

Submission on the Scheme to Regularise Undocumented Migrants in Ireland

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Submission to the Department of Justice consultation on the scheme to regularise undocumented migrants in Ireland.

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Nasc, Migrant and Refugee Rights Centre is a non-governmental organisation based in Cork City, Ireland. Nasc, the Irish word for 'link', empowers migrants to realise and fulfil their rights. Nasc works with migrants and refugees to advocate and lead for change within Ireland's immigration and protection systems, to ensure fairness, access to justice and the protection of human rights.

Nasc, founded in May 2000, has over two decades of experience supporting refugees, asylum seekers and ethnic minority communities in Ireland. Through our various projects including our free legal service, our migrant youth project and our education and employment project for refugee women, Nasc provides information, advice and support to over 1,200 people annually. Nasc also provides support in the form of referrals and training to mainstream services working with migrant and ethnic minority communities.

We welcome the opportunity to make submissions on the matter of a regularisation scheme for long-term undocumented people living in Ireland. We strongly support the introduction of a regularisation scheme and commend the government for taking decisive action on this important issue.

This submission is informed by Nasc's experience of working directly with undocumented people and reflects our belief that the scheme should be as broad and as inclusive as possible. This submission document directly addresses the questions posed in the Department of Justice Consultation Paper.

Question 1: The scheme is for persons considered to be long-term undocumented persons living in Ireland for a minimum number of years.

Do you have any views on how undocumented should be defined in the context of this Scheme and/or in relation to the residence requirements and how these should be verified?

The scheme should accommodate as broad a range of individuals and families as possible in order to offer as many people as possible the opportunity to regularise their position in the State, and to avoid the need for further schemes of this type in the near future. With regard to the required residency periods, we recommend that legal residence prior to becoming undocumented should be taken into account. We would join with proposals by the MRCI to apply a simple residence requirement, and a date from which applicants must be undocumented e.g. start date of the scheme/1st of Jan 2021/1st of Jan 2020.

Definition of "undocumented residence"

Nasc recommends that undocumented residence should be broadly defined as period of time where the person did not hold any residence permission. This will in the main involve people who do not have any residence permission but consideration should also be given to specific inclusion of the following:

- The scheme should specifically include individuals with a pending application under s.3(11) of the Immigration Act 1999. Surveys carried out by the Migrant Rights Centre of Ireland find that approximately 30% of undocumented people in Ireland are awaiting an answer on a s.3 application. To exclude this grouping would punish those who have already come forward in good faith to engage with the State to regularise their position and may have found themselves waiting for years for a decision on their application. In our experience s.3 applications can currently take up to 3 years to process. Including this cohort of applicants would also have the additional benefit of addressing the large backlog of pending s.3 applications.
- The scheme should include individuals who have another immigration application pending including applications for residence as family members of Irish citizens. We recommend that applicants should be able to make applications to the regularisation scheme without prejudice to any other immigration applications pending.
- The scheme should include individuals who have had their EU Treaty Rights status revoked or who have had final negative decisions on their applications but who have not yet been issued with a removal order. Nasc recommends that the periods of residence where the person held a permission under the EU Freedom of Movement Regulations, temporary or otherwise, and was subsequently either unsuccessful in their application or have had their application revoked should be considered to be 'undocumented residence' for the purposes of this scheme and should count towards the qualifying length of residence.
- The scheme should include individuals who have unenforced deportation orders e.g., where the deportation order has been in place for a certain period and where the person has at all times co-operated with the relevant authorities.

Where the principal applicant meets the required period of residence, we would suggest that any other members of the family unit should be included and not have to meet the same qualifying period. This will avoid a situation where some family members are eligible for the scheme and other family members remain undocumented. Children born in Ireland should not have to show any period of qualifying residence.

Question 2: Do you have any views on the proposed eligibility criteria and what supporting documentation should be required?

Supporting documentation will be challenging for many who are eligible for this scheme due to the nature of life as an undocumented person in Ireland.

Identity documents

Consideration should be given as to how those who do not hold a valid passport can make an application under this scheme. Particularly in light of Covid, many embassies based in London or elsewhere have not visited Ireland to provide consular services since prior to March 2020. Some embassies require a person to show that they hold a residency permission in Ireland before renewing their passport. Undocumented people are generally not able to travel to attend at an embassy in London or elsewhere, and therefore may be unable to renew their passport after they become resident in Ireland.

We suggest that where all other criteria are met, and where the applicant makes reasonable efforts to substantiate their identity, permission should be granted to the applicant on condition that they acquire a passport before their permission is due to be renewed. This approach is often taken by the Ministerial Decisions Unit with individuals who may be granted permission to remain or subsidiary protection under the International Protection Act 2015, where their permission is granted on condition that they acquire or make reasonable efforts to acquire a passport prior to seeking to renew their permission.

Proof of Residency

A flexible approach should be taken to proving the applicant's period of residency in Ireland. Many applicants may be unable to provide the traditional proofs of address such as utility bills and tenancy agreements. If the scheme takes a strict approach to supporting documentation, many applicants will be excluded and will remain undocumented.

- Statutory declaration by applicant regarding their residence in Ireland:
- Evidence of interaction with GP and hospital services
- Evidence of interaction with trusted and established NGOs e.g. immigration NGOs that are members of the IIN, St. Vincent de Paul, Simon Community, other homeless services:
- Bank Statements showing transactions in Ireland
- Payslips
- Letters stating that the person resided as a licensee at a particular residence together with the main tenant's tenancy agreement/utility bill
- Letters from schools or other training bodies
- Evidence of past interaction with the International Protection Office and the Immigration Service
- Letters of reference/statutory declarations from an appropriate witness stating the period of time that the applicant has been known to them. It is suggested that appropriate witnesses would include those who are permitted to sign Section 7 of a passport application form in respect of a child.

Consideration of past behaviour/criminal record

We would suggest that the scheme should be guided by the 2015 McMahon Report which suggested that past behaviour should be dealt with in the following manner:

- only serious criminal activity should be considered, with criminal convictions and criminal activity to mean as follows:
- conviction of a crime or crimes whereby a term of imprisonment of 12 months or more has been imposed;
- in the case of conviction of an offence or of offences against the person, where a term of imprisonment of three months or more has been imposed (including where such a sentence has been suspended);
- where someone is under investigation or has been charged with a serious offence (as understood by reference to the above), they will not be eligible for consideration under these solutions until the investigation or prosecution has been concluded, at which point they will be assessed by reference to the above conditions;

- in all cases where there are indications that a condition might not be met, full account must be taken of a person's experiences prior to arrival in Ireland which may have influenced his/her conduct. Account must also be taken of his/her state of mental health.

We would also consider that it is inappropriate to include or consider "soft" information where no charge or conviction was brought. An individual should not be required to disclose any information that would not be disclosed via a garda vetting application.

Further, any criminal convictions that are directly related to a person's undocumented status should not be considered e.g. convictions for working without an employment permit.

We would consider that other matters such as domestic violence orders or care orders in relation to children are not relevant to this application.

Question 3: It is proposed that the immigration permission to be awarded will allow unrestricted access to the labour market. Are there any points you wish you raise in relation to the permission to be granted?

Duration of Permission

Applicants should be granted a permission of 3-5 years in duration. It should be renewable at the applicant's local GNIB office, without the need to make a paper or electronic based application to the Immigration Service in years to come as this would create a significant burden of work in processing these renewals. Consideration should be given to waiving the first registration fee under this scheme, particularly if the applicant must also pay a fee to apply.

Independent Permission

Each member of a family unit should be granted an independent permission in line with the above conditions. There should be no condition to continue to require e.g. dependent adult children to continue to reside with their family unit to avoid enforced dependency. Spouses should be given an independent permission to avoid future issues should relationship breakdown occur.

Access to Employment & Education

The permission granted should entitle recipients to enter both employment and self-employment. The permission should enable holders to access SUSI grants, and to be eligible for the Free Fees Scheme. Consideration should also be taken as to how we can ensure holders are entitled to family payments such as child benefit and working family payment to ensure no child remains in poverty despite the fact that they have benefited from this scheme. Holders should be entitled to a medical card and should not be required to hold private medical insurance.

Family Reunification Rights

Beneficiaries should be entitled to family reunification rights in line with the Family reunification policy document as a category B sponsor.

Question 4: How can we ensure that all those eligible to apply are aware of the Scheme? What would assist those eligible in making their applications?

Funding should be made available to appropriate organisation to assist in a) ensuring all those who are eligible are aware of the scheme and b) helping those who are eligible to make their applications.

Depending on the requirements, we would estimate that it could take 3-6 hours per person to compile an application for this scheme. This may require making data protection requests, contacting service providers to acquire letters/documentation, contacting embassies to acquire birth certificates/passports. This will require significant resources and staffing to ensure all those who are eligible can make an application within the required time period. It would also allow organisations to carry out outreach sessions in locations where there may be a large number of undocumented persons and where advocacy services might not normally be available e.g. fishing villages.

The Department should engage in targeted social media advertising in multiple relevant languages. They should also provide information to churches, mosques and key community organisations. The Workplace Relations Commission should also engage in a targeted information campaign, and inspectors from the WRC should provide information about the scheme to employees where a breach of employment permit legislation is detected.

Question 5: It is proposed to have an online application system. How can we make this process as simple and accessible for applicants?

The online system should:

- Be tested in advance by NGOs/focus groups
- Utilise plain English
- Be available in multiple languages. MRCI surveys show that the top 5 language among undocumented people in Ireland are Chinese, Portuguese, Tigalo, Mongolian and Arabic.
- Allow applications to be started online, saved and completed at a later date
- Be mobile friendly

Any correspondence relating to application should be through the online portal or via email.

Consideration should be given to waiving any application fee for those who are homeless or otherwise destitute. To achieve this funding could be provided to appropriate organisations to cover the application fee in appropriate circumstances.

A phonline or paper-based system should be available for those who may not have the skills or facilities to avail of an online system. For a small minority of applicants even completing an application on a mobile phone may not be possible. This would mirror the way the COVID19 vaccination system has an alternative to online registration.

Question 6: How will your organisation help to promote the scheme to eligible persons and support them to apply?

Nasc wishes to reiterate our broad welcome for the proposed scheme which has the potential to have a transformative effect on the lives of undocumented people in Ireland. Nasc is committed to promoting and publicising the proposed scheme as widely as possible subject to our resources available at the time.

We will promote the scheme through our social media, and by word of mouth through our client network. We will use our extensive networks, particularly in Cork, to ensure that smaller, non-specialised organisations, faith-based groups and professionals are aware of the scheme and can refer potential applicants to our service for assistance. We will conduct outreach sessions and group information sessions to engage with those who may be eligible for the scheme. If restrictions do not allow, this will have to be carried out as a zoom webinar.

We will provide in-depth support to applicants in submitting their applications through our advocacy service. However, this service is already extremely busy which means that funding specific to this scheme would assist greatly in ensuring that all applicants can be appropriately supported. Nasc's team can ensure that applications submitted are of a high standard and contain correct information and all necessary documentation. This will have the effect of reducing the workload of Department of Justice staff administering the scheme.

Question 7: Are there any other points you wish to raise in relation to the proposed scheme?

We wish to make the following additional points:

- There should be no application fee for minor applicants
- Minors with no parent or guardian should be enabled to make an independent application.
- Clarity should be provided as to the implications of a final negative decision, and whether a deportation order will then issue, or whether a proposal to deport will issue under s.3 of the 1999 Act.
- An application under the scheme should be without prejudice to other pending applications with the Immigration Service.
- The formation of the scheme should account for the fact that some applicants may have provided inaccurate information to the other services such as PPS section of the Department of Social Protection or be utilising another person's PPS number. An "amnesty" should be provided for these situations and applicants should be given an opportunity to correct their records.
- The Immigration Service should confirm that information provided under the scheme will not be passed to the Revenue Service as should this not be the case, it may discourage some persons from applying.

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