



Policy proposal to the Department of Justice and Equality on returning Irish emigrants with non-EEA family members

Crosscare Migrant Project

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(1) Introduction

Over 126,900 Irish emigrants have returned to Ireland in the past five years¹ on foot of the economic recovery. Crosscare Migrant Project has been monitoring the experiences for many people returning to live in Ireland and facing barriers affecting their re-integration. We have noted an increase from 2015 in queries from clients seeking information on family member visas and residency permission during this period. This was also raised as an issue that has been experienced among recently returned emigrants in our *Home for Good?* report².

Returning emigrants can be difficult to identify, as can their needs and the issues impacting on their lives during their transition. We conducted a survey for our *Home for Good?* report to identify recently returned emigrants and their experiences. Many of the issues raised have been quite well publicised but very little is known publicly about the immigration issues affecting returning emigrants and their non-EEA family members

The majority of returned emigrants in our survey stated their reason to return to Ireland was to be closer to family and support networks above career or quality of life. Many had left Ireland after college in their 20s and 30s, met partners, started families, and now wish to return to Ireland to be close to their family and raise their children in Ireland. Some of these couples and families are Irish citizens with non-EEA spouses, partners and dependents who will be required to apply for permission to reside and work in Ireland. This process has been proving difficult and to some extent a deterrent for some families wishing to return.

Fresh research from the Indecon report³ commissioned by the Minister for the Diaspora Ciarán Cannon, published March 2018, expanded on this evidence. The report noted that 21% of the independent survey respondents had non-EEA partners, and also noted the official number of applications for de facto partner permissions has risen by a third since 2015.

(2) Purpose of this policy proposal

This policy proposal seeks to outline the specific difficulties returning emigrants are experiencing in relation to the immigration system, setting out the restrictions caused by processing delays and the impact on family and financial security. The objective is to collate the information made available to Crosscare Migrant Project on this issue in order to inform and update the Department of Justice and Equality Irish Naturalisation and Immigration Service (INIS) in its efforts to address the challenges discussed.

¹ CSO <http://www.cso.ie/en/releasesandpublications/er/pme/populationandmigrationestimatesapril2017/>

² Crosscare Migrant Project. 2017. *Home for Good? A Report on the Experiences of Recently Returned Irish Emigrants*. Crosscare, Dublin.

³ Indecon, March 2018, *Report on returning Emigrants*

Our proposal follows previous communication with the Department of Foreign Affairs & Trade Irish Abroad Unit and presentations to the Interdepartmental Committee on Diaspora on this issue since 2016⁴. It includes an evidence base from Crosscare Migrant Project's face-to-face work with returning emigrants, findings from our 'Home for Good?' report, emerging social media evidence and public discourse on returning with non-EEA family members. It also examines comparative international immigration models for returning emigrants and non-national family members.

We present the discussion in the context of the objectives of Ireland's 2015 'Global Irish Diaspora Policy' in supporting the return of Irish emigrants by addressing barriers to return with an interdepartmental approach:

*"it is also important that moving or returning to this country is as easy a process as possible... we will...work with other Departments and agencies to minimise the difficulties that these challenges present"*⁵

Finally, we set out a summary of the issues for the Department to review and options that can be explored in order to improve the process of return for emigrants and their non-EEA family members.

(3) Immigration and residency permission process for non-EEA family members of returning Irish emigrants: an overview of the current system

The following tables outline the current system for entry into the State and applications for residency permission for non-EEA family members of Irish citizens.

Table 1 outlines the immigration and residency permission routes for spouses/civil partners and de facto partners of returning Irish emigrants who do not need a pre-entry visa.

Table 2 outlines the routes for those who will require a pre-entry visa. 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.

⁴ See Crosscare Migrant Project's Policy papers: https://www.migrantproject.ie/policy_research/

⁵ Department of Foreign Affairs. March 2015. *Global Irish, Ireland's Diaspora Policy*. Department of Foreign Affairs, Dublin.

Table 1: Non-visa required family members⁶

	Route	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 Inexpensive	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 Inexpensive	No security of permission being granted, therefore risky to plan move if partner might be denied. No right to work in interim. Policy designed for Irish citizens residing in Ireland, does not recognise returning Diaspora	Pre-entry application <i>OR</i> Interim permission granted to work during application processing period

⁶ Department of Foreign Affairs and Trade <https://www.dfa.ie/travel/visas/visas-for-ireland/> [accessed 27/02/2018]

Table 2: Visa required family members⁷

	Route	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) Inexpensive	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
Visa required De Facto Partner	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) Inexpensive	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	3 month visa processing time with pre-entry de facto application considered in tandem OR 3 month visa processing and interim permission granted on arrival in Ireland during de facto application processing period

⁷ Irish Naturalisation and Immigration Service <http://www.inis.gov.ie/en/INIS/Pages/visa-required-countries> [accessed 27/02/18]

The progressive nature of the immigration system for non-EEA family members of Irish citizens

The Irish immigration system, whilst ensuring security in the State, recognises and supports the right to a family life and provides a system by which this can be achieved for emigrants returning with non-Irish family members. The system for applying for permission is generally straightforward to navigate for applicants. There is also no charge for residence permission on these grounds as opposed to other countries which vary in rates. The privilege of a non-EEA national to join an Irish spouse therefore is viewed as a citizen's right (pending meeting the required criteria), rather than a process that should incur a cost to the citizen.

Of particular note is Ireland's policy to allow de facto partners of Irish citizens to apply for residency permission, recognising the changing nature of family make-up and relationships. The Irish Naturalisation & Immigration Service's (INIS) decision to facilitate such applications sets it apart from many other jurisdictions.

There has also been a positive change in policy recently in relation to assessments for evidence of residence for de facto applications. Some returning emigrants' partners had complained and appealed against decisions in 2016 and 2017 refusing residence permission on the basis that they were residing with family members of the Irish partner. This issue was raised broadly and has been resolved, and applications are now being approved for applicants living with family members. This decision is positive as it allows couples to return and sustain an affordable living until permission is granted and the de facto partner can work. This change also enables families to return where housing availability is extremely limited in places like Dublin.

Issues with the system

The system in Ireland is not without some issues. 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 can long processing times for immigration residency permission for the non-EEA citizen.

This is rare for spouses or civil partners where immediate registration can be granted, but standard for de facto partners where a minimum 6 month processing period is in place. The absence of a 'preclearance' option in advance of arrival does not give applicants the opportunity to avoid these delays. Furthermore, there is no statutory right for such permission meaning there is always a possibility that it can be refused (see section 5).

During the processing period the applicant has no right to work, and cannot effectively leave the State as their application could be cancelled. There is an option to apply for Stamp 3 during the application process, which the Department 'may consider'⁸, however this is a very

⁸ Explanatory leaflet - Application for a residence permission for a de facto partner
<http://www.inis.gov.ie/en/INIS/defacto-app-explained.pdf/Files/defacto-app-explained.pdf>

uncertain option for the applicant and does not allow them to work or set up a business during the waiting period.

Spouses/civil partners, despite having a potentially much quicker route to residency permission on arrival are still at risk of their initial application being refused leading to a lengthy secondary application.

How does this impact returning emigrants?

INIS requirements for emigrants returning with a non-EEA partner can affect both married and de facto couples.

A married couple experience the uncertainty of the long processing times of up to six months for the non-EEA spouse entry visa where they are coming from a visa-required country such as Thailand. The couple that will have least delays and uncertainty are those with a non-EEA partner coming from a non-visa required country such as Australia. The non-EEA partner can be issued with an entry visa on arrival and will generally have a short period of a few weeks for the Stamp 4 permission.

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 minimum 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 other 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 is uncertainty about employment.

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 shipping⁹, for example. Returnees do not always have employment arranged in advance of return, and if only one partner is permitted to work for the first 6 months, it can be financially unviable or too risky to make the return.

All our clients in this position 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 process¹⁰.

⁹ *Home for Good? A report on the experiences of recently returned Irish emigrants*, Crosscare Migrant Project, May 2017: www.migrantproject.ie/images/Home-for-Good---a-report-by-Crosscare-Migrant-Project---May-2017.pdf

¹⁰ Irish Naturalisation and Immigration Service <http://www.inis.gov.ie/en/INIS/Pages/EU+Treaty+Rights> [accessed 27/02/2018]

The following two cases from our service this year outline the issues for a visa-required spouse applicant and a non-visa required de facto applicant.

- A. An Irish citizen living in Thailand with his Thai wife wanted to return to Ireland with his wife and had been offered a job in Ireland. He sought information on the possibility to fast-track a D visa application for his wife because he could not afford to wait the six months for his wife to get her visa as he would lose the job offer. He was advised that unfortunately that fast-tracking is not an option. This couple was unable to uproot with the uncertainty that the delay in processing a visa would cause.
- B. An Irish citizen now living in Ireland contacted us about her Australian partner joining her. They were keen for the partner to start working as soon as possible so did not want to wait for a De Facto Partner application to be processed. The alternatives were work permit routes which were not a straightforward option for them.

In the case of a visa-required applicant (Case A.), the option of applying for D Visa can take up to 6 months or longer to be processed when the sponsor is an Irish citizen. The Irish citizen cannot take up an offer of employment in advance as employers are unlikely to wait the six month period.

In the case of a non-visa required applicant (Case B.), the option of applying for a work permit is very restrictive as it has a limited number of applicable industries from which applications can be accepted. There is an expensive fee of €1,000 and the processing time can be several months with backlogs and is dependent on the industry type.

2) Uncertainty over the success of an application

Moving to Ireland is a huge step for the non-EEA partner. They will be faced with the double impact of financial and emotional upheaval. They must take the decision to give up their career in the country they have been working in and take a risk to start again in Ireland in order to live together with their partner. They will need to accumulate significant savings in order to sustain a living until a decision is granted on their immigration residency application.

They will often be leaving behind close family, friends, contacts, and networks, making them almost completely reliable on their partner in the interim until their residency is processed and they can secure employment following that. The quote below is from a returned emigrant whose partner was refused permission:

“my partner and I had 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...”

(4) Policy background and developments

The Government released its 'Policy Document on Non-EEA Family Reunification'¹¹ in 2013 (and updated in 2016) outlining the broad remits and limitations to policy development for Non-EEA family reunification. The document outlines the schemes that grant family reunification for Irish family members.¹²

Centralised Family Settlement Unit

The policy outlined a commitment to establish a Centralised Family Settlement Unit¹³ which would address the inefficiency of separated sections administrating family reunification by replacing them with one unit that will deal with all applications. This has not been implemented to date.

Preclearance

The issue of preclearance is debated within the policy (section 10.3). It is discussed as an option to obtain residence permission in advance of return in response to a number of issues with the current visa requirements, in order to *'provide security in these cases and prevent families from experiencing the strain and stress of living in limbo..and there is a strong case for putting in place a formal visa requirement for long stays or some alternative'*.¹⁴

The difficulty with introducing preclearance into the current system is that it would affect applicants applying from within the State who have already obtained an inferior residence status and seek to "upgrade" this on the basis of their relationship with an Irish citizen. However, it makes the commitment that *'the establishment of a general pre-clearance process will be implemented over time... on a phased basis.'*¹⁵

The Department's website also states:

*'When the Family Settlement Unit is established it will be possible to have De Facto Partnership Immigration Permission applications decided prior to entry to the State for non visa required persons as well as for visa required persons.'*¹⁶

To date, pre-clearance has not been introduced, and it remains to be seen if it is possible to implement in line with fair treatment.

¹¹ INIS, Department of Justice and Equality. 2016. Family Reunification Policy Document. Department of Justice and Equality: Dublin
[\[http://www.inis.gov.ie/en/INIS/Family%20Reunification%20Policy%20Document.pdf/Files/Family%20Reunification%20Policy%20Document.pdf\]](http://www.inis.gov.ie/en/INIS/Family%20Reunification%20Policy%20Document.pdf/Files/Family%20Reunification%20Policy%20Document.pdf)

¹² Ibid: Sections 17.2, 18, 19 & 22

¹³ Ibid: section 10.2

¹⁴ Ibid

¹⁵ Ibid: section 25.3

¹⁶ Department of Justice and Equality <http://www.inis.gov.ie/en/INIS/Pages/De+Facto+Relationships>

Economic impact

The document further outlines the economic impact of family reunification policy, stating that;

*'Immigration can bring significant economic advantages by growing the domestic market for goods and services and through the direct contributions of migrant workers both in terms of output and taxation. At the same time there can be substantial costs in terms of education, housing, healthcare and welfare arising from family migration. Economic considerations are therefore a very necessary part of family reunification policy.'*¹⁷

However, this omits reference to the unique circumstances of returning Irish emigrants with their non-Irish partners and dependents. A family reunification policy must consider Irish citizens and their families as a unique group. Irish citizens should have the right to have their immediate non-Irish family members reside with them in Ireland and the economic benefits or cost should be secondary to this right.

Not only do returning emigrants and their families contribute to the growth of the economy, they integrate into society and bridge the cultures of their non-Irish family members with Irish culture and extended families. They contribute to a rich and diverse culture and heritage and strengthen Ireland's connections with its Diaspora and the international community, a stated aim of the National Diaspora Strategy.

(5) Legislation and Court Decisions

European and Irish law underpin the decision-making process for applications for visas or residence permission of non-EEA family members of Irish citizens.

EU Law

The right to family life, as supported by Article 8 of the European Convention on Human Rights,¹⁸ outlines the responsibilities of European States to protect the rights of the family in relation to permitting joint residence in a State. Although this right is subject to certain stated limitations, any interference with the right to family life must be proportionate and pursue a legitimate aim. This however must be considered in line with security and immigration control measures subject to an individual State, therefore, each State is not obliged to meet all applications for family reunification. However, the uncertainty of decision making and processing delays may cause difficulty to those seeking to access these rights.

Irish Law

The High Court in *RX v Minister for Justice, Equality and Law Reform*, 10th December 2010 states that in considering whether the State has breached its human rights obligations, the Irish Constitution must be considered first and that '...the ECHR merely supplements or enhances the role of the Constitution.' The Irish constitution therefore provides greater protection to

¹⁷ Ibid: section 8

¹⁸ <http://www.irishstatutebook.ie/eli/2003/act/20/schedule/1/enacted/en/html>

families based on marriage than Article 8 of the ECHR. A recent Court of Appeal decision¹⁹ found that a married couple have:

‘the constitutional right to have their application determined by the Minister with regards to (i) the constitutional right of protection of the family as per article 41.1.2, (ii) that the lawfully married couple are a family within the context of the Constitution “a fundamental unit possessing inalienable and imprescriptible rights which rights include a right to cohabit which is also an individual right of the citizen spouse which the State must, as far as practicable, defend and vindicate,” (iii) a family has a right to make a decision to live in Ireland and the State must protect such, as per article 41.1, (iii) the “birth right” of an Irish citizen to reside in Ireland.’

Whilst this ruling supports the favourable decision of the Minister for Justice and Equality to grant residency to the non-EEA spouse of an Irish citizen, the standard processing period is 12 months which can significantly delay the citizen’s access to these rights. Therefore, the introduction of a pre-clearance option is important to implement these rights fully and fairly. De facto permission does not have a legislative underpinning and is therefore intrinsically more risky in terms of there being no supporting legal provision or case law for applicants to rely on.

(6) Direct service cases

Crosscare Migrant Project dealt with 127 cases of immigration permission for family members of returning emigrants in the year from February 2017 to January 2018.

A variety of queries have been recorded through our information and advocacy clinics relating to de facto and spouse residence permission of returning Irish emigrants. These queries fall under the following categories:

1. Seeking clarification on information on the INIS website on when an application can be made for de facto/spouse residence permission
2. Problems with the absence of a provision to apply for de facto/spouse residency permission in advance from abroad
3. Seeking information on applying for pre-clearance for a work permit or alternative immigration permission (e.g. student) as a substitute option in the absence of pre-clearance residence permission for a de facto partner or spouse

¹⁹ Gorry vs Minister for Justice and Equality[2017] <https://berkeleysolicitors.ie/right-non-national-spouses-irish-citizens-reside-ireland-gorry-v-minister-justice-equality/>

Queries like these often seek clarity on information available on the INIS website or communications they have had with INIS or with Irish embassies & consular services. We offer information on applying and often refer clients to our own information guides such as 'Residence information for spouses & civil partners of Irish citizens' and 'Residence information for de facto partners of Irish citizens'.²⁰ These resources have been among the top-searched items on our website in the last 12 months and are referred to by Embassy and Consular staff around the world along with other Emigrant Support Programme-funded organisations.

(7) 'Home for Good?' report findings

In 2017 we published our 'Home for Good?' report on the findings of a survey in which 400 recently returned emigrants (2015-2017) participated, discussing their experiences on returning to live in Ireland²¹.

One question was included specifically to establish a broader record of people's experiences in seeking information on immigration for partners and dependents (*'How was your experience in getting official information about visas or immigration permission for Ireland?'*). A total of 34 respondents answered this question with an open ended comment.

Analysis of these comments can be broken down into Positive and Negative comments. There were a total of 10 positive comments and 24 negative comments. The positive comments outlined some details such as adequate access to information online and the application process. The negative comments outline more details on specific cases but can be broken down into difficulties with:

- Pre-departure information on the Department's INIS website
- Email communication
- Absence of phone-line
- Consistency of information provision as official source
- Point of entry information
- Application delays
- Referral to relevant services/ migration agents
- Registration office/ registration in Garda stations
- Queuing system and waiting time
- Renewal visa/residence information
- Information on citizenship/naturalisation process

A sample of detailed responses in relation to difficulties in accessing information is presented on the following page.

²⁰ <https://www.migrantproject.ie/returning-to-ireland/bringing-non-irish-family-members/>

²¹ *Home for Good? A report on the experiences of recently returned Irish emigrants*, Crosscare Migrant Project [2017] <https://www.migrantproject.ie/wp-content/uploads/2017/10/Home-for-Good-a-report-by-Crosscare-Migrant-Project-May-2017.pdf>

'Home for Good?' survey responses on immigration

'When we applied for her residency in November 2015, the GNIB office was a shambles. That has since been greatly improved with the appointment system however the wait time is still too long.'

'It was reasonably clear although I had to call the relevant department to determine that in order to get a work permit my partner needed to have a job offer beforehand. This was not evident online in my opinion.'

'Poor. Contradictory information at ports of entry, no clarity on status during the application process or lack of information on reliable migration agents. Most if not all Irish who have lived in Australia and probably the US are familiar with using one so this is a natural path to look to take when returning to Ireland when seeking assistance on visas but the industry may be small or low profile but its certainly not immediately obvious, nor are people advised to consider using their services.'

'We thought we had to apply before we came so we sent in our forms and passports to Irish Embassy in Ottawa. They returned them and said we just had to register when we arrived. We are in rural Ireland so had to wait for the Garda Immigration officer to be available. It took about a month to meet with him & then had to wait for the GNIB card.'

'Mixed (experience) - non-government websites were clear enough on Stamp 4 (spouse of member of EU) - but all the Government sites referred you to non-Government sites - unclear how you can rely on these for official advice.'

'While it has improved it is still a grey area, needing transparent processes; we got different advice from different bodies and professions. The Irish public service in general is not at all welcoming of non-Irish!!'

'We went to the Garda station and asked what we needed prior to moving so it was straightforward. The main problem is getting proof of address when you've just arrived.'

'It is extremely awful. INIS has no phone line and the website is very bad. Any email replies from INIS are standardised and uninformative. Even now we are 6 months into the process and still confused.'

'The main challenge was with the immigration status and process for my De facto partner...I've read numerous articles of recruitment companies encouraging migrants home, and yet the people who grant the permission to remain for partners are unanswerable to anything and can use subjective opinions to reject permissions. You live in fear of someone else making your decisions for you.'

(8) Social media evidence

Social media has become one of the most popular sources of first-hand knowledge and experience with more and more people turning to the advice of peers who have insight into issues and advice on how to address them. One specific example of this popular information-sourcing platform is a closed Facebook group named **'Irish Expats Returning to Ireland'**. This group has 13,355 members (*as of 22.03.18*) who are returning or recently returned Irish emigrants and was set up by the administrators of another closed group 'Irish around Oz' (*42,357 members as of 22.03.18*). It has generated a lot of discussion on issues affecting planned return to Ireland, including residency and visas for non-EEA partners and children.

From a word search analysis of the discussion thread for **'de facto'**, a total of **23 threads** were found discussing de facto residence permission on return to Ireland. All of these threads included different members' experiences with accessing information and/or applying personally for de facto permission for a partner. A further **23 threads** discussing information on permission for non-EEA Spouse were found in an analysis of threads containing 'spouse'.

The discussions generally start with a question asking about other people's experiences or knowledge on the issue. Issues mentioned include clarity on information from the INIS website, communications, processing delays, documents required and preclearance. The regularity in occurrence of these discussions is important to note as an issue of increasing interest to returning emigrants and those considering return to Ireland. The noted absence of clarity in public information on the immigration process is the main cause for many of these discussions and questions. They also note the absence of migration agency equivalents in Ireland that would exist in other countries like Australia to assist people with the process.

The Irish Times 'Irish Abroad' section and the linked Facebook page has also been a source of queries and information on this issue. We contributed to an 'Ask the experts' section on the issue of visas and immigration permission for the site – it was one of the most read articles.²²

(9) International diaspora return policy and comparative systems

Internationally, there has been a rise in the number of Governments introducing policies to encourage the return of citizens, particularly in Europe (from 32 per cent in 2005 to 59 per cent in 2011)²³. Whilst some EU countries have adapted some approaches by developing countries to return migration policies, Weinar observes that there is no 'EU community of practice' around emigration policies²⁴. There are a number of drivers that have influenced approaches by individual countries on return policies.

²² <https://www.irishtimes.com/life-and-style/abroad/how-can-i-bring-my-non-irish-partner-to-live-in-ireland-1.3086540> May 2017

²³ United Nations Department of Economic and Social Affairs, 2013 *International Migration Policies: Government Views and Priorities*

²⁴ Weinar, A, 2014. *Emigration Policies in contemporary Europe*, Research Report CARIM-East RR 2014/01, European University Institute

The difficulty in supporting return migration of emigrants with non-national partners has a broader reach and inevitably is affected by immigration policies. This is where the overlap of policies can create an issue or barrier, particularly, as is the case for Ireland, where immigration policies were not originally intended for de facto partner or spouse of an Irish national returning to live in Ireland.

In contrasting the British efforts in diaspora matters to New Zealand, The Economist refers to Wellington's private-public funded programme for 30 years supporting Kiwis abroad. It supports and connects New Zealanders living abroad through social media and networking events, and also helps them to return home²⁵. It also discusses the issue of *"Expats who want to move back with their non-national partners often collide with their home country's ever-tougher immigration regime"*²⁶.

We have used two comparative examples of immigration policy and procedures that returning emigrants and their non-national partners will need to undertake: Australia and the UK.

Australia

The process for De facto/Spouse of Australian citizen offers the option to apply from outside Australia²⁷:

- All-in-one application 'Temporary Partner visa', subclass 309) for spouse /de facto partner (12 months) Australian sponsor for 2 years before qualifying for Permanent Partner Residence (subclass 100)
- Gives permission to work and travel in and out of Australia until decision on permanent residence.
- Cost AUD 7000
- Access to up to 510 hours of free English language tuition
- Access to national health scheme
- Processing times for 309 visa 11-15 months
- Processing times for 100 visa 20-28 months
- A permanent Partner visa (subclass 100) may be granted immediately after the temporary Partner visa (subclass 309) if recognised as a long term relationship (3+ years or 2+ years with dependent child)

There is also another option for a 'Prospective Marriage visa' (Subclass 300)²⁸ applying from outside the State, which provides 9 months stay where there is intention to marry and has a 12-14 month waiting time.

²⁵ The Economist, 7th August 2014, *The British Diaspora: And don't come back*

²⁶ Ibid

²⁷ <https://www.homeaffairs.gov.au/trav/visa-1/309->

²⁸ <https://www.homeaffairs.gov.au/trav/visa-1/300->

Process for applying for Child visa (Subclass 101) from outside Australia²⁹

- Permanent residence
- Child must be of Australia citizen or permanent resident
- Child must be under 18 or in full time education up to age 25
- Fee AUD 2,145
- Processing times 7-12 months

The Australian preclearance process, despite long delays in cases, provides returning emigrant citizens with more certainty on their situation before planning a return with non-Australian partners and children. The immigration website provides very clear and detailed information on all versions of visa processes and requirements, including guidance booklets³⁰. However, it is an expensive process which could effectively deny people without sufficient income from applying.

UK

The UK distinguishes between short and long term visa requirements which therefore separate the process of application for residence permission for de facto partner/spouse of returning emigrants from other non-EEA visas applications. The UK also provides the option to apply from outside the UK³¹:

- Same application as partner or spouse
- Gives permission to work and study for 2.5 years or for 6 months if applying as a fiancé, fiancée or proposed civil partner (which can be extended)
- Processing time within 12 weeks
- Fee £1,464
- Must pay immigration healthcare charge £200 per year
- Can add children under 18 to application as dependants

The UK preclearance process has a very short processing time by comparison and there is also one application that combines both partner and spouse visas. The permission is not permanent but long term residence can be applied for within the UK. It also has a much lower fee and can benefit from free NHS healthcare after paying the yearly charge.

Ireland (like the UK) does not participate in the EU Directive on Family Reunification. Family Reunification is treated by only national immigration policy and legislation. However, Irish policy echoes many of the provisions within the Directive and regard is also given to *'comparative systems and practices in other common law jurisdictions where those are relevant to the Irish situation'*³². The absence of a preclearance option for residence of partners and spouses of returning Irish emigrants is a barrier to the right to family life in Ireland for returning emigrants and their non-EEA family members.

²⁹ <https://www.homeaffairs.gov.au/trav/visa-1/101->

³⁰ <https://www.homeaffairs.gov.au/Forms/Documents/1127.pdf>

³¹ <https://www.gov.uk/uk-family-visa>

³² Section 1.4. INIS, DFA. 2016. Family Reunification Policy Document. DFA: Dublin

(10) Summary

This report outlines the more recent and emerging pattern of returning emigrants with non-EEA family members as an inevitable outcome of the original recession-led emigration wave (often categorised as ‘forced emigration’). It discusses the impact that the immigration system can have on new Irish Diaspora communities – mixed nationality families. It speaks to the diversity of the Irish Diaspora and the indication of a diverse Diaspora returning to Ireland. Within the context of the Diaspora policy that the Department of Foreign Affairs has developed, the matters discussed can fall under the following commitments:

‘Support research so that we can better understand the diaspora and their needs’³³

and

‘Ensure diaspora policy is responsive to evolving needs’³⁴

We present this report as a contribution to these commitments in developing the knowledge base of diaspora and returning diaspora needs and in developing responsive solutions to evolving needs.

Not least of all, it offers an opportunity for the Government to deliver on its commitment to seek consultations, new contributions and ideas in meeting evolving needs in changing times.

“We want to continue to mobilise that interest and welcome new contributions.

*We will remain open to new ideas, so that Government policy
can evolve to meet changing needs in changing times.”³⁵*

The publication of the **Indecon report on Returning Emigrants in March 2018** is a significant contribution to up-to-date research on the needs of returning emigrants and dedicates attention to the issues with delays in processing residence permissions for partners of Irish citizens. In summary, the report emphasises similar recommendations in addressing these issues with specific focus on de facto partners:

“The key issues relate to the provision of information on the conditions of the scheme and the timescale for decisions. The introduction of a pre clearance system would also be of great assistance. In some cases individuals may not meet the eligibility criteria but enhanced information and speed of decisions would assist returning emigrants.”

³³ Department of Foreign Affairs. March 2015. *Global Irish, Ireland’s Diaspora Policy*. Department of Foreign Affairs, Dublin: 17

³⁴ Ibid: 52

³⁵ Ibid: 52

We ask the INIS and the relevant Government representatives to review the policies in relation to the matters discussed within the context of the commitments under the National Diaspora Strategy with a view to improving the situation for returning emigrant families with non-EEA members. The following recommendations are presented based on the evidence presented.

(11) Recommendations

We suggest that the following recommendations are considered by the Irish Naturalisation and Immigration Service regarding developing the family visa and permission policy specifically for returning Irish emigrants and their families:

1. Facilitate pre-entry applications for visa-required spouses/civil partners and for de facto partners
2. If (1) is not possible or in the period between when it can be implemented, reduce processing times of all spouse/civil partner and de facto applications made in Ireland to 3 months
3. In the absence of (1) and/or (2) introduce an interim permission on Stamp 1 or 4 basis for applicants for spouse/civil partner or de facto permission that will allow applicants to work while waiting for a decision. This is already facilitated in the EU Treaty Rights application process so could be implemented on a similar basis.
4. Develop a specific section on the INIS website with information for returning emigrants on all options for returning with non-EEA family members. Provide clear guidelines and communication on applications for D Visa for entry to Ireland, registration post-arrival and applications if required, and liaise with Embassies and Consular services to refer to this information on their own sites. This will allow the applicant to prepare adequately for their application for arrival in Ireland. It should also be hosted on or link to <https://www.dfa.ie/global-irish/>
5. Implementation of the Family Reunification Unit, as committed to under the DJEI's Policy Document on Non-EEA Family³⁶, that includes a specific service for family members of returning Irish emigrants.

³⁶ Irish Naturalisation and Immigration Service Department of Justice and Equality. December 2016. *Policy Document on Non-EEA Family Reunification*. Department of Justice and Equality: Dublin:

(12) Conclusion

The Irish immigration system has many positive elements with regards to non-EEA family members, not least the ability for de facto partners to apply for and receive permission to live and work in Ireland, and the fact that there is very little cost involved. The registration process for spouses and civil partners is on the whole extremely quick.

However, issues exist around the inability to apply from outside Ireland, particularly for de facto partners, and the lack of interim permission while waiting for applications to be decided when in Ireland. These create barriers for returning Irish emigrants with non-EEA family members. This has been most recently evidenced by the report commissioned by Minister for the Diaspora Ciarán Cannon, carried out by Indecon Economic Consultants. The Indecon report calls for the development of pre-clearance applications to reduce uncertainty prior to return and help alleviate financial burdens on return.

Ireland's Diaspora Policy 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, the recommendations outlined in (11) above would provide the security they seek in order to resettle in Ireland without significant financial and emotional risk. This will help to ensure that Irish emigrants are not deterred from returning to Ireland if they so wish and allow them to benefit from a life close to family and friends, and raise their children in Ireland.

There is also a potential economic benefit for Ireland in enabling the return of highly experienced and qualified workers and families to contribute to the economy. However, most people return for family reasons and the employment market is not by itself a sufficient driver of return. Therefore Ireland should have more rights-based and holistic approaches to enable Irish emigrants come home.

The proposals in this document, if implemented, would contribute hugely to reducing barriers for returning emigrants and help fulfil the Global Irish Diaspora Policy's aim to promote and support the successful return of Irish emigrants to Ireland.

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

We have been supporting Irish emigrants for over 75 years.

www.migrantproject.ie

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An Roinn Gnóthaí Eachtracha agus Trádála
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