a long term or permanent basis should be entitled to apply to be joined by his/her spouse and minor unmarried children where the family will be economically viable in the State, subject to public policy and security issues.*
- *The admission of family members in other cases should be covered by schemes made by the Minister.*
- *The issue of non-marital partnerships and same sex relationships will be considered and provision could be made for schemes to deal with these in accordance with the treatment of such relationships in Irish law generally.*
- *A sponsorship scheme to allow unmarried children over 18 to join their family members with long term or permanent residence in Ireland is to be considered.*
- *Other circumstances to be covered in schemes to be made by the Minister include: admission of fiancé(e)s of persons resident in Ireland, foreign adoptions and the situation of family members in the event of the death of head of a family, marriage breakdown or in the event of domestic violence.*
- *Consideration is to be given as to how abuses of family reunification, including marriages of convenience, can be dealt with. Sanctions should be provided.*

Children

- *There should be a general requirement for proof that unaccompanied children seeking to travel to Ireland are travelling with their parents' or guardian's consent.*
- *To combat child trafficking, there should be provision for appropriate action to be taken to protect children where there are suspicions about the nature of the relationship of a non-national child to the adults accompanying him/her in entering the State.*
- *The compulsory registration of all non-national children resident in Ireland is to be considered.*

Admission for non-economically active persons — chapter 10

The category of non economically active migrants covers a diverse group of people who may choose to immigrate to Ireland for a variety of reasons such as retirement, medical treatment or extended tourism. Key proposals in this area include:

- *Primary legislation should allow the Minister to specify, in secondary legislation, schemes for persons seeking to migrate to Ireland for non-economic purposes.*
- *Persons benefiting from these schemes should not be able to engage in economic activity in Ireland, must have a specified minimum level of resources and must be able to subsist without recourse to public funds.*
- *Relevant Government Departments should consider the basis on which persons admitted as non-economically active migrants can be excluded from entitlements to public services.*

Residence status and residence permits — chapter 11

Key proposals in this area are:

- *The Immigration and Residence Bill should provide a clear basis for a new system of residence permits for non-EEA nationals resident in Ireland.*
- *The residence permit should clearly indicate the holder's status in Ireland and should be necessary to establish entitlements and gain access to public services by non-EEA nationals.*
- *The residence permit will be evidence of the holder's permission to remain in Ireland. The possibility of issuing residence permits in certain circumstances to people in advance of arrival in Ireland should be considered.*
- *Legislation should provide for the sharing of residence data within the public service in Ireland. In certain circumstances, the possibility of sharing residence data internationally should be provided for.*
- *Legislation should provide the Minister with the power to revoke residence permits in certain specified circumstances e.g. where false/forged documents have been provided as part of the application, where the individual is convicted of a serious offence resulting in them being considered a threat to public order or national security.*
- *The scope for change of immigration status of persons while remaining in Ireland should be clarified in secondary legislation.*
- *A new category of long term resident status should be introduced for persons resident in the State for more than 5 years. This status should be recognised for entitlement purposes across the public service.*
- *The format of residence permits should be in accordance with EU Regulations and should include biometric features.*
- *Charges should be introduced for residence permits to fund administrative costs and system developments.*

- *The possibility should be considered of the residence permit being acceptable as a re-entry visa also containing, in certain circumstances, permission to work.*
- *Developments on residence permits will be co-ordinated with developments on the proposed public service cards.*
- *The system of issuing Irish travel documents to non-nationals other than refugees should be restricted to exceptional cases only.*

Monitoring and Compliance — chapter 12

The enforcement of immigration legislation and procedures is a crucial element of any immigration system. The objective of enforcement procedures is to protect the interests and welfare of both citizens and legal migrants. All immigration regimes experience threats to their integrity from a tiny minority of citizens and foreign nationals seeking to exploit them for illegal gain. Key proposals are:

- *There is a need for co-operation and co-ordination across the public service to ensure that access to public services by persons illegally in the State is limited to emergency services so as not to encourage illegal immigration.*
- *There is a need to consider whether additional provisions are needed in the Immigration Bill to allow the Gardaí to deal effectively with the use of forged and fraudulent documents within the immigration system.*
- *The introduction of biometric identifiers in immigration documentation in Ireland (visa and residence permits) should take place as soon as possible*
- *Existing legislative provisions on the issue of trafficking and smuggling should be examined to see whether they can be strengthened. The position of victims of trafficking should be safeguarded with a view to assisting them and getting their co-operation in the prosecution of perpetrators.*

Removals — chapter 13

The State's powers to remove from the State persons who are foreign nationals is a fundamental element of State sovereignty and is in the interest of the common good. Key proposals in this area are:

- *The legislation should provide for two mechanisms for removing persons from the State — a removals process and a more serious deportation process.*
- *The removals process for persons with no legal basis for being in the State should be along the lines of the current process for removing a person who has been refused leave to land.*
- *A single procedure for consideration of protection claims should be introduced. The removals procedure should apply to those with failed claims for protection.*
- *In general a removal should not preclude a person applying to return to Ireland but the Minister should have the power, in certain circumstances, to require a removed person to remain outside the State for a period of time.*

- *Persons who could not be subject to the removals process are, for example, persons who are dependents of Irish or EU nationals, parents of Irish citizen children and failed asylum seekers with an alternative legal basis for remaining in the State.*
- *A deportation process along the lines of the current process should be provided for. The Minister should be able to provide for different periods of exclusion depending on circumstances.*
- *Consideration should be given to the automatic conversion of a removal order into a deportation order if the person has not complied with it within a set period of time.*
- *Any provision for legislation that reviews removals cases should not in general have suspensive effect.*
- *The legislation should make provision for voluntary return schemes.*
- *Persons who seek to return to the State within a certain period of time after deportation should be required to repay the cost of deportation before being admitted.*

Administration and Delivery of Services — chapter 14

The current immigration system in Ireland involves a number of public bodies dealing directly with the admission of migrants and a greater number dealing with migrants after they have arrived in Ireland. The new legislation will address the reorganisation of immigration and citizenship services in the context of the establishment of the Irish Naturalisation and Immigration Service (INIS), which was approved by Government in March 2005 . The proposed legislation should address the following issues:

- *The legislation should contain any provisions necessary for the reorganisation of immigration, asylum and citizenship services in the Irish Naturalisation and Immigration Service (INIS)*
- *User charges will play an important role in providing resources to the INIS to develop service-based initiatives.*
- *The roles and functions of immigration officers should be set out in legislation.*
- *The legislation should set out the powers of the Minister to appoint immigration officers and to suspend or revoke such appointments, and the procedures to be followed.*
- *Legislation should provide the Minister with power to give instructions to immigration officers and for the development of a body of immigration instructions, or manual, which should in general be publicly available*
- *The role of a senior immigration officer in reviewing decisions should be set out.*
- *The legislation should provide powers for immigration officers to undertake necessary functions outside the State and to co-operate in international operations.*