

## **Submission to the Joint Committee on Justice, Equality, Defence and Women's Rights on the Immigration Residence and Protection Bill**

- 1. Residency rights for family members of Irish citizens**
- 2. Issues and suggestions regarding marriage restriction proposals**
- 3. Concerns around the capacity of the Bill to act as a disincentive to integration**
- 4. Other proposals**

### **1. Residency rights for family members of Irish citizens**

As part of a comprehensive overhaul of immigration legislation in Ireland the publication of the Immigration and Residence Bill offered an opportunity to correct some of the fundamental deficits of Irish immigration legislation. One of the most glaring deficits of current legislation is the fact that non-EU family members of Irish citizens do not have a stated right to live in Ireland with their Irish family member/s. This is in contrast to some categories of immigrants in Ireland who actually have stronger rights to family reunification than Irish citizens.

Such weak rights for Irish citizens can act as a barrier to Irish emigrants wishing to return to Ireland with their non-EU family members. There are also cases where spouses of Irish citizens are refused entry into Ireland because the Irish citizen is not earning enough money. The difficulties do not end there as there are 100s of cases every year where non-EU spouses of Irish citizens have to wait up to 12 months (without the right to work) for their request for residency to be processed. The gap in legislation also leads to situations whereby if certain categories of immigrant are granted Irish citizenship they lose their rights to family reunification. There are broader questions for integration on this particular aspect of the issue.

Notwithstanding indications by the Minister and the Department of Justice, Equality and Law Reform that family reunification rights will be provided for in secondary legislation CMP believes that rights for family members of Irish citizens (at the very least) should be enshrined in primary legislation. For the purposes of successful integration rights of various categories of immigrant should not be significantly weaker than those Irish citizens.

**CMP calls on the Minister to insert a part in the Immigration, Residence and Protection Bill that would grant rights to non-EU family members of Irish citizens to reside in Ireland with their Irish family member/s. A suggested text for this part is given in ten sections at Appendix 2.**

In addition, in Section 127 (5) the Minister outlines 11 broad grounds which he will take into account when considering whether to grant entry or residence to certain categories of immigrant. Such grounds include, among others:

- trade, commercial, tourist, cultural, educational or scientific activities,
- fostering and development of the links between the State and the United Kingdom of Great Britain and Northern Ireland.

**CMP proposes that the Minister includes an additional ground, in the manner of the following suggestion:**

*The wishes of Irish citizens abroad to return to live in the State with their family members*

## **2. Issues and suggestions regarding marriage restriction proposals**

CMP views the proposals in Section 123 as an overly invasive intervention by the State in the institution of marriage. CMP also believes that people should be prevented from gaining residency in Ireland on the basis of a ‘marriage of convenience’. However the current proposals punish all for the actions of what can only be a small minority of people at the most. There are no accurate statistics on proven marriages of convenience for immigration purposes in Ireland. Collation of better specific and background data is a first step before any policy decisions should be made. A response to Written Parliamentary Question 386 of 13/2/08 outlines some of the Minister’s reasoning for the measures in Section 123. The Minister stated that only 14 people were refused residency based on marriage to an Irish citizen in 2007, however this was a significant drop from 2005 and 2006 where figures of 46 per year were recorded. These were simply refusals, INIS could not confirm that the marriages in question were marriages of convenience.

In the same answer the Minister stated that:

*With regard to applications for residence on foot of marriage to a Union citizen approximately 30% of those cases involved persons who were illegally present in the State or on a temporary or limited permissions thereby giving rise to a suspicion that the marriage is one of convenience for the purpose of circumventing immigration controls.*

Considering that all applications for residency on foot of marriage to a Union citizen are from non-EEA citizens, this is a somewhat misleading and/or misguided representation of the facts on the basis that the majority of non-EEA nationals in Ireland are on *temporary or limited permissions*, almost by definition of being non-EEA nationals, whether they are an asylum seeker, a student or an employment permit holder. What is really notable

perhaps is that the figure of 30% of applications is well below the percentage of non-EEA citizens in Ireland with *temporary or limited permission*<sup>1</sup>.

There are further weaknesses in another section of the answer:

*Further indicators of a problem are to be found in highly unusual patterns of marriages and intelligence in relation to inducements being offered in certain European Union Member States for their nationals to marry third country nationals.*

While the presence of such inducements demands vigilance on behalf of immigration authorities in Ireland, the mere presence of inducements cannot serve as a solid basis for profound legislative changes in this jurisdiction.

CMP recognises that residency rights for spouses/partners of EU citizens are open to abuse, however the context of legitimate interaction between EEA and Non-EEA nationals must also be born in mind. EEA and non-EEA citizens in Ireland are as likely (if not more likely) to have co-workers and fellow third level students who are not Irish. The Irish labour force and third level student population is significantly skewed towards non-Irish citizens compared to the population as a whole. In this context CMP believes it is reasonable to expect a high level of interaction between EEA and non-EEA citizens in Ireland and thus relationships, many long term, are likely to form.

It is very difficult to prove a marriage of convenience and there is no doubting that people should not be granted residency in Ireland on this basis. However CMP also believes that the State can and should only go so far with measures to ensure people do not get residency based on a marriage of convenience. While external observations may give indications as to the possibility of a marriage of convenience, it can rarely be definitively stated that a marriage was conducted for the sole purpose of gaining residency status in Ireland.

It should also be borne in mind that even when external observations indicate the possibility of a marriage of convenience it is possible that these observations may be interpreted incorrectly. Such incorrect interpretations are likely to happen with people of different cultures where expectations around the nature of a relationship before the marriage are quite different from cultural expectations in contemporary Ireland, which it must be said form the basis for some of the current checks and balances. It is also important to note that an increasing number of Irish people initiate and form relationships that lead to marriage via the internet, a more recent and legitimate cultural phenomenon that also needs to be recognised in assessing applications for residency for non-EEA spouses/partners.

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<sup>1</sup> From a reply to Parliamentary Question 653 of 19/2/08, there are 138,232 non-EEA nationals registered with the GNIB. Over 30, 000 of these have student permission and statistics from [www.entemp.ie](http://www.entemp.ie) show that over 23, 000 people were issued work permits last year. Even including an asylum seeker population of 7000, (PQ 525 from 12/2/08) these two sources alone indicate that at the very minimum over 40% of non-EEA nationals in Ireland are here on a temporary or limited permission. This figure does not include various other forms of temporary permission like working visas, authorisations or temporary leave to remain.

The right to marriage is one of the core tenets of the Universal Declaration of Human Rights, the European Convention on Human Rights and the Irish Constitution. At the centre of any system checks and balances to prevent people gaining residency based on marriages/partnerships of convenience should be the guarantee that nobody who has a genuine relationship is denied the right to marry and/or live with his/her spouse/partner.

CMP believes it is possible for strong rights to family reunification in primary legislation to exist side by side with effective checks and balances to prevent people gaining residency based on a marriage of convenience. **CMP proposes the following measures as alternatives to the proposals in section 123.**

- **Collation of accurate data on the total number of marriages in Ireland involving Irish, EEA and non-EEA citizens, in the context of the populations of these groups**
- **Continued and enhanced monitoring of current checks and balances in the residency application processes for Irish and EU spouses/partners with collation of data of proven marriages of convenience**
- **If reliable data on proven marriages of convenience emerges and it is not possible to enhance the current application process to ascertain such applications then a direct interview stage with the applicant and his/her spouse partner could be formulated in conjunction with the NGO sector**

### **3. Concerns around the capacity of the Bill to act as a disincentive to integration**

#### Long Term Residency

CMP views the provisions for Long Term Residency (36) as unnecessarily exclusive. The Bill is proposing that immigrants who fall into situations of vulnerability and may need to access their rights through the welfare system, will be penalised by not being eligible for Long Term Residency. Those on low wages will be more susceptible to such a need and thus Long Term Residency permission will be granted to the more fortunate and/or better paid, thus increasing an already present socio-economic division in society. The proposed qualification criteria for Long-Term Residency are over and above the current requirements for Irish citizenship and in their current form will serve to further socially and economically stratify rather than integrate immigrants.

CMP also views the proposal for continued welfare and educational restrictions into the 'Qualified Long Term Resident' 37 (2) (c) status as unnecessarily restrictive and ultimately counter productive.

Section 36 (4) (c) (iii) mentions the requirement of ‘reasonable efforts to integrate’. The question here is how reasonably can the immigrant be expected to integrate if he/she has no right to live with his/her family?

**CMP proposes that Long Term Residence permission is made more accessible by dropping 36 (4) (c) (iv) which requires that applicants cannot have had recourse to public funds.**

**In light of no provided definition of integration and the somewhat vague and contradictory requirement of 36 (4) (c) (iii) in relation to ‘reasonable efforts to integrate’ CMP believes that this clause should be dropped.**

**CMP also recommends that Long Term Residency should be granted on a permanent basis.**

#### Bond System

Combined with the lack of rights to family reunification and only an exclusive right to Long Term Residency, this Bill is now also outlining a possibility that only family members of an exclusive group of immigrants would be allowed to visit Ireland.

Via the proposed ‘Bond System’ for visas (13) only Long Term Residents, Irish citizens or EU citizens resident in Ireland for 5 years would be able to act as guarantor for a Bond (financial or otherwise) that can be required to accompany a visa application. This will serve to further punish those who are economically and socially on the margins of society, thus again exacerbating social exclusion and division. We have an ongoing need for non-EEA immigrants who do not qualify for Green Cards, (See Appendix 1 for more detail) who under this Bill will not have a right to family reunification, may not qualify for Long Term Residency and whose family may not be able to visit Ireland.

**On the grounds of being unnecessarily punitive to those immigrants on the lower socio-economic scale CMP believes that proposals for a Bond system of visas should be dropped.**

## **4. Other proposals**

#### Obligation on immigration officers to provide receipts

**CMP proposes an additional clause in the Bill that would place an obligation of an Immigration Officer or other representative of the Minister for Justice to provide any person from whom he/she confiscates or receives a document with a receipt detailing the officer’s name and title, the date, name and reference number of person in question and an exact description of the document confiscated or received and a reason explaining why the document was confiscated or received. While this is currently a procedural requirement the GNIB have recognised that it is not happening in practice.**

Inability to easily prove the location of a registration card, travel document or passport can cause confusion, hardship and incorrect actions by a range of officers acting on behalf of different state agencies and departments. The ability to provide a receipt would eliminate much of this hardship, confusions and incorrect action. It seems only just and prudent that an immigrant should be able to supply proof of the whereabouts of his/her documents, if they have been confiscated from him or her or if they have been submitted to an Immigration Officer or the Department of Justice.

### Trafficking

CMP views the proposal to grant victims of trafficking only an initial 45 day period (124) of legal status in order to recover and reflect from their ordeal as inadequate. With possible deportation looming at the end of this short time span, a 45 day period will have the effect of moving a person from one situation of pressure to another. Such a short time period will continue the situation of instability and vulnerability for the victim. **CMP recommends a period of 6 months for an initial recovery and reflection period.**

### Lost Permits

In relation to section 35 (1) (d) on replacement of lost permits, **CMP suggests the removal of this clause on the grounds that it is not reasonable to expect someone to provide evidence that their permit was lost or destroyed.**

### Response time to notification to revoke a renewable residence permit

In relation to section 40 (3) (b) on the period of time within which a person must respond to a notification to revoke a renewable residence permission, CMP suggests a time period of significantly more than 5 days. Considering margins of error, the time involved in making a review application and the seriousness of the issue for the person involved **CMP proposes that a time period of at least 15 working days would be more appropriate.**

## Appendix 1.

The following is a table of new work permits issued to non-EEA nationals in the 3 years following the 2004 accession of new EU states:

<b>Year</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
<b>New Work Permits issued to non-EEA nationals</b>	7, 354	7, 298	10, 134

From [www.entemp.ie](http://www.entemp.ie) on 18/2/08

## Appendix 2.

### **Suggested text for inclusion in the Immigration Residence and Protection Bill in relation to residency rights for Irish family members**

#### **Section 1**

##### **Definitions**

For the purposes of this proposal:

1. 'family member' means:

(a) the spouse;

(b) the partner with whom the Irish citizen has contracted a registered partnership, on the basis of the legislation in any State, if the legislation of that State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of that State;

(c) the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner as defined in point (b);

(d) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b);

(e) any other family members, irrespective of their nationality, not falling under the definitions outlined in points (a), (b), (c) or (d), who in the country from which they have come, are dependants or members of the household of the Irish citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Irish citizen;

(f) the partner, not defined by point (b) but with whom the Irish citizen has a durable relationship, duly attested.

In relation to points (e) and (f) the State may undertake an examination of the personal circumstances involved and shall justify any denial of entry or residence to these people.

2. 'foreign national' means a person who is not an Irish citizen

## **Section 2**

### **Beneficiaries**

1. This proposal shall apply to all Irish citizens who move to or reside in the State and to their family members as defined in Section 1 (1) who accompany or join them.

## **Section 3**

### **Visas**

1. It shall be possible but not necessary for a family member of an Irish citizen to gain pre-clearance for entry into the State in the form of a visa for the purposes of living with his/her Irish family member regardless of whether the family member, who is a foreign national, is a visa required national or not.

## **Section 4**

### **Right of residence for more than three months**

1. The right of residence of Irish citizens in the State shall extend to family members who are foreign nationals, accompanying or joining Irish citizen in the State

## **Section 5**

### **Issue of residence cards**

1. The right of residence of family members of an Irish citizen who are foreign nationals shall be evidenced by the issuing of a document called 'Residence card of a family member of an Irish citizen' no later than six months from the date on which they submit the application. A certificate of application for the residence card shall be issued immediately and this shall serve as temporary proof of limited permission to remain in the State for six months. If the family member has received pre-entry clearance in the form of a visa for the purposes of living with his/her Irish family the 'Residence card of a family member of an Irish citizen' shall be issued no later than three months from the date on which they submit the application.

2. For the residence card to be issued, the State shall require presentation of the following documents:

(a) a valid passport;

(b) a document attesting to the existence of a family relationship or of a registered partnership;

(c) proof of residence in the State of the Irish citizen whom they are accompanying or joining;

(d) in cases falling under points (c) and (d) of Section 1 (1), documentary evidence that the conditions laid down therein are met;

(e) in cases falling under Section 1 (e), a document issued by the relevant authority in the country of origin or country from which they are arriving certifying that they are dependants or members of the household of the Irish citizen, or proof of the existence of serious health grounds which strictly require the personal care of the family member by the Irish citizen;

(f) in cases falling under Section 1(f), proof of the existence of a durable relationship with the Irish citizen.

## **Section 6**

### **Validity of the residence card**

1. The residence card provided for by Section 5 (1) shall be valid for five years from the date of issue or for the envisaged period of residence of the Irish citizen, if this period is less than five years.

2. The validity of the residence card shall not be affected by temporary absences not exceeding six months a year, or by absences of a longer duration for compulsory military service or by one absence of a maximum of 12 consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another State.

## **Section 7**

### **Retention of the right of residence by family members in the event of death or departure of the Irish citizen**

1. The Irish citizen's death shall not entail loss of the right of residence of his/her family members who are foreign nationals and who have been granted residence in the State as family members before the Irish citizen's death.

2. The Irish citizen's departure from the State or his/her death shall not entail loss of the right of residence of his/her children or of the parent who has actual custody of the children, irrespective of nationality, if the children reside in the State and are enrolled at an educational establishment, for the purpose of studying there, until the completion of their studies.

## **Section 8**

### **Retention of the right of residence by family members in the event of divorce, annulment of marriage or termination of registered partnership**

1. Without prejudice to the second subparagraph, divorce, annulment of marriage or termination of the registered partnership referred to in point 1(b) of Section 1 shall not entail loss of the right of residence of a Irish citizen's family members who are foreign nationals where:

(a) prior to initiation of the divorce or annulment proceedings or termination of the registered partnership referred to in point 1(b) of Section 1, the marriage or registered partnership has lasted at least three years, including one year in State; or

(b) by agreement between the spouses or the partners referred to in point 1(b) of Section 1 or by court order, the spouse or partner who is a foreign national has custody of the Irish citizen's children; or

(c) this is warranted by particularly difficult circumstances, such as having been a victim of domestic violence while the marriage or registered partnership was subsisting; or

(d) by agreement between the spouses or partners referred to in point 1(b) of Section 1 or by court order, the spouse or partner who is a foreign national has the right of access to a minor child, provided that the court has ruled that such access must be in the State, and for as long as is required.

## **Section 9**

### **Right of permanent residence**

1. Family members who are foreign nationals and have legally resided with the Irish citizen in the State for a continuous period of five years shall have the right of permanent residence there.

2. Continuity of residence shall not be affected by temporary absences not exceeding a total of six months a year, or by absences of a longer duration for compulsory military service, or by one absence of a maximum of 12 consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another country.

3. Once acquired, the right of permanent residence may be lost only through absence from the State for a period exceeding two consecutive years.

## **Section 10**

### **Exemptions for persons no longer working in the State and their family members**

1. By way of derogation from Section 9, the right of permanent residence in the State shall be enjoyed before completion of a continuous period of five years of residence by:

(a) workers or self-employed persons who, at the time they stop working, have reached the age laid down by law for entitlement to an old age pension or workers who cease paid employment to take early retirement, provided that they have been working in the State for at least the preceding twelve months and have resided there continuously for more than three years.

(b) workers or self-employed persons who have resided continuously in the State for more than two years and stop working there as a result of permanent incapacity to work. If such incapacity is the result of an accident at work or an occupational disease entitling the person concerned to a benefit payable in full or in part by an institution in the State, no condition shall be imposed as to length of residence;

For the purposes of entitlement to the rights referred to in points (a) and (b), periods of involuntary unemployment duly recorded by the relevant employment office, periods not worked for reasons not of the person's own making and absences from work or cessation of work due to illness or accident shall be regarded as periods of employment.