

Submission to the National Action Plan on Equity of Access to Higher Education

MAY 21

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About Nasc

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. This submission is directly informed by our day-to-day experiences working with migrants, refugees, asylum seekers and ethnic minorities living in Ireland. It aims to identify issues disproportionately impacting Ireland's migrant, asylum seeking and ethnic minority communities.

Our work in assisting migrants and asylum seekers to access higher-education

Nasc's Gateway Women's Project works with refugee, migrant and asylum-seeking women to tackle issue of socio-economic disadvantage and to help otherwise marginalised women transition to formal education or employment or self-employment. The supports offered range from English classes for beginners to support progressing employment and education goals. The project helps to match participant with further and higher education courses that meet their career goals. Graduates of the project have gone on to set up their own businesses, enrol in further education, vocational training and university courses.

Nasc's Connect Project specifically works with children and young people from asylum seeking, migrant and ethnic minority backgrounds providing social work-led supports including practical, academic and financial support for children and young people from vulnerable backgrounds to access education. In 2020 the Connect Project provided support to 95 children and young people and their families; this included 45 interventions around access to education. The children and young people accessing the Connect Project are often children and young people who are/were unaccompanied minors, young people in the international protection process or exiting the international protection process pr migrant young people in or exiting care. Over the past year Nasc has developed a project, *Our Lives Our Futures*, working with young people from migrant and asylum-seeking backgrounds who have or currently are experiencing barriers to accessing higher

education. The lived experiences of these young people who are denied any financial supports to access third level education forms the basis for this submission.

National Action Plan Priorities

We welcome the opportunity to submit to the National Action Plan 2022 – 2026. Nasc’s key recommendation is that migrants should be made a specific target group under the National Action Plan. We believe that this is particularly important as, during the lifetime of the National Action Plan 2022 – 2026, the first generation of children born in Ireland to non-Irish citizen parents who do not hold birthright Irish citizenship¹ are about to come of age and graduate from second level education. While many of these teenagers may have naturalised as Irish citizens in the intervening years, the naturalisation process for minors is complicated and relies on a parent or guardian to accumulate ‘reckonable residence’ and to make that application on behalf of a minor. We’re aware that particularly in the case of minor migrants born to undocumented parents, or from families experiencing poverty or family breakdown, this is not always possible.

We are concerned that there appears to be a lack of joined-up thinking when it comes to educational supports for migrants and asylum seekers and this has led to widespread confusion amongst schools, third or higher-level institutes and migrants themselves as to what supports are available and who qualifies. It should not be necessary to have a working knowledge of immigration law in order to discover what supports are available and to whom. This is a reflection of the convoluted nature of the supports available rather than a criticism of any schools, third or higher-level institutes or migrants themselves. In an Ireland where, as of the 2016 census, 535,475 people reported their nationality as ‘non-Irish’, it is essential that migrants are not seen as an afterthought and their needs are part of the conversation when designing programmes or State services and supports.

We acknowledge that the National Action Plan 2015 – 2019 refers to “lone parents, teen parents and some people from ethnic minorities” as being subgroups across the national target groups however we believe that migrants face unique challenges to accessing further and higher education and that these warrant being specifically targeted.

This submission focuses on the experiences of children and young people, especially those under the age of 21 as they do not have access to supports such as Back to Education Allowance or the Vocation Training Opportunities Scheme (VTOS), and is primarily concerned with the financial barriers to accessing education.

These challenges are discussed in detail below.

Financial barriers to accessing higher-education

Financial barriers in the form of exclusion from the Student Universal Support Initiative (SUSI)² and the Free Fees Initiative deeply affect students from migrant backgrounds. We welcome the

¹ A referendum to change the rules about the constitutional entitlement to citizenship by birth was held on 11 June 2004. The referendum was passed with the result that people born in the island of Ireland from the 01st January 2005 would not have a constitutional right to be Irish citizens, unless, at the time of their birth, one of their parents was an Irish citizen or entitled to be an Irish citizen.

² For a more extensive examination of the issues for migrant young people accessing SUSI grants see the *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 April 2021, available at

development of the Student Support Scheme for Asylum Seekers which provides an equivalent to a SUSI grant for international protection applicants who have been resident in Ireland for 3 years and the recent decision by the Department of Further and Higher Education and Science to waive international fees for international protection applicants (in receipt of a labour market access permission) who wish to enrol in PLC courses. Although these initiatives don't go as far as recommendations made in *the Report of the Advisory Group on the Provision of Supports, including Accommodation, to Persons in the International Protection Process* (Day Report) to extend access to higher education to applicants in the international protection system, it has made access to further and higher education more accessible for a large cohort of people. However migrants, including legally resident migrants, who are not in the international protection system do not benefit from either of these initiatives.

The legislation and regulations implementing SUSI and the Free Fees Initiative contain restrictive nationality and residency requirements. Migrants who do not qualify for the above financial support may be liable for thousands of euros in fees if they choose to pursue higher education.

Student Universal Support Initiative (SUSI)

The Student Universal Support Initiative requires, in addition to satisfying a means test and selecting an eligible course of study, that the student have been resident in Ireland for three of the past five years and be an Irish, UK, Swiss or EEA nationals or hold a specific immigration status. The Student Support Act, 2011 (2011 Act) and the Student Support Regulations (updated each year) set out the immigration statuses considered eligible:

- Refugees and persons eligible for subsidiary protection
- A family member of a refugee or person eligible for subsidiary protection
- A family member of an EU/EEA citizen
- 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 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.

Unfortunately, this leaves significant cohorts of migrant young people who have a legal permission to remain in Ireland without recourse to SUSI. It is unclear why other immigration statuses which permit the holder to live and work in Ireland and accumulate 'reckonable residence' for the purposes of applying for naturalisation are excluded from the Student Support Regulations 2020. There appears to be little coordination between the Department of Justice and the Department of Further and Higher Education, Research, Innovation and Science (or formerly the Department of Education) with regard to the various immigration statuses that are considered eligible for support. Nasc believes that this is an area that requires urgent examination and review. We highlight two examples of migrants who are excluded from accessing SUSI grants below.

(i) Children in care and young people in aftercare/care-leavers

https://nascireland.org/sites/default/files/Submissions/Student%20Grant%20Review_Submission_Nasc_Doras_Crosscare_Cairde_ICOS.pdf

Our service is particularly concerned with the situation of children and young people in care who receive what is colloquially known as an “exceptional Stamp 4”³. These are often young people who have been resident in Ireland for years and were taken into care following child protection concerns or the breakdown of a family relationship. These children may spend their entire teenage years or even longer in the care of the State. At the age of 16 when it becomes legally necessary for them to register, their social workers may be successful in securing them an ‘exceptional Stamp 4’. However, although appearing in almost every other respect to be identical to a Stamp 4 held by a person granted leave to remain following a decision not to issue a deportation order under Section 3 of the Immigration Act 1999 the exceptional Stamp 4 holder cannot apply for a SUSI grant but their counterpart who was granted a permission to remain under section 3 of the Immigration Act, 1999 may. More striking still, is that a person who is the child or stepchild of an Irish citizen may have a Stamp 4 permission granted under section 4(7) of the Immigration Act, 2004. Although both young persons may have lived in the State for the same length of time, both attended primary and secondary school in Ireland and both have been given Stamp 4 permissions under the exact same legislative provision, the child or stepchild of the Irish citizen is permitted to access financial support from SUSI but the child or young person who may have spent most of their childhood in the care of the Irish State cannot.

(ii) Siblings and parents of Irish citizens

As outlined above the Student Support Regulations 2020 categorise spouses, civil partners, children and stepchildren of Irish citizens as ‘students’ and therefore eligible to apply for SUSI grants. However, children or young people who are siblings of, or even parents of Irish citizens who receive their residence status on the basis of that family relationship are excluded from the terms of the Student Support Regulations 2020 and cannot apply for a SUSI grant. It is unclear why the Minister, who has the power to designate who may be considered a student, has chosen to treat family members of Irish citizens differently based on the nature of their relationship to the Irish citizen. These family members will all likely have derived their immigration permission to remain in Ireland through the Minister exercising her powers under section 4(7) of the Immigration Act 2004 (as amended).

There does not appear to be any coherent legal or policy basis for these distinctions. The Student Support Act 2011 provides a series of factors for the Minister to consider when making regulations to decide who should be considered to be a student (and therefore eligible to apply for a SUSI grant). 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. On the face of it, it is completely unclear why a child or young person who has been in the care of the State during the childhood and for whom the State is acting in *loco parentis* and who has been granted a renewable immigration permission which allows them to live and work in the State would not meet these criteria. Likewise, 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

³ Section 4(7) of the Immigration Act 2004 gives the Minister for Justice wide-ranging discretion to change or vary the immigration residency conditions of non-EEA migrants. ‘Exceptional stamp 4s’ are one of the immigration permissions which are issued under this power; they allow the holder to legally live and work in Ireland.

parent or sibling of an Irish citizen who may have lived in Ireland legally for over a decade but cannot access support.

Free Fees Initiative

Similar to the Student Universal Support Initiative (SUSI), the Free Fees Initiative which covers tuition fees for students is limited to those who have been resident in Ireland for 3 of the preceding 5 years and who, if not Irish, EEEA, Swiss or UK nationals, hold one of a limited number of immigration statuses. These immigration statuses are set out in the Free Fees Initiative. Although there is some overlap with the immigration statuses set out in the Student Support Regulations 2020, the list is, in fact, more restrictive.

The following are eligible for support under the Free Fees Initiative:

- Persons with refugee status or who are family members of a refugee.
- Persons eligible for subsidiary protection status or family members of same.
- Persons who are family members of an EU/EEA citizen.
- Persons granted 'leave to remain' under Section 3 of the Immigration Act 1999.
- Persons granted 'permission to remain' under Section 49 of the International Protection Act 2015.
- Persons granted Humanitarian Leave to Remain.

Nasc is very critical of the limitations of the Free Fees Initiative as they potentially make higher and third level education unaffordable for migrants living in Ireland. Migrants can find themselves excluded from financial supports but also facing international education fees. We wish to acknowledge that individual institutions, universities and colleges have used their own discretion in some cases to accept EU level fees from migrants who do not qualify for the Free Fees Initiative, however this is not always consistent.

Transitioning between the Student Support Scheme for Asylum Seekers and Back to Education Allowance

As we noted above, Nasc welcomes the expansion of the Student Support Scheme for Asylum Seekers in recent years which has allowed hundreds more asylum seekers to access higher and third level education. However, we are concerned that there is very little clarity how a student who is granted status while enrolled in a full-time education course and in receipt of the Student Support Scheme for Asylum Seekers can continue their education uninterrupted and transition to another State support such as Back to Education Allowance. This is a very real concern for those who cannot afford to continue their studies without financial support towards their living costs. Presently, in order to qualify for Back to Education Allowance, an applicant must have been in receipt of an eligible payment for a set number of weeks. The payment, known as the Daily Expenses Allowance, received by a person in the international protection system who is living in direct provision accommodation is not a qualifying payment for this purpose. However, the student cannot apply for a qualifying payment such as Jobseeker's Allowance while they remain a full-time student. This leaves students in an untenable situation where they risk real poverty should they continue with their course of study.

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