



## **Submission by Nasc, Migrant and Refugee Rights Centre, Doras, Crosscare Migrant Project, the Irish Council for International Students (ICOS) and Cairde to the Public Consultation on the Review of the Student Grant Scheme – SUSI**

15<sup>th</sup> April 2021

### **Introduction**

1. We are five organisations working with refugees, asylum seekers, migrants and international students. We welcome the opportunity to make submissions to the Public Consultation on the Review of the Student Grant Scheme – SUSI and to advocate for a change to the Student Support Regulations. This submission is based on the lived experiences of people accessing our services.
2. Nasc, Migrant and Refugee Rights Centre is a non-governmental organisation based in Cork City, Ireland. Nasc 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 migrant and refugee women, Nasc provides information, advice and support to over 1,200 people annually.
3. Crosscare Migrant Project is a non-governmental organisation based in Dublin. The Migrant Project is one of the three projects that comprise Crosscare Information & Advocacy Services, providing combined support to over 4,000 individuals and families every year. The majority of people the Information & Advocacy Services work with are from asylum and migrant backgrounds. We also provide training and referral supports to many frontline services, including home-school liaison officers and Tusla social workers & aftercare workers.
4. Doras is a non-governmental organisation based in Limerick City in the mid-west of Ireland. We have over 2 decades of experience of providing a free and confidential advice and legal information service on immigration-related issues including but not limited to asylum applications; Direct Provision; Family Reunification; employment rights and reporting racism. Each year, over 1,200 migrants access our service. We also campaign at local, national and international level for change in policy and legislation relating to International Protection, Direct Provision, Anti-Trafficking and Anti-Racism.
- 5: The Irish Council for International Students (ICOS) is a members based non-governmental organisation based in Dublin. ICOS mission is to protect the rights of international students, and to contribute to a healthy and vibrant international education sector in Ireland which has the quality of the student experience at its centre. We provide an information, advice, and mediation service to hundreds of international students every year.
- 6: Cairde is a community development organisation working to tackle health inequalities among ethnic minority communities by improving ethnic minority access to health services, and ethnic minority participation in health planning and delivery.

7. This submission is directly informed by our collective day-to-day experiences working with migrants, refugees, asylum seekers and international students living in Ireland and is predominantly concerned with the restrictive nationality eligibility criteria which prevent migrants, particularly children and young people, from accessing third level or further education. This submission includes real case studies from our services to inform this submission<sup>1</sup>. Our experience of working with migrants, schools, social workers and third level institutes has been that there is widespread confusion as to who is eligible to apply for a student grant. We particularly find that career guidance teachers and aftercare social workers struggle to advise the pupils or young people in their care as to whether they qualify to apply for a grant or not as the immigration and nationality requirements are complicated and confusing. Ireland's idiosyncratic immigration system allows for immigration residence permissions which *prima facie* appear to be the same (for example Stamp 4) and offer the same access to the labour market, citizenship and security of residence to provide for divergent levels of access to other supports such as housing and education. In our experience, many prospective students only discover that they do not meet the requirements once they receive a refusal of their application from SUSI.

### **Scope of the Review**

8. Although this review is limited to the review of the Student Support Scheme, it is important to note that cohorts of migrants are excluded from access to both the Free Fees Initiative and the Student Grant Scheme based on their nationality and immigration status, leaving them with thousands of euros to pay in fees and without access to any State financial support. This makes further or third level education unaffordable and prevents children and young people from achieving their education and employment goals.

9. The terms of reference of the review do not specifically include a review of the nationality criteria. Our organisations have written directly to the Minister for Further and Higher Education, Research, Innovation and Science to bring this to his attention however, we believe that this issue is of such signal importance to our service users that we make this submission even without having clarification on the terms of reference.

### **Who is currently eligible to apply for a SUSI grant?**

10. The Student Support Act, 2011 (2011 Act) and the Student Support Regulations<sup>2</sup> (updated each year) set out who may be considered a 'student' and therefore eligible to apply for a grant for the purposes of the Student Support Act. In brief, the following are the categories of non-EEA or Swiss nationals eligible to be considered as 'students':

- Refugees and persons eligible for subsidiary protection<sup>3</sup>
- A family member of a refugee or person eligible for subsidiary protection<sup>4</sup>

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<sup>1</sup> Please note that all names and countries of origin or identifying details have been changed to protect the identities of our service users.

<sup>2</sup> The most recent regulations, at time of writing, the Student Support Regulations, 2020.

<sup>3</sup> Refugees and persons eligible for subsidiary protection may have derived their status from the Refugee Act, 1996, the European Communities (Eligibility for Protection) Regulations 2006 ( S.I. No. 518 of 2006) or the International Protection Act, 2015.

<sup>4</sup> This specifically refers to persons who have been granted an immigration permission (colloquially referred to as family reunification status) on the basis of their family relationship with a refugee or person eligible for subsidiary protection. These family permissions will have been granted under the Refugee Act, 1996, the European Communities (Eligibility for Protection) Regulations 2006 ( S.I. No. 518 of 2006) or the International Protection Act, 2015.

- A family member of an EU/EEA citizen<sup>5</sup>
- A spouse, civil partner of an Irish citizen or the dependent child of a spouse or civil partner of an Irish citizen
- A dependent child of a naturalised Irish citizen
- A person granted leave to remain<sup>7</sup> following a decision not to issue a deportation order under Section 3 of the Immigration Act 1999
- A person granted 'permission to remain' under Section 49 of the International Protection Act 2015.
- A person granted 'humanitarian leave to remain'<sup>6</sup>

11. Sections 14(2) and 14(3) of the 2011 Act set down factors for the Minister to consider when deciding on which categories of persons should be considered a student for the purposes of the 2011 Act. These factors include, the period for which they have been ordinarily resident in the State, the basis on which they were granted permission to reside within the State, the conditions pursuant to which they were granted permission to reside within the State, the degree of connection that they are likely to have to the State, their entitlement to benefits or services provided by a Minister of the Government, a local authority, the Health Service Executive etc, whether they have access to education in their State of origin and finally the resources available for the provision of student support.

12. Of this list of persons eligible to be considered students set out in paragraph 11, the first three categories<sup>7</sup> have independent legal rights to apply for state supports on the same basis as Irish/EEA citizens. The criteria for who may be considered a 'student' have remained largely the same since the 2011 Act was enacted. Although the regulations have been updated to reflect the enactment of the International Protection Act, 2015, they have not kept pace with other categories of immigration permissions that have been developed since 2011.

### **Who is excluded?**

13. All other categories of migrants are excluded from being eligible for student grants regardless of whether they meet the factors set out in Section 14(3) - as outlined above in paragraph 11. It is entirely possible for a child to have been born in Ireland, spent their entire childhood and teenage years in Ireland, be legally resident for all that time and at the age of 18 when applying for a student grant, discover that they are not eligible for a student grant.

14. The Minister for Justice has a wide-ranging discretion under Section 4 (7) of the Immigration Act, 2004 (as amended) (2004 Act) to renew or vary the type of permission granted to a non-EEA migrant in Ireland and it is from this power that typically most immigration permissions derive. Of all the permissions granted under this section only those granted to the spouse or civil partner of an Irish

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<sup>5</sup> This specifically refers to persons who have been granted an immigration permission pursuant to the European Communities (Free Movement of Persons Regulations) 2006 and 2008

<sup>6</sup> This specific status predates the Immigration Act, 1999.

<sup>7</sup> Section 53 of the International Protection Act provides for refugees, persons eligible for subsidiary protection as well as their family members granted residence under the 2015 Act to engage in and access education, employment, training and social welfare benefits in the same manner as an Irish citizens. Family members of EEA citizens granted residence under the Free Movement of Persons Regulations have to benefits and supports on the same basis as EEA citizens.

citizen or the dependent child of an Irish citizen or their spouse or civil partner, can be considered eligible for a student grant.

15. We will outline our particular concerns with respect of people with exceptional Stamp 4s especially children and young people in foster care or aftercare, victims of trafficking and parents of and siblings of Irish citizens as well as dependent children and young people who hold Stamp 3 permissions.

**‘Exceptional Stamp 4’ holders:**

**(i) Children and Young People in the care of the State or Aftercare**

Case Study

Anna (19) from Democratic Republic of Congo is a care leaver who has lived in Ireland for most of her life. She entered the State as a minor to reunify with her family however was taken into the care of the State when the family relationship broke down. Anna spent all of her teenage years in care and, on turning 16, her social workers secured her a Stamp 4 immigration permission (permitting her to live and work in Ireland). However, this immigration permission does not allow her to access SUSI grants or free fees and so Anna is financially excluded from accessing third level education and cannot pursue her education or future employment goals.

16. Non-EEA migrant children who are in the care of Tusla, whether that is because they entered the State as an unaccompanied minor or there was an intervention by Child Protection following a bereavement of a parent or guardian, a family breakdown or abuse, may (unless they enter the international protection process) be given an immigration permission pursuant to Section 4(7) of the 2004 Act.<sup>8</sup> This immigration permission places them at a significant disadvantage to their Irish or EEA citizen counterparts when it comes time for them to apply for third level or further education insofar as they are now ineligible to apply for a student grant.

17. Our experience has been that many young people in Aftercare no longer have a biological family network in Ireland and often have little or no connection to family in their country of origin and there is no realistic prospect of them returning to their country of origin either to reside or to access education. They have spent the majority of their teenage years, and for some, their pre-teen years in Ireland and in the Irish education system and have a deep-rooted connection to Ireland and a strong sense of Irish identity. It is clear to us that including these children and young people in the SUSI student support scheme would be perfectly consistent with the legislative factors the Minister must take into consideration under Section 14(3) of the 2011 Act.

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<sup>8</sup> Ireland’s naturalisation system makes it almost impossible for social workers or foster families to help the minor children in their care apply for naturalisation regardless of the child’s length of residence in Ireland. Section 16 of the Irish Nationality and Citizenship Act 1956, as amended does give the Minister for Justice the absolute discretion to waive the statutory conditions to apply for naturalisation in certain circumstances, including where the applicant is of Irish descent or Irish associations which is defined as related through blood, affinity or adoption to a person who is or is entitled to be an Irish citizen. While it would be legally possible for the sibling of an Irish citizen to try to make an application under section 16, the guidance is very clear that the Minister will use this discretion rarely and “only under the most exceptional and compelling circumstances.” See further <https://www.irishimmigration.ie/citizenship/applications-based-on-irish-descent-or-irish-associations/>

18. We are aware of numerous instances where family courts have ordered Tusla to pay the costs of third level education for children and young people as part of their Aftercare plan. This is not a consistent, expedient or effective solution for young people in care or aftercare who wish to access third level or further education. We would also argue that the current situation is more expensive for the State in terms of litigation costs as well as providing for stressful and inconsistent outcomes for children and young people.

**(ii) Family Members of Irish citizens**

Case Study

Joel came to Ireland at 10 years of age with his mother Maria. At 12 years old, Joel and his mother were able to secure their residence in Ireland following the birth of Joel's younger, Irish citizen brother. Joel, his mother and brother have lived together as a family unit in Ireland since. As Joel was not born in Ireland, he was not able to apply for naturalisation as an Irish citizen while he was a minor unless his mother first became an Irish citizen.

Joel was able to register with his local immigration registration office at the age of 16 and received a 'Stamp 4' Residence Permit. Joel was 17 by the time Maria was legally able to submit her application for Irish citizenship however she had not received a decision before Joel was 18. Joel was able to submit his own application for naturalisation when he turned 18 however he expects to wait for several years for a decision.

Meanwhile Joel is completing his Leaving Certificate and is looking at his options to attend university in Ireland. He hopes to study accounting and believes that he should be able to get the points that he needs for his course. When Joel applies for support through SUSI, he discovers that as his Stamp 4 immigration permission derives from section 4 (7) of the 2004 Act, he cannot apply for a student grant and is likewise not eligible for Free Fees. Neither Joel nor his mother can afford to pay for Joel's university fees.

19. The current Student Support Regulations treat family members of Irish citizens differently based on the nature of their relationship to the Irish citizen. Although civil partners, spouses and dependent children/stepchildren are supported under the Regulations, siblings and parents of Irish citizens are not. It is unclear why there is a policy difference between the stepchild of an Irish citizen who has lived in Ireland for four years and is eligible for support and the parent or sibling of an Irish citizen who may have lived in Ireland legally for over a decade but cannot access support. This has a particularly negative impact on young people, especially those aged under 21, who have grown up in Ireland and who are too young to access supports such as Back to Education Allowance or the Vocation Training Opportunities Scheme.

### iii Victims of Trafficking

#### Case Study

Estelle was trafficked into the State as a 14 year old and became a victim of severe exploitation while in Ireland. She was eventually identified and taken into the care of Tusla. She was formally identified as a suspected victim of human trafficking, cooperated with the Garda trafficking investigation and was granted a Stamp 4 on this basis. This permission has regularly been renewed. Estelle has been going to school and has been placed in foster care. She will sit her Leaving Certificate shortly however her immigration permission bars her from accessing SUSI supports. Estelle feels that her future is uncertain and this adds to her significant anxiety and trauma.

20. The restrictive nationality criteria mean that Estelle and others suspected victims of trafficking, despite having a Stamp 4, and reaching the significant threshold of being identified as a suspected victim by a superintendent or higher-ranked Garda in the Garda National Immigration Bureau (GNIB) are not eligible to access SUSI student supports. Like the siblings of Irish citizens outlined above (paragraph 19) this cohort have no prospect of getting financial support to access education until such time as they naturalise as Irish citizens or turn 21 and can apply for financial support through the Back to Education or VTOS schemes.

#### Stamp 3 holders

Hoja and her siblings came to Ireland when Hoja was only 8 years old to join her mother who held a work permit. Hoja's mother works as a nurse and is a single parent. After 8 years of working in Ireland, Hoja's mother was able to secure a Stamp 5 (a Without Condition as to Time endorsement) which recognises her long term residence in Ireland and gives her residence for another 10 years. When Hoja was 16 and went to register at her local immigration office she was given a Stamp 3. This means that Hoja cannot herself work.

Hoja's mother is originally from Malaysia and, as she cannot hold dual citizenship, she has not applied for Irish naturalisation herself. Hoja and her siblings are not able to apply for Irish naturalisation themselves as minors unless their mother naturalises first. Hoja wants to follow in her mother's footsteps and dreams of becoming a nurse herself. However, despite getting excellent results in her Leaving Certificate she cannot progress to third level education as neither she nor her mother can afford to pay fees. Hoja's immigration status means that despite spending 12 years of her childhood in Ireland, Hoja can neither work nor get support to access further or third level education.

21. Dependent family members of Work Permit holders, former Work Permit holders or persons with Without Condition as To Time Endorsements<sup>9</sup> are excluded from accessing any financial

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<sup>9</sup> A Without Condition As To Time (WCATT) Stamp 5 is a permission that may be granted to a person who has completed 8 years (96 months) of reckonable legal residency in Ireland. The permission allows the holder to remain in Ireland without condition as to time and their Immigration Residence Permit is valid for the duration of their passport (normally up to 10 years).

supports to access further or third level education in Ireland. Ireland's immigration system means that this cohort are often granted Stamp 3 statuses which preclude them from accessing employment and self-funding their own education. There is no pathway for these children and young people to transfer to an immigration status that would allow them to access SUSI student supports.

## **Conclusion and Recommendation**

22. There is a clear need for greater access to financial support for people from a migrant background who wish to attend further or third level supports. It is evident from our services that despite their skills, migrants are routinely financially excluded from accessing third level education. Several of our services operate fundraisers or link in with other charities to try to bridge some of these gaps, however this is not sustainable and not enough to meet the need. Our experience has been that migrant young people begin to experience feelings of exclusion and difference when they become school leavers and discover that unlike their Irish peers, they cannot afford to go to third level or further education. This is particularly egregious in the cases of young people who have been in the care of the State and where the State has been acting in *loco parentis* for years.

23. Practically, many migrants must wait until they naturalise as Irish citizens before they can qualify for support however this process can take years and significantly delay their education and employment goals. It is also clear to us that Ireland is losing the benefit of diverse, educated and motivated young people because they cannot afford third level or further education. There is a real risk of creating an under-employed class of people if this is not rectified.

24. The current Student Grant Scheme makes arbitrary distinctions between different categories of Stamp 4 holders and even different relationships to Irish citizens. We believe that access to the Student Grant Scheme needs to be simplified and we would urge the Department of Further and Higher Education, Research, Innovation and Science to expand the Student Grant scheme to allow equality of access to the scheme for all Stamp 4 holders.

25. We also believe that there is a strong case to be made for extending access to the Student Grant Scheme for children and dependents of work permit holders or former work permit holders, particularly where young people have completed their second level education in Ireland. Their opportunities to progress their employment or education goals are so limited unless their parents are able to fund their education or they can secure financial support through an *ad hoc* charitable fundraiser. The current Student Grant scheme limits their futures.

ENDS

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