



Rights and Entitlements of Migrants in Ireland



**Factsheet 4:
Rights to 'Leave to Remain' in Ireland**

Introduction

This factsheet is one of a series of leaflets produced by the Immigrant Council of Ireland (ICI) on the rights of migrants in Ireland. Other topics in the present series include:

- 'Rights to Long Term Residency and Citizenship in Ireland'
- 'Rights of International Students in Ireland'
- 'Rights to Family Reunification in Ireland'.

This series of factsheets was kindly funded by the Department of Social and Family Affairs in Ireland.

What Is The Immigrant Council Of Ireland?

The ICI is an independent, non-governmental organisation that promotes and campaigns for the rights of migrants through its:

- Information and Support Service (free and confidential)
- Legal Service (free but limited service)
- Publications and training work
- Policy and campaigning work
- Work with migrant and ethnic minority-led groups.

Disclaimer

This factsheet has been produced for information purposes only and is not a substitute for legal advice. Every effort has been made to ensure it is accurate and up to date at time of publication – November 2007. However, the ICI disclaims any responsibility for errors or omissions in the text.

1 What Information Is In This Factsheet?

This factsheet provides information on:

- The rights of people from outside the European Union to apply for 'leave to remain' in Ireland
- How to make an application for 'leave to remain' in Ireland
- The rights of those granted 'leave to remain' in Ireland.

2 What Is 'Leave To Remain'?

'Leave to remain' is a form of permission to stay in Ireland, which is granted at the discretion (authority) of the Minister for Justice, Equality and Law Reform (the Minister) as an exceptional measure to allow a person to remain in Ireland rather than forcibly deport them.

Generally, people are granted 'leave to remain' in the State for a set period of time (usually one year), after which time they have to apply to renew the permission to remain. There is no guarantee it will be renewed after one year.

Please note: Very few people who apply for 'leave to remain' in Ireland are given a positive response and allowed to stay in Ireland.

3 Who Can Apply For 'Leave To Remain' In Ireland?

Generally, a person will apply for 'leave to remain' when they have received a letter from the Minister called a 'Section 3' letter. The letter is issued under Section 3 of the Immigration Act, 1999 and states the Minister is considering issuing the person with a deportation order.

However, even before a notice of intention to issue a deportation order is issued, it is possible to apply for 'leave to remain' in a range of situations, for example, if:

- You feel you are unable to, or do not wish to, return to your country of origin for humanitarian reasons
- Your permission to work (such as a work permit) has expired and you have not been issued with a 'Section 3' letter.

4 What Is A 'Section 3' Letter?

A 'Section 3' letter is NOT a deportation order and, if you receive this, you will not be deported from the country immediately. If you receive this letter, it means that the Minister is giving you a warning that he/she intends to issue a deportation order but, before any order is actually issued, you are given a number of options to consider (see 4.1 below).

Please note: If you receive a ‘Section 3’ letter you should always read it carefully and respond within the required time. If you do not respond, the Minister will eventually issue you with a deportation order and you will be required to leave Ireland and may be forcibly removed from the State.

4.1 How Do I Respond To A ‘Section 3’ Letter?

When you receive a ‘Section 3’ letter, it will state the reason why the Minister intends to make a deportation order and will outline a number of options for you to consider as to how to respond.

The options are:

- You can make representations to the Minister to ask him/her to allow you to stay in Ireland
- You can choose to return to your country of origin voluntarily, or
- You can agree to be deported from Ireland.

Individuals who have made a failed asylum application are also given the option of making an application for subsidiary protection. ICI does not give advice regarding this application. You should discuss this with your legal representative.

It is important to carefully consider these options and to seek advice regarding the consequences of each option. For more information see below or contact the ICI.

► **Making Representations To The Minister To Stay In Ireland**

You can choose to respond to the letter by writing to the Minister and asking him or her to grant you 'Leave to Remain' in Ireland. This is done by outlining the reasons why you should be allowed to stay (see Section 6 below). The Minister is required to consider these representations when deciding whether to grant you permission to remain in Ireland.

► **Choosing To Return Voluntarily**

Another option open to you will be to return to your country of origin voluntarily without the Minister issuing a deportation order against you. If you take this option, it means that you may apply to enter the country again at another time. You must notify the Minister of your travel arrangements for leaving Ireland. For more information on voluntary return, please contact the ICI or the International Organisation for Migration (IOM) (see useful contacts section).

► **Consenting To The Deportation**

The third option available to you is to consent to the deportation. You should be very careful before consenting to deportation, as it will effectively prevent you from re-entering Ireland or another EU country in the future.

5 How Do I Apply For 'Leave To Remain'?

▶ If Applying In Response To A 'Section 3' Letter

If your application is in response to a 'Section 3' letter, you should complete the enclosed forms, in particular the address notification form, and include more detailed information on separate pages, if necessary.

Your application must be returned to the Repatriation Unit, INIS, Department of Justice, Equality and Law Reform within 15 working days from the date of the letter. This application should be sent by registered post.

▶ If Applying Outside Of The 'Section 3' Process

If the application is made outside of the 'Section 3' process, there are no specific application forms to be completed. Your application should be a detailed letter setting out your immigration history in Ireland and the reasons why you believe you should be allowed to remain in the State and / or not required to return to your own country. For more information on what to include, see section 5.1 and 5.2 below.

The application should be sent by registered post to the General Immigration Division, INIS, Department of Justice.

5.1 What Should I Write When Making The Application?

Under Irish law, the Minister must consider certain matters when he/she is deciding whether to grant you 'leave to remain', or whether to issue you with a deportation order instead. For this reason, it is very important that you provide as much information as possible with your application and that you address all of the following issues so that the Minister can make an informed decision:

- Your age, and the length of time you have been living in the country
- Your family and domestic circumstances
- The nature of your connection with the State, if any (e.g. children going to school/ work/ community work)
- Your employment record (including self-employment)
- Your employment prospects (including self-employment)
- Your character and conduct both within and (where relevant) outside the State (including any criminal convictions)
- Humanitarian considerations (e.g. health problems for which you can not get treatment in your country of origin, or dangers in your country of origin if returned)
- Any representations made by you or on your behalf
- The 'common good'
- Considerations of national security and public policy

You may also want to ask friends, colleagues or influential members of the community who know you to give character references or letters of support, explaining why they believe you should be allowed to stay in Ireland. The Minister is required to consider all representations he/she receives.

5.2 What Documents Should I Include With My Application?

You should include all relevant documents in support of your application for 'leave to remain'. This could include, for example, letters from doctors explaining any health problems and treatment you require, evidence of family relationships (i.e. birth certificates or marriage certificates), evidence of employment, course registration details or details of ongoing humanitarian or security concerns in your country of origin. You should also include any relevant reports or documents regarding the situation in your country of origin, e.g., newspaper articles or Amnesty International country reports.

6 What Happens If I Am Granted 'Leave To Remain'?

If the Minister, after considering the matters raised in your application, decides that you should not be deported, he/she will grant you 'leave to remain' in Ireland, usually for an initial period of one year, which may be renewed.

You will be issued with a letter setting out the conditions attached to your permission to remain. You are then required to register your presence in the State with the authorities.

6.1 Registering With The Authorities

If you have been granted 'leave to remain' in Ireland, you must register with the Garda National Immigration Bureau (if living in Dublin), or with your local police station (if living elsewhere). When registering, you should bring the letter you received from Government informing you that you have been granted 'leave to remain', as well as a passport or other form of identification.

When you register, you will be issued with a Certificate of Registration, which will state that you have a 'Stamp 4', proving that you have the right to live and work here without needing other permission (e.g. work permit). Currently there is a €100 administrative charge for registering, which is payable by credit card or bank giro only.

6.2 How Do I Renew My Permission To Remain?

Your permission to remain will usually be reviewed after one year. If your situation has changed in a way that no longer requires you to remain in Ireland, your permission to remain may not be renewed and you may be asked to leave the country.

To renew your permission to remain, you are required to apply to the Minister. This should be done in writing by registered post at least six weeks before the expiry of your current Certificate of Registration. You should include all relevant documents in support of the renewal of your application.

It often takes several months for a decision to be made. If your Certificate of Registration expires while you are waiting for a response, you should go to the GNIB (if you are in Dublin) or at your local police station (if outside Dublin) to inform them you have re-applied and are waiting for a decision.

7 What If I Am Not Granted 'Leave To Remain'?

The Minister may decide to refuse your application for 'leave to remain'. If this happens, you will be notified of the Minister's decision in writing and at the same time you will be served with a Deportation Order. You will be required to present yourself at the GNIB and to make travel arrangements for leaving Ireland.

7.1 How Do I Respond To A Deportation Order?

You are required to co-operate with any requirements imposed on you by the Deportation Order, in particular, to present yourself at the GNIB or your local police station. Failure to do so may lead to arrest and detention pending deportation.

7.2 Can I Appeal A Deportation Order?

It is not possible to appeal against a decision to deport you. However it is possible to:

- Apply to the Minister to revoke the deportation order
- Seek to challenge the validity of the Deportation Order. This can only be done by applying to the High Court to seek leave for a 'judicial review' of your case.

While the applications are being considered, you will remain liable to deportation unless you obtain an undertaking from the Minister or a court order guaranteeing that you will not be deported while your case is considered.

7.3 How Do I Apply For A 'Judicial Review'?

If you want to apply for a 'judicial review', you will need to contact a solicitor to advise you whether you have grounds (good reasons) to issue court proceedings. The application for a 'judicial review' needs to be made within 14 days of the date you were notified of the Government's decision to deport you. The High Court will decide on your application.

8 What Are My Rights If I Am Granted 'Leave To Remain'?

The rights of people who are granted 'leave to remain' in Ireland are not defined in law. However, if you have been granted 'leave to remain', generally, you have many of the same rights as Irish citizens.

8.1 What Are My Rights To Work?

If you have been granted 'leave to remain' in Ireland, you are allowed to work without needing another form of permission.

Everyone who has permission to work in Ireland has the same rights in the workplace, regardless of nationality. This means a right to a legal contract, lawful hours of work, a salary that is not below the minimum wage and holiday, illness and parental leave, as set down in Irish law. For information, contact the ICI's Information and Support Service.

8.2 What Are My Rights To Family Reunification?

Although you do not have a right based in law to family reunification, if you have been granted 'leave to remain', the Government may allow your immediate family members, such as spouses and minor children, to join you in Ireland. You may also make an application for other dependent family members to join you.

The Minister has discretion in these decisions and applications require evidence the person with 'leave to remain' can support family members financially. For more information, see the ICI's factsheet 'Rights to Family Reunification in Ireland,' or contact the ICI.

8.3 What Are My Rights To Social Welfare?

Anyone who wishes to apply for social welfare support in Ireland must now pass a residency test known as the 'habitual residence condition'. There are conditions involved but, generally, it means anyone who has not been resident in Ireland for two years before making the application may not be entitled to social welfare benefits. However, a person granted 'leave to remain' in Ireland is generally eligible for social welfare payments. You should contact your Social Welfare office.

8.4 What Are My Rights To Vote?

Non-EU nationals who are over 18 and legally resident in Ireland may vote in local elections if their name is entered on the Register of Electors.

Useful Contacts

Immigration and Citizenship Division Irish Naturalisation and Immigration Service (INIS)

Department of Justice, Equality and Law Reform
13/14 Burgh Quay, Dublin 2
1890 221 227
www.inis.gov.ie

Passport Office

Setana Centre
Molesworth Street, Dublin 2
+ 353 1 671 1633/ Lo-Call (from outside Dublin
in Ireland): 1890 426888

Visa Office

Irish Naturalisation and Immigration Service (INIS)

Department of Justice, Equality and Law Reform
13/14 Burgh Quay, Dublin 2
1890 551 500 / +353 1 616 7700
www.inis.gov.ie

Garda National Immigration Bureau

13/14 Burgh Quay, Dublin 2
+ 353 1 666 9100
email: gnib@iol.ie

Information Service of the Department of Social and Family Affairs

Áras Mhic Dhiarmada
Store Street, Dublin 1
+ 353 1 704 3000
www.welfare.ie

International Organisation for Migration

7 Hill Street
Dublin 1
+ 353 1 878 7900
www.iomdublin.org

Do You Want More Information On The Rights Of Migrants?

If you would like more information on the rights of migrants in Ireland, you can get this from the Immigrant Council of Ireland by:

Reading Other Factsheets In This Series:

- 'Rights to Long Term Residency and Citizenship in Ireland'
- 'Rights of International Students in Ireland'
- 'Rights to Family Reunification in Ireland'.

Reading The 'Information For Migrants' Section Of Our Website:

www.immigrantcouncil.ie

Contacting Our Free And Confidential Information And Support Service:

The ICI provides a free and confidential Information Service on the rights of migrants and their families. Information is available on topics such as:

- work permits
- working visas and authorisations
- business permits
- student visas
- family reunification
- citizenship and residency
- permission to remain
- regularisation
- tourist visas/visitor visas
- referrals to other services.

For the opening hours and contact details of the ICI's Information and Support Service, see the back of this factsheet.

Opening Hours of the Immigrant Council of Ireland's Information Service:

The ICI's Information and Support Service is free of charge and is open to individuals and organisations with immigration queries on:

**Monday
Tuesday
Thursday
Friday
NOT WEDNESDAY**

**Open for drop-in queries
MORNINGS ONLY: 10am-12.30pm**

**Open for phone queries
AFTERNOONS ONLY: 2pm-4.30pm**

**Contact Details
Immigrant Council of Ireland
2 St. Andrew Street, Dublin 2, Ireland.**

**Information Service:
Tel: +353 1 674 0200 or
Email: info@immigrantcouncil.ie
Website: www.immigrantcouncil.ie**

**Administration:
Tel: +353 1 674 0202 or
Email: admin@immigrantcouncil.ie
Fax: + 353 1 645 8059**

