

# Introduction to Immigration, Protection and Naturalisation

A guide for service providers

---

DECEMBER 2019

---

Nasc, the Migrant & Refugee Rights Centre  
34 Paul Street  
Cork



[nascireland.org](https://nascireland.org)

 **021 427 3594**



EUROPEAN UNION

Asylum, Migration  
and Integration Fund



An Roinn Dlí agus Cirt  
agus Comhionannais  
Department of Justice  
and Equality

**This project is co-financed by the European Commission under the Asylum, Migration and Integration Fund and supported by the Department of Justice and Equality.**

## Table of Contents

1. Glossary of frequently used terms.....	4
2. Asylum Seekers/Applicant for international protection.....	5
The protection process under the International Protection Act 2015 .....	5
How does a person make an application for international protection?.....	5
Driving licences .....	5
Bank Accounts.....	6
3. International Protection Applicants and the recast Reception Conditions Directive.....	7
The right to work/Labour Market Access Permission.....	7
Are there any restrictions on the work that a LMAP holder can take up? .....	7
Will people who are working be able to stay in direct provision and receive the weekly allowance? .....	7
Information for employers.....	8
Right to health care.....	8
Access to education/training .....	8
The Pilot Support Scheme/Third level grants .....	9
Access to social welfare .....	9
PRSI Contributions .....	9
Social welfare payments and child benefit .....	9
4. Irish Citizenship .....	10
Citizenship by Birth .....	10
Citizenship by Descent and Foreign Birth Registration.....	10
Citizenship by Naturalisation .....	10
Eligibility to Apply & Statutory Requirements .....	11
Good character & national security.....	11
Reckonable Residence .....	12
5. Types of immigration permission .....	13
6. Categories of Stamp 4 holders.....	15
Refugees, Persons eligible for subsidiary protection and their family members (beneficiaries of international protection) .....	15
Parents of Irish Citizen Children.....	16
Accessing residency on the basis of having an Irish citizen child .....	16
7. Annex .....	17

## 1. Glossary of frequently used terms

**Asylum seeker:** A person who has made an application for refugee and/or subsidiary protection status. The term “protection applicant” or “international protection” applicant is the new legal term used in the International Protection Act 2015.

**Direct Provision:** Direct Provision is the means by which the State seeks to meet its obligations to provide for the material needs of people seeking protection in the State.

**Garda National Immigration Bureau:** The GNIB carries out deportations, border control and registrations (outside of Dublin).

**Irish Naturalisation and Immigration Service:** INIS is the unit within the Department of Justice and Equality responsible for asylum, immigration (including visas) and citizenship matters. INIS is also responsible for border control and registration in Dublin.

**Labour Market Access Permission:** LMAP refers to the permission granted to an applicant for international protection to work.

**Reception and Integration Agency:** RIA is the unit within the Department of Justice and Equality with responsibility for arranging accommodation for protection applicants. RIA is also tasked with coordinating the delivery of other services including health, social welfare and education to applicants.

**Refugee:** A person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his or her former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

**Single procedure:** A procedure leading, on the basis of a single application for refugee status, subsidiary protection status or leave to remain, to a decision.

**Subsidiary protection:** The protection given to a person who is not a national of a EU Member State and who does not qualify as a refugee, in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, would face **a real risk of suffering serious harm** and who is unable or, owing to such risk, unwilling to avail himself or herself of the protection of that country. “Serious harm” is defined as the death penalty or execution, torture or inhuman or degrading treatment or punishment of an applicant or serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

## 2. Asylum Seekers/Applicant for international protection

The legislation governing applications for asylum in Ireland is the International Protection Act 2015. There is a legal right to claim asylum in Irish, EU and international law. Until such time as a final decision has been made on an international protection decision, asylum seekers are legally resident in the State and should be issued with a Temporary Residence Certificate.

### The protection process under the International Protection Act 2015

Previously, under the asylum process administered by ORAC under the Refugee Act 1996, applications for refugee status, subsidiary protection, and humanitarian leave to remain were heard **consecutively**. With the coming into force of the 2015 Act, a 'single procedure' for assessing asylum claims was created, meaning that applications for refugee status, subsidiary protection and humanitarian leave to remain will be assessed **concurrently**.

Section 7(2) of the International Protection Act, 2015 provides examples of acts which may amount to persecution:

- a. acts of physical or mental violence, including acts of sexual violence;
- b. legal, administrative, police or judicial measures, or a combination of these measures, that are in themselves discriminatory or are implemented in a discriminatory manner;
- c. prosecution or punishment that is disproportionate or discriminatory;
- d. denial of judicial redress resulting in a disproportionate or discriminatory punishment;
- e. prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or war crimes, crimes against the peace or crimes against humanity;
- f. acts of a gender-specific or child-specific nature.

### How does a person make an application for international protection?

An application for international protection in Ireland can only be made from within the State. Applications may be made by informing an immigration officer at the border of the State. The immigration officer will record the details and refer the applicant to the **International Protection Office (IPO) at 79-83 Lower Mount Street, Dublin 2** to formally register their claim for protection within 5 days.

If an application for asylum is not made at the border, then an application can be made by attending the International Protection Office in person.

### Driving licences

At present, the Department of Transport, Tourism and Sport has opted to retain the requirement to produce a Residence Permit for any non-EEA citizens applying for a driving licence. This means that asylum seekers are unable to access driving licences.

We understand that this position is under review by the Department for Transport, Tourism and Sport.

The Minister for Transport has stated in parliamentary questions (May 22<sup>nd</sup> 2019):

*I have... asked my officials to re-examine the question of whether we should issue driving licences to asylum seekers, as I know some EU member states do. The matters at issue in the case of driver licences for asylum seekers are matters of both EU and national driver licensing law. I understand, based on legal advice, that it would be possible to issue asylum seekers with driving licences, and I will be happy to consider that, once other matters are resolved.*

## Bank Accounts

Asylum seekers have encountered difficulties in accessing bank accounts. There is no statutory bar on asylum seekers opening bank accounts. The EU Payment Accounts Directive was transposed in Ireland by way of the European Union (Payment Accounts) Regulations 2016.

Any consumer who is legally resident in the European Union and who does not already have a payment account with a credit institution in the State has the right to open and use a payment account with basic features. Regulation 15 of the European Union (Payment Accounts) Regulations 2016 explicitly states that a consumer who is legally resident in the European Union (within the meaning of Article 2(2) of the EU Payment Accounts Directive) has this right regardless of his or her place of residence and regardless of whether he or she has a fixed address, is an asylum seeker, or is a consumer who has not been granted a residence permit but whose expulsion is not possible for legal or practical reasons.

When opening a bank account the standard documentation which may be used for the purpose of verifying identity is one item of photographic ID (typically to verify name and date of birth) and one item of non-photographic IDs (typically to verify address). This does not prevent the use of two documents under the heading "Photographic ID" for the identification of name, date of birth and address. Depending on the risk assessment of the customer, additional ID verification may be required.

### 3. International Protection Applicants and the recast Reception Conditions Directive

In response to the 2017 NHV judgment in the Supreme Court, which found that the absolute ban on the right to work for asylum seekers was unconstitutional, the government decided to sign up to the recast Reception Conditions Directive. The Directive was transposed into Irish law by the S.I. No. 230/2018 - European Communities (Reception Conditions) Regulations 2018. This had the effect of, for the first time, placing reception conditions on a statutory basis and introducing the right to work for asylum seekers.

#### The right to work/Labour Market Access Permission

An applicant for international protection who has been waiting for a first instances decision on their application from the International Protection Office for 9 months or longer will be eligible to apply for a 'labour market access permission'. Applicants will need to show that they have cooperated with the process and that they have made reasonable efforts to establish their identity. The 'labour market permission' will last for 6 months and can be renewed until the asylum seeker receives a final decision on their protection application from the International Protection Appeals Tribunal, i.e. until judicial review proceedings are finalised. Where a negative final decision is made the permission ends immediately.

The right to work provisions do not apply retrospectively. If an asylum seeker has already had a first instance decision prior to the Directive coming into force then (s)he will not be eligible for a LMAP.

Those who held a self-employment permit under the Interim Scheme (scheme put in place between the NHV judgment and the Directive coming into force) but who received a first instance decision prior to the Directive coming into force can renew their Self-Employment permit until a final decision is made on their case.

#### Are there any restrictions on the work that a LMAP holder can take up?

Eligible applicants will have access to all sectors of employment except employment in the Civil Service, the Defence Forces, or An Garda Síochána. There is no income threshold and applicants can work in part-time or full-time positions.

#### Will people who are working be able to stay in direct provision and receive the weekly allowance?

Yes, international protection applicants will have the choice to remain in direct provision accommodation. Those who have been working for 12 weeks, may have their allowance reduced or withdrawn based on a means test.<sup>1</sup> The allowance for dependent children and the spouse will not be reduced or withdrawn. The INIS has also stated that an asylum seeker in employment or self-employment may be required to contribute towards the cost of the provision of their "material reception conditions". The deductions are set out in Schedules 1 and 2 of the Regulations. (See Annex 1 of this document.) Presently, the contribution amounts are not being collected by the Department

---

<sup>1</sup> The proposed means test is an income disregard of €60 per week earned by the applicant with 60% of the balance assessed as means. See Annex 1 for full breakdown of the deductions.

of Justice and Equality and there are no indications of precisely how the Department intends to collect these contributions.

### Information for employers

Employers must verify that an applicant holds a valid, in-date labour market access permission before employing the applicant. An employer who inform the Minister for Justice and Equality within 21 days that the applicant has been employed, and of the end of the employment within 21 days of the employment ceasing. These forms can be accessed on the [INIS website](#).

An employer must keep a record of the employment concerned, the duration of the employment, the particulars of the LMAP, and details of the remuneration paid to the applicant for a period of 3 years. If the employer receives notification of a withdrawal of the LMA permission, these records must be kept for a period of 6 months from receipt of that notification and shall provide these to the Minister within 10 days of being requested to do so

Employers will be required to apply 'the 50-50 rule' when employing eligible applicants, i.e. employers need to show that at least 50% of their employees are EEA/Swiss nationals. Employers of more than one foreign national, or holder of an LMA permission must, at Minister's request, furnish the Minister with a record of the numbers employed of:

- a) nationals of a Member State of the EU, EEA, or Switzerland, and
- b) foreign nationals who hold an employment permit, or applicants who hold a labour market access permission.

Employers who fail to comply with any obligation shall be guilty of an offence and be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months, or both.

### Right to health care

Applicants for international protection now have a statutory right to health care under the recast Reception Conditions Directive. Regulation 18 of the implementing SI sets out states that the Minister for Health shall ensure that a recipient has access to:

1. emergency health care,
2. such health care as is necessary for the treatment of serious illnesses and mental disorders,
3. such other health care as is necessary to maintain his or her health,
4. and where the recipient is vulnerable,
5. such mental health care as is appropriate, having regard to his or her special reception needs.

### Access to education/training



Holders of labour market access permissions can access further education or training (FET) or third level courses that have an employment, vocational or workplace-training component. LMAP holders can contact their local INTREO Centre, Local Employment Service or the Education and Training Board (ETB). The LMAP certificate can be used as evidence of the eligibility to work. While access to the majority of these programmes is free of charge, participation in Post Leaving Certificate and higher education programmes will continue to be subject to the payment of fees.

### The Pilot Support Scheme/Third level grants

The pilot student support scheme was introduced in 2015. It allows prospective students who are in the international protection system, but who do not have a deportation order, and who satisfy the residence requirements to apply for grants similar to the Student Grant Scheme.

Applicants will be required to meet the following criteria:

- Meet the definition of a protection applicant or a person at leave to remain stage (other than those at the deportation order stage);
- Have obtained their Leaving Certificate;
- Have been accepted on an approved post-leaving certificate course or an approved undergraduate course;
- Have at least three academic years in the Irish school system by 31 August 2019; and
- Have been part of an application for protection or leave to remain for a combined period of three years as at 31 August 2019.

Further information on how to apply, including the application form, is available on <https://www.education.ie/en/Learners/Services/Pilot-Support-Scheme/Pilot-Support-Scheme.html>

## Access to social welfare

### PRSI Contributions

In line with all other employees, international protection applicants who are in employment and earning more than €38 per week will pay Class A PRSI contributions. Class A employees may qualify for the full range of social insurance payments subject to meeting the qualifying conditions. International Protection Applicants who are self-employed will pay a Class S contribution once their income exceeds €5,000 per year. Class S contributions cover self-employed people for certain social insurance payments subject to satisfying the qualifying conditions.

### Social welfare payments and child benefit

International protection applicants who are in employment may and are in full time employment (38 hours per fortnight or more), may qualify for the Working Family Payment subject to satisfying the eligibility criteria and means test. International protection applicants will not qualify for any payments which require the habitual residence conditions to be satisfied.

In November 2019, the Supreme Court overturned the Court of Appeal judgment in *Agha v Minister for Social Protection*; *Osinuga v Minister for Social Protection*. The Supreme Court found that the Court of Appeal had erred in focussing on the immigration or citizenship status of the child for whom benefit may be payable rather than on the status of the "claimant" for child benefit ie her mother. The Supreme Court confirmed that the law excluding asylum seekers from accessing child benefit even for Irish citizen children, was not, unconstitutional.

## 4. Irish Citizenship

The laws governing citizenship in Ireland are set out in the Irish Nationality and Citizenship Acts 1956 to 2004. A version of the Irish Nationality and Citizenship Act 1956, incorporating all of the amendments made to it by the 1986, 1994, 2001 and 2004 Acts, can be found on the INIS website at <http://www.inis.gov.ie/en/INIS/INCA%20Dec2014.pdf/Files/INCA%20Dec2014.pdf>

It is possible to attain Irish citizenship in a number of ways:

- Citizenship by birth
- Citizenship by descent
- Naturalisation at the discretion of the Minister for Justice

### Citizenship by Birth

A person will be entitled to Irish citizenship if at the time of their birth one of the following conditions apply:

1. The child was born on the island of Ireland prior to 1<sup>st</sup> January 2005; or
2. The child was born after 1<sup>st</sup> January 2005 with one parent being:
  - an Irish citizen (applies to children born in and outside island of Ireland);
  - a British citizen residing in Ireland;
  - a declared refugee or a stateless person
  - a person who has acquired three years **reckonable residence** in the State in the four years prior to the child's birth.

The Act specifically excludes time legally spent in the State as an asylum seeker or as a student for the purposes of reckonable residence.

### Citizenship by Descent and Foreign Birth Registration

A person born outside the State whose parent or grandparent (grandparent must have been born in Ireland) is an Irish citizen is entitled to apply to be declared an Irish citizen. That person must be registered under the Foreign Birth Register. The FBR is maintained by the Department of Foreign Affairs. Applications from outside of Ireland must be made online through the DFA portal <https://www.dfa.ie/citizenship/born-abroad/registering-a-foreign-birth/>

Straightforward applications are taking between 6 and 9 months but many applications, particularly those for children of Irish citizens in countries which do not have an Irish consular presence are taking considerably in excess of 12 months.

### Citizenship by Naturalisation

The Minister for Justice & Equality has absolute discretion in deciding whether to grant naturalisation in each individual case. The Minister must be satisfied that the applicant is of full age and of good character.

The Minister must be satisfied that the applicants intends, in good faith, to reside in the State after naturalisation. The granting of Irish Citizenship through naturalization is deemed to be a privilege and not an entitlement. After being approved for citizenship, the applicant must make a Declaration of fidelity and loyalty to the State at the citizenship ceremony.

#### Eligibility to Apply & Statutory Requirements

1. (i) Adults: 18 years of age or older, or if married and aged under 18;  
(ii) Children: parent/legal guardian must make application on behalf of child;
2. Continuous residency in the State for one year prior to the application\*;
3. Requisite reckonable residence in the State;
4. Good Character
5. Intend to continue residing in Ireland after naturalisation
6. Make declaration of fidelity and loyalty to the State

#### Good character & national security

There have been a number of recent High Court decisions on how the Minister should interpret good character. The Department of Justice and Equality does not provide any guidance to applicants on how they assess good character so practically, for a prospective applicant, it is very difficult to assess how long to wait before applying if you have committed a minor criminal offence. In our experience it is very common for people to be refused naturalisation on good character grounds if they have committed traffic offences, driving while over the alcohol limit, driving without tax or insurance, public order offences etc.

#### **I v Minister for Justice [2019] IEHC 515**

The High Court overturned the refusal of a Nigerian woman's naturalisation application. The Minister found that she had failed to disclose that she had come to the "attention" of the Gardai on two dates in 2007 and refused her on the basis of this non-disclosure. However, Ms I had been a witness in both cases rather than the subject of an investigation. On the first occasion, the woman had been a witness only to allegations of child neglect and cruelty and on the second occasion, the woman had called the Gardai herself as she believed that she and her family were victims of racist attacks.

Barrett J criticised the broad interpretation of coming to the attention of the Gardai:

*The court does not fully know what it means that someone "came to the attention of An Garda Síochána" but it would seem to embrace a radically wider set of circumstances than the question "Are you, or have you been, the subject of an investigation in Ireland by An Garda Síochána (Irish Police), including where you were not charged with any offence?" One can easily imagine multiple instances where one would come to the attention of the Gardaí and not be in any sense a person of less than good character, e.g., a man who is the subject of domestic violence and who calls the Gardaí to his house could be said to have 'come to the attention of the Gardaí', but no right-thinking person would suggest that that man's unhappy experience in any way reflected on, let alone diminished, his character. [Barrett J]*

### **Iurescu v Minster for Justice and Equality**

The High Court overturned a refusal of an application for naturalisation of an 8 year old child. The child, was born in Ireland in 2010 to a legally resident father and an undocumented mother. The child's mother subsequently regularised her immigration permission in 2013. The mother alleged that the father was violent towards her and in 2013 he physically assaulted her, forcing her to flee to a women's refuge with their daughter. She subsequently obtained a barring order against the child's father. In 2016, the father submitted an application for naturalisation on behalf of the child and separately applied for his own naturalisation. In December 2016, both applications were refused on "good character" grounds. The child's application was refused on the grounds that her father was not of good character.

The court found that the applicant in the case was the child and that the Minister had erred in finding that it was a condition of the naturalisation of the child that the father satisfy the Minister of father's good character.

*[T]he applicant who must meet the conditions of naturalisation to the satisfaction of the Minister is the minor born in the State. [Keane J]*

#### Reckonable Residence

**3 years:** declared refugees. Refugees are eligible to apply for naturalisation three years from the date of entry to the State;

**3 years:** Spouses/civil partners of Irish nationals. Spouses/civil partners require 1 year of continuous residence immediately prior to application (365 days immediately prior to the date of application or 366 days if permission encompasses 29 February) **plus** 730 days in the 4 year period before that, 1095 days in total + 1 day for any period encompassing 29 February.

**5 years:** all other applicants. You must have residency permission for the 365 days immediately prior to the date of application (366 days if permission encompasses 29 February) **plus** 1,460 days in the 8 years prior to that period (+1 day for any period encompassing 29 February) i.e. a total of 1,825/1,826 (leap year) days of residency.

Only Stamps 1, 3, 4 and 5 are considered reckonable for the purposes of applying for naturalisation. Time spent on a Stamp 2/2A may be considered reckonable only where the applicant is under the age of 24 and arrived in the state as a minor as part of a family unit, was registered on a Stamp 2 or 2A basis on turning 16 and is now a dependent young adult.

- Came to the state as a minor as part of a family unit
- 365 days (+1 day if the period includes 29 February) of continuous residence in the State as shown by immigration stamps on the passport **plus** 1,460 days in the 8 years prior to that period.
- Immigration stamps in passport from the age of 16+ and a letter from each school showing enrolment dates and periods of attendance from the date of arrival in the State.
- Copy of parent(s)' passports showing their permission to remain stamps from child's date of arrival in the state to the date of application.

## 5. Types of immigration permission

Rights and entitlements for immigrants vary depending both on the type of immigration permission held (Stamp 1, 2 etc...) and the basis on which that stamp was granted. This is particularly relevant to migrants who hold Stamp 4 residency permission. The most common immigration permissions are Stamp 1, Stamp 2, Stamp 3, Stamp 4 and Stamp 5.

The easiest way to determine a person's residence stamp is to check the Certificate of Registration (i.e. IRPs). Please note that persons in the asylum system will not have an IRP however they may have a Temporary Residence Certificate (TRC).

A quick reference guide to the stamps is available below however it is important to assess each person on a case by case basis.

<b>Stamp 0</b>	A Stamp 0 is a temporary and limited immigration permission. A Stamp 0 holder is permitted to remain in Ireland on the conditions that they have private medical insurance and are not entitled to receive state benefits. Unless otherwise specified, Stamp 0 holders do not have access to the labour market. The Stamp 0 holder must be of either independent means or be fully supported by a sponsor. This type of permission is not reckonable for Citizenship by naturalisation applications (as a matter of Ministerial discretion rather than a statutory exclusion).
<b>Stamp 1</b>	Stamp 1 holders are generally resident on the basis of an employment permit i.e. employment permit, critical skills employment permit, Atypical employment permit. The Stamp 1 holder has the right to work but only with the employer specified on their permission and for the duration of that permission. This type of permission <b>is reckonable</b> for Citizenship by naturalisation applications.
<b>Stamp 1G</b>	Holders of Stamp 1G are permitted to work full-time as employees without the need for a work permit. Stamp 1G holders are usually recent graduates previously on Stamp 2 permissions. It is to allow legally resident <b>Irish</b> educated non-EEA graduates holding an award of NFQ level 8 (for one year) or above (for two years) to remain after their studies. Since March 2019, spouses and de facto partners of Critical Skills employment permit holders have also been granted Stamp 1Gs.
<b>Stamp 2</b>	Stamp 2 holders are generally international students <sup>2</sup> however a Stamp 2 holder may also be the child/dependent of a Stamp 1 or Stamp 4 holder. The latter category should be treated as a separate category to international students.* The former type of Stamp 2 permission <b>is not reckonable</b> for Citizenship by naturalisation applications.

<sup>2</sup> In English language courses, Higher National Diplomas, Undergraduate and Masters Degree and PhD.

<b>Stamp 2A</b>	Stamp 2A holders are generally international students who are pursuing a full time course of study not recognised by the Department of Justice or minor dependents of Stamp 1 or Stamp 4 holders. This type of permission <b>is not reckonable</b> for Citizenship by naturalisation applications.
<b>Stamp 3</b>	Stamp 3 holders are usually dependents of a family unit or a person resident in the State on the basis of a volunteer/minister of religion visa. A Stamp 3 holder is not permitted to engage in a business, profession or employment in the State. This type of permission <b>is reckonable</b> for Citizenship by naturalisation applications.
<b>Stamp 4</b>	Stamp 4 holders are permitted to operate a business, engage in employment and pursue training. Stamp 4 is the most diverse of the immigration permissions and there are several pathways to obtaining a Stamp 4. The rights, entitlements and method of renewing permission for Stamp 4 holders are dependent upon the basis of the person's residency. This type of permission <b>is reckonable</b> for Citizenship by naturalisation applications.
<b>Stamp 5</b>	A Stamp 5 is also known as a 'Without Condition as to Time' (WCATT) endorsement. Stamp 5 is placed in the passport of an individual who has completed 8 years (96 months) of legal residency in Ireland <sup>3</sup> . The holder of a Stamp 5 permission has permission to remain in the State until the date of the expiry of their national passport and it permits the holder to work or engage in a business or profession while in Ireland. This type of permission <b>is reckonable</b> for Citizenship by naturalisation applications.
<b>Stamp 6</b>	A Stamp 6 holder is a dual national i.e. holds Irish citizenship

<sup>3</sup> Stamp 0, Stamps 2/2A, Stamp 4 (Temporary registered Doctors & Intra Company Transfer), Stamp 1A (Trainee Accountants) or Stamp 3 (Spouse of Intra Company Transfer) will not be counted.

## 6. Categories of Stamp 4 holders

*Stamp 4 holders have full access to the labour market and access to social protection. Access to the fees waiver and student grants is dependent upon the type of Stamp 4 immigration permission a person has.*

Stamp 4 is the most diverse of the immigration permissions and there are several pathways to obtaining a Stamp 4. The rights, entitlements and method of renewing permission for Stamp 4 holders are dependent upon the basis of the person's residency.

A non-exhaustive list of Stamp 4 holders include:

- Non-EEA spouse/civil partner/de-facto partner of an Irish national;
- Non-EEA child of an Irish national;
- Non-EEA parent of an Irish citizen child (i.e. Zambrano Application);
- Beneficiary of international protection (refugee/person eligible for subsidiary protection)
- Person granted family reunification with a beneficiary of international protection;
- Programme Refugee;
- Refugee granted under the International Humanitarian Admission Programme (IHAP);
- Persons granted long term residency in the State;
- Persons granted temporary permission to remain/humanitarian leave to remain in the State;
- Administrative Stamp 4 holders
- 6 month Temporary Residence Permit for a suspected victim of trafficking;
- Person granted residence pursuant to the Domestic Violence Concession policy;
- Persons granted residence under the IHAP;

### Refugees, Persons eligible for subsidiary protection and their family members (beneficiaries of international protection)

The International Protection Act 2015 sets out their rights:

**Education, Training, Business and Employment:** Section 53(a) of the IPA states that a refugee/person eligible for subsidiary protection and their family members are entitled to seek and enter employment, to carry on any business, trade or profession and to have access to education and training in the State on the same basis as an Irish citizen.

**Social Protection:** Section 53(b) of the IPA states that **beneficiaries of international protection** are entitled to access medical care, services and social welfare benefits\* subject to the same conditions as an Irish citizen.

\* "social welfare benefits" includes any payment or services provided for in or under the Social Welfare Acts or the Health Acts 1947 to 2015.

## Parents of Irish Citizen Children

Article 20 of the TFEU has been held by the European Court of Justice in Case C-49/09 *Gerardo Ruiz Zambrano v Office National de l'Emploi (Zambrano)* "as meaning that it precludes a Member State from refusing a third country national upon whom his minor children, who are European Union citizens, are dependent, a right of residence in the Member State of residence and nationality of those children, and from refusing to grant a work permit to that third country national, in so far as such decisions deprive those children of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizen."

### Accessing residency on the basis of having an Irish citizen child

In practice the INIS are generally applying *Zambrano* more liberally and are granting Stamp 4 residency permission for parents of Irish citizen children if they can establish that they are:

1. living in the State; and
2. that the child is dependent upon them or they are actively involved in the child's life, in an emotional and financial capacity.

The process of registering on the basis of parentage of an Irish Citizen child is dependent on the type of immigration permission that the person holds in the State:

As detailed above, holders of a valid Stamp 1, Stamp 2, Stamp 3 must apply to INIS for this change of status and request a Stamp 4 residency permission. After being granted the permission, applicants must present to their local GNIB office to register this permission. At the Immigration desk of the Garda station the applicant will be asked to sign a declaration confirming that they do not have a criminal record.

Existing Stamp 4 holders, asylum seekers, persons who are not currently documented (have never been registered in the State or their permission to remain in the State has expired) will also need to make a written application to the Residence Division of INIS.



## 7. Annex

### Calculation of Relevant Portion of Income for Purposes of Reduction of Daily Expenses Allowance

The relevant portion of a recipient's weekly income shall, for the purposes of Regulation 5(1), be calculated as follows:

1. The first €60 of the recipient's weekly income shall be disregarded
  
2. The relevant portion of the recipient's weekly income shall be the amount equal to 60% of the amount of that weekly income, after the amount referred to in paragraph 1 is disregarded.

### Calculation of Contribution to Cost of Relevant Reception Conditions

Weekly Income	Proportion of weekly €238 accommodation costs payable by recipient	Contribution
Up to €97.00	Up to €97.00	€0.00
From €97.01 to €150.00	€15.00 per resident in receipt of income	€15.00
From €150.01 to €210.00	15% of weekly cost of accommodation services	€35.70
From €210.01 to €275.00	25% of weekly cost of accommodation services	€59.50
From €275.01 to €340.00	35% of weekly cost of accommodation services	€83.30
From €340.01 to €405.00	50% of weekly cost of accommodation services	€119.00
From €405.01 to €470.00	65% of weekly cost of accommodation services	€154.70
From €470.01 to €535.00	75% of weekly costs of accommodation services	€178.50
From €535.01 to €600.00	85% of weekly costs of accommodation services	€202.30
From €600.01 or over	100% of weekly costs of accommodation services	€238.00

Disclaimer:

The information provided in this publication is provided in good faith and every effort is made to ensure that it is accurate and up to date.

The contents of this training guide are intended for informational purposes only and should not be relied upon as a substitute for legal advice. Nasc does not accept liability for the use or misuse of the information contained in this publication. Thank you for your co-operation.

Copyright © 2019 Nasc, The Migrant and Refugee Rights Centre

*The information contained in this publication is subject to copyright by Nasc. You may reproduce this document for non-commercial use however we do ask that you please acknowledge Nasc's ownership.*