

# Submission to Indecon Ireland on Barriers for Returning Irish Emigrants

Crosscare Migrant Project

October 2017

## Introduction

Crosscare Migrant Project is the only Irish based non-government organisation with the specific remit of working with both intending and returning Irish emigrants, as well as immigrants in Ireland. We are funded by the Department of Foreign Affairs and Trade's Emigrant Support Programme and, as a part of social support actions by the Catholic Archdiocese of Dublin, have been working with Irish emigrants since the 1950s.

Our primary focus is the provision of information and advocacy support directly to people who are marginalised. As a result our work spans everyday queries from accessing a bank account or car insurance, to more immediate and urgent support needs for those returning in crisis and requiring access to homeless services and social protection. This can involve significant advocacy work with the relevant Departments and raising policy gaps and issues where relevant with service providers and relevant stakeholders, such as the Interdepartmental Committee on Diaspora Policy. It also encompasses research into Irish migratory trends, such as our *Home for Good?*<sup>1</sup> report published in May 2017. We undertook this prior research in response to a significant increase in returning emigrants and a growing need for support. Based on a survey into the experiences of 400 recently returned Irish emigrants, it detailed many of the common barriers encountered upon return to Ireland by people making a planned return home.

In line with our remit under the Emigrant Support Programme, we have focused this submission on three key barriers which we continue to encounter in our work with Irish emigrants returning to Ireland in marginalised situations. These barriers are:

- 1. The Habitual Residence Condition**
- 2. Immigration and residency permission for family members**
- 3. Access to homeless services**

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<sup>1</sup> 'Home for Good? A report on the experiences of recently returned Irish emigrants – May 2017':  
[www.migrantproject.ie/images/Home-for-Good---a-report-by-Crosscare-Migrant-Project---May-2017.pdf](http://www.migrantproject.ie/images/Home-for-Good---a-report-by-Crosscare-Migrant-Project---May-2017.pdf)

## 1. The Habitual Residence Condition

We are aware of an increased number of cases whereby returning Irish emigrants are being refused access to social welfare payments on the basis of the Habitual Residence Condition (HRC). HRC is a condition that must be satisfied in order to be eligible for most non-contributory social welfare payments in Ireland. HRC requires an applicant to show that they have a strong connection to Ireland and that it is their home. It is not based on nationality and is therefore applicable to both Irish and non-Irish citizens.

We have extensive experience in this area of Social Protection, providing HRC specific information<sup>2</sup> and advocacy services to returning Irish emigrants. We previously raised HRC as an issue affecting returning emigrants in 2008<sup>3</sup> and 2010<sup>4</sup>, successfully lobbying for clarification and the eventual removal of the '2 year rule'. More recently we have highlighted the issue of HRC in our policy submissions to the Interdepartmental Committee (IDC) on Diaspora Policy in November 2016<sup>5</sup>, and again in March 2017<sup>6</sup>. We also continue to undertake HRC related social welfare appeals for returned Irish emigrants, positively overturning the majority of these at the level of the Social Welfare Appeals Office.

When deciding if a person is habitually resident, the following five factors<sup>7</sup> are considered by the Department of Employment Affairs and Social Protection:

1. Main centre of interest
2. Length and continuity of residence
3. Length and purpose of any absence from Ireland
4. Nature and pattern of employment
5. Future intention to live in the Republic of Ireland as it appears from all the circumstances.

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<sup>2</sup> <https://www.migrantproject.ie/index.php/what-we-do/returning-to-ireland/habitual-residence-condition>

<sup>3</sup> 'Issues and Proposals of Crosscare Migrant Project for the Joint Committee on Social and Family Affairs on the Habitual Residence Condition and its implications for returning Irish emigrants - February 2008': [https://www.migrantproject.ie/images/CMP\\_submission\\_HRC\\_JointCommittee\\_02.2008.pdf](https://www.migrantproject.ie/images/CMP_submission_HRC_JointCommittee_02.2008.pdf)

<sup>4</sup> 'Crosscare Submission to the Joint Oireachtas Committee on Social Protection on the Habitual Residence Condition and returned emigrants – October 2010': [https://www.migrantproject.ie/documents/CrosscareSubmissiontotheJointOireachtasCommitteeonSocialProtectionontheHabitualResidence\\_000.pdf](https://www.migrantproject.ie/documents/CrosscareSubmissiontotheJointOireachtasCommitteeonSocialProtectionontheHabitualResidence_000.pdf)

<sup>5</sup> 'Crosscare Migrant Project Brief for Diaspora Affairs IDC – November 2016': <https://www.migrantproject.ie/images/Barriers%20for%20returning%20emigrants%20-%20Crosscare%20Migrant%20Project%20brief%20for%20Diaspora%20Affairs%20IDC%2024.11.2016.pdf>

<sup>6</sup> 'Crosscare Migrant Project Brief for Interdepartmental Committee on the Diaspora – March 2017': [https://www.migrantproject.ie/images/Brief\\_for\\_Diaspora\\_Affairs\\_IDC\\_-\\_Crosscare\\_Migrant\\_Project\\_16.03.17.pdf](https://www.migrantproject.ie/images/Brief_for_Diaspora_Affairs_IDC_-_Crosscare_Migrant_Project_16.03.17.pdf)

<sup>7</sup> Detailed in Section 246 (4) of the Social Welfare Consolidation Act 2005, as amended by Section 30 of the Social Welfare and Pensions Act 2007, Section 15 of the Social Welfare and Pensions (No. 2) Act 2009 and Section 11 and 12 of the Social Welfare Pensions Act 2014

The Department's Guidelines for Deciding Officers on the determination of Habitual Residence<sup>8</sup> provide that *'A person who had previously been habitually resident in the State and who moved to live and work in another country and then resumes his/her long-term residence in the State may be regarded as being habitually resident immediately on his/her return to the State'*.

It follows therefore that **Irish emigrants who were previously resident in Ireland may be found habitually resident immediately upon return to Ireland**, once they can demonstrate that they are resuming their residence.

Additionally, the Guidelines also provide for certain arrangements whereby returning Irish emigrants repatriated to Ireland with the assistance of Safe Home Ireland<sup>9</sup> can sign a declaration form confirming that they have returned to reside in the State on a permanent basis.

## Barriers

In our experience HRC acts as a barrier for Irish emigrants who require access to social assistance payments upon return primarily due to **inconsistency in its interpretation, misinterpretation and misapplication at the level of local Social Welfare offices**. Some of the issues that we have noted in relation to this include:

- Disregard of the provision for 'resuming residence' when assessing claims made by returning Irish emigrants immediately upon return
- Over emphasis placed on one of the five factors, especially 'Length and Purpose of Absence', resulting in a persons full circumstances not being taken into account
- Lack of information provided to applicants about the types of documentation they can provide to evidence their 'habitual residence' in Ireland
- Unfair burden of proof on applicants to produce documentation that is outside of their power to obtain (e.g. proof of no social welfare payments abroad)
- Dismissal of the ability of homeless applicants to resume a residence in Ireland, due to their lack of a fixed abode
- Failure to take into account the unique circumstances of Irish citizens returning in crisis, especially naturalised Irish people returning from conflict zones
- Decisions on applications for Basic Supplementary Welfare Allowance applications being deferred until HRC has been decided upon for primary claims such as Jobseekers Allowance
- Refusals of the right to a review, exacerbated by the length of time it takes for appeals to be processed by the Social Welfare Appeals Office

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<sup>8</sup> <http://www.welfare.ie/en/Pages/Habitual-Residence-Condition--Guidelines-for-Deciding-Offic.aspx>

<sup>9</sup> <http://www.safehomeireland.com/>

## Recommendations

We recommend:

1. Updated training for frontline staff on the guidelines on the determination of Habitual Residence and 'Returning migrants or resuming previous residence',
2. Appropriate referral of applicants to the Community Welfare Service for interim Basic Supplementary Welfare Allowance and a decision to be made in advance of and independent of primary claims, as per guidelines,
3. The publication annually of figures showing the number of HRC related refusals overturned on appeal, including those relating to Irish citizens.

## How this will help

At present HRC is resulting in some returning Irish emigrants being unfairly refused access to a vital financial safety net on their return to Ireland, putting them at risk of poverty and even homelessness. These recommendations will help to ensure returning Irish emigrants are not disproportionately affected by this condition.

## 2. Immigration and residency permission for family members

Couples and families returning to Ireland where one partner is a non-EEA citizen can be significantly disadvantaged and perhaps deterred from making the decision to return, as there are long processing times for immigration residency permission for the non-EEA citizen. It is not possible to apply for residency permission in advance of arrival. Furthermore, there is no statutory right for such permission meaning there is always a possibility of it being refused.

When non-EEA applicants arrive in Ireland they must make an application to the Irish Naturalisation and Immigration Service (INIS). This application takes 6 months minimum to be processed. During the processing period the applicant has no right to work, and cannot effectively leave the State as their application could be cancelled.

Spouses/civil partners, despite having a potentially much quicker route to residency permission on arrival, are still at risk of initial applications being refused leading to a lengthy secondary application. The table overleaf outlines the immigration and residency permission routes for spouses/civil partners contrasted with those for de facto partners of returning Irish emigrants. Note that any visa-required non-EEA citizen (e.g. someone from India) faces a significant visa application process before they can even travel to Ireland.

	Non-visa required	Benefits	Issues	Solution/s
Non-visa required Spouse / Civil Partner	Entry and immediate registration with INIS or GNIB possible (but not guaranteed)	Quick & clear to navigate	GNIB can refuse registration which leads to application to INIS with 12 month processing	Pre-entry residence permission application
Non-visa required De Facto Partner	Entry and application to INIS with 6 month processing time	Clear to navigate	No security of permission being granted, therefore risky to plan move if partner might be denied  No right to work in interim	1) Pre-entry application  OR  2) Interim permission granted to work during application processing period

	Visa required	Benefits	Issues	Solution/s
Visa required Spouse / Civil Partner	Visa application with 6 month processing time (potentially longer) , and immediate registration on arrival possible (but not guaranteed)	Clear system (although visa guidelines could be made easier to follow)	Difficulty in planning for move with potentially long processing time, and risk of 12 month application after arrival	3 month visa processing time with pre-entry residence application considered in tandem

<b>Visa required De Facto Partner</b>	Visa application with 6 month processing time (potentially longer), then application to INIS with 6 month processing time	Clear system (although visa guidelines could be made easier to follow)	Long delay - visa application with 6 month processing time, then application to INIS with 6 month processing time  No security of permission being granted therefore risky to plan a move	<b>1)</b> 3 month visa processing time with pre-entry de facto application considered in tandem  OR  <b>2)</b> 3 month visa processing and interim permission granted on arrival in Ireland during de facto application processing period
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## Barriers

A non-EEA De Facto partner (both visa or non-visa required) of an Irish emigrant must make a written application to the INIS after arrival, and face a 6 month processing period during which they cannot work or travel. This is posing as a barrier to return as people are concerned about the financial and additional implications of these delays. They will often be faced with the reality that they may be significantly financially restricted at a very challenging period of resettling when relocation costs are high and there may be uncertainty in the employment industry.

The major implications for these emigrants' partners are:

### **1) No right to work until an application is processed**

This is a major concern expressed by the majority of returnees. The expense of returning can be very high: up to €10,000-€15,000 for a family coming from Australia depending on shipping<sup>10</sup>, for

<sup>10</sup> Home for Good? A report on the experiences of recently returned Irish emigrants – May 2017': [www.migrantproject.ie/images/Home-for-Good---a-report-by-Crosscare-Migrant-Project---May-2017.pdf](http://www.migrantproject.ie/images/Home-for-Good---a-report-by-Crosscare-Migrant-Project---May-2017.pdf)

example. Returnees do not always have work arranged in advance of return, and if only one partner is able to work for the first 6 months means it can be financially unviable or too risky to make the return. All our clients express the desire for a system where interim permission to work can be granted while an application is being considered. There is a precedent for such interim permission in the EU Treaty Rights process.

## **2) Uncertainty over the success of an application**

Moving to Ireland is a huge step for the non-EU partner. They must give up their career, family, friends, etc. The quote below is from someone who contacted us when their partner was refused permission:

*“my partner and I had over nearly 5 years of cohabitation, had all the documentation, he sold his home in Australia, left a successful career, we brought our 2 dogs here, but they still refused us...we had our family to support us but it took a terrible toll on us, my health especially...in limbo for 8 months...”*

Being able to apply for residence permission in advance of return would provide security and would be hugely welcomed.

## **Recommendations**

We would suggest that the following recommendations are made to the Department of Justice and Equality to consider family visa policy strategy specifically for returning Irish emigrants and their families:

1. Reduce processing times of all applications made in Ireland to 3 months
2. Facilitate pre-entry applications for de facto partners and visa-required spouses or civil partners or introduce a bridging permission for the application processing period in Ireland that allows work and travel

## **How this will help**

The Diaspora strategy sets out to achieve the smooth transition and welcome of returning Irish emigrants. For those who have lived for a number of years abroad and wish to return to Ireland with their non-Irish family members these recommendations would provide the security they seek in order to resettle in Ireland without risk.

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### 3. Access to homeless services

We have noted<sup>11</sup> for some time that homeless returning Irish emigrants are experiencing barriers in accessing emergency accommodation.

Not everyone who returns to Ireland does so in a planned way or by choice. With this in mind, there are three groups of Irish citizens who can be defined as returning to Ireland in crisis:

- 1) Deportees - Irish citizens deported back to Ireland from abroad following forced removal by the authorities of another country (including former prisoners and the undocumented).
- 2) Irish citizens repatriated to Ireland with the assistance of Irish Embassies and Consular Services (including people with support needs relating to their physical/mental health, and long-term rough sleepers)
- 3) Irish citizens fleeing war, conflict and violence

Individuals within these three groups are more likely to require access to homeless services on return. This is because many lack family supports and may be returning with limited means after a prolonged absence from Ireland. Additionally, it is often not possible for these individuals to return to the country of their departure. This is especially in the case for deportees who are usually prohibited from re-entering the country from which they have been deported.

#### Barriers

As Local Authorities<sup>12</sup> have overall responsibility for the provision of emergency accommodation, most of the barriers faced by homeless returning Irish emigrants are concentrated at this level.

Barriers encountered include:

- Misinformation and inconsistency in the manner in which requests for emergency accommodation are processed by Local Authorities
- Requirement to be present in Ireland and have a PPS number before processing requests for emergency accommodation
- Delays in processing applications for Social Housing, resulting in delays in emergency accommodation placement
- Limited availability of supported emergency accommodation options leading to prolonged referrals to night on night services and the issuance of sleeping bags
- Unreasonable requests for supporting documentation which are not within the returnee's power to provide (e.g. evidence of never having owned foreign property)

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<sup>11</sup> Crosscare Migrant Project report on 'Barriers for returning Irish emigrants accessing homeless supports – June 2016': <https://www.migrantproject.ie/images/Barriers%20for%20returning%20Irish%20emigrants%20accessing%20homeless%20supports%20-%20Crosscare%20Migrant%20Project%20June%202016.pdf>

<sup>12</sup> <http://www.housing.gov.ie/local-government/administration/local-authorities/local-authorities>

- Verbal refusals which do not include the grounds for the negative decision
- No appeal mechanism

## Recommendations

While acknowledging that many of the aforementioned issues are not unique to returning Irish emigrants, we make the following recommendations on the basis that these barriers disproportionately affect them.

1. Recognise in homeless service provision policies the unique circumstances of Irish emigrants returning in crisis (*as defined above*) by issuing a Department of Housing Circular to all Local Authorities which:
  - a. Acknowledges that deported Irish emigrants are prohibited from returning to the country from which they have been forcibly removed and therefore should satisfy local connection criteria regardless of the length of their residence in Ireland; and
  - b. Recommends that Local Authorities use their discretion to provide emergency accommodation in cases whereby Irish emigrants have returned to Ireland in crisis from abroad and are homeless on return
2. In situations where Irish Embassies and Consular Services are aware of an individual's imminent deportation, repatriation or return into homelessness:
  - a. Establish a mechanism between the Department of Foreign Affairs and Trade and the Department of Housing, Planning and Local Government facilitating direct access into pre-arranged emergency accommodation; and
  - b. Guarantee access to emergency accommodation for a minimum of seven days to ensure crisis returnees are not sleeping rough on arrival and have time to link with essential services

## How this will help

These recommendations will provide an essential safety net to homeless Irish emigrants at a critical time in their return journey by ensuring that they are able to access emergency accommodation supports. This will counter the need for returning Irish emigrants returning in crisis to sleep rough on arrival, reducing the risk of ill-health (physical and mental), recidivism by former prisoners, addiction relapse for people with a history of substance misuse and becoming entrenched in homelessness on return to Ireland. It will also promote trust and engagement with support services, ultimately supporting a successful reintegration into life in Ireland.

## Conclusion

We welcome the continued commitment by Minister for the Diaspora and the Department of Foreign Affairs and Trade to reduce barriers and identify solutions to common challenges faced by returning Irish emigrants. In this regard, we appreciate the opportunity to contribute to the Government commissioned economic report being undertaken by Indecon Ireland. We strongly believe that supporting our most vulnerable returnees sends a message of support to anyone who is worried about coming home that Ireland cares for our Diaspora.

Crosscare Migrant Project is a project of Crosscare,  
the social support agency of the Dublin Catholic Archdiocese.



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An Roinn Gnóthaí Eachtracha agus Trádála  
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