

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

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

Monday
Tuesday
Thursday
Friday
NOT WEDNESDAY

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

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

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

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Email: info@immigrantcouncil.ie
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Immigrant Council
of Ireland



Rights and Entitlements of Immigrants in Ireland



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



Introduction

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

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

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

What Is The Immigrant Council Of Ireland?

The Immigrant Council of Ireland (ICI) is an independent, non-governmental organisation that promotes and campaigns for the rights of immigrants through its:

- Information Service (free & confidential)
- Legal Service (free but limited service)
- Publications and Training work
- Policy and Campaigning work
- Work with migrant and ethnic minority led groups.

Disclaimer

This factsheet has been produced for information purposes only and is not a substitute for legal advice. Every effort has been made to ensure it is accurate and up to date at time of publication – October 2005. However, the Immigrant Council of Ireland disclaims any responsibility for errors or omissions in the text.

1 What Information is in this Factsheet?

This factsheet provides information on:

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

2 What Is 'Leave to Remain'?

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

A person may be granted 'leave to remain' in Ireland on a temporary basis if, for example, he/she does not fully meet the requirements of the *UN Geneva Convention relating to the Status of Refugees 1951* but who may still need protection.

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

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

3 Who Can Apply for 'Leave to Remain' in Ireland?

Generally a person will apply for 'leave to remain' when they have received a letter from the Minister for Justice, called a 'Section Three' letter. This letter states that the Minister for Justice is considering issuing that person with a deportation order.

However, it is possible to apply before that if, for example:

- you feel you are unable to, or do not wish to return to your country of origin for humanitarian reasons
- your permission to work (such as a work permit) has expired and you have not yet received a 'Section Three' letter.

4 What is a 'Section Three' letter?

A 'Section Three' letter is NOT a deportation order, and if you receive this you will not be deported from the country immediately. If you receive this letter it means that the Minister is giving you a warning that he/she intends to deport you within a certain period and is giving you different options as to how to proceed.

Please note: If you receive a 'Section Three' letter you should always read it carefully and respond within the required time. If you do not respond the Government will eventually issue you with a deportation order and you will be required to leave Ireland.

4.1 How Do I Respond To A 'Section Three' Letter?

When you receive a 'Section Three' letter, it will state that you have three options as to how to respond.

They are:

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

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

▶ Making Representations To The Minister To Stay In Ireland

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

▶ Choosing To Return Voluntarily

Another option open to you will be to return to your country of origin voluntarily, without waiting for the Government to issue you with a deportation order. If you take this option it means that you may apply to enter the country again at another time. For more information on voluntary return contact the

International Organisation for Migration (IOM)
(see useful contacts).

▶ **Consenting To The Deportation**

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

5 How Do I Apply for ‘Leave to Remain’?

There is no specific application form which you need to complete in order to apply for ‘leave to remain’, therefore when writing you need to set out in full the reasons why you feel the Minister for Justice should allow you to stay in the country.

▶ **If Applying In Response To A ‘Section Three’ Letter**

If your application is in response to a ‘Section Three’ letter, you should send the letter to the Minister for Justice, Equality and Law Reform within 15 working days from the date of the ‘Section Three’ letter. In the application you should set out the reasons why you believe you should be allowed to remain in the State.

This application should be sent by registered post to the Repatriation Unit of the Department of Justice, Equality and Law Reform, and you should fill out and enclose the forms provided by the Department of Justice when you received the ‘Section Three’ letter.

► **If Applying Outside Of The 'Section Three' Process**

If the application is made outside of the 'Section Three' process, it should be sent by registered post to the Permission to Remain Unit in the Department of Justice.

5.1 What Should I Write When Making The Application?

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

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

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

5.2 What Documents Should I Include With My Application?

You should include all relevant documents in support of your application for 'leave to remain'. This could include for example: letters from doctors explaining any health problems and treatment required (if relevant), evidence of employment, course registration details (if relevant) or details of ongoing humanitarian or security concerns in your country of origin.

6 What Happens if I am Granted 'Leave to Remain'?

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

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

6.1 Registering With The Authorities

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

When you register you will be issued with a Certificate of Registration, which will state that you have a 'Stamp 4', proving that you have the right to live and work in Ireland without needing another form of permission to work (e.g. work permit).

6.2 How Do I Renew my Permission to Remain?

Your permission to remain will usually be reviewed after one year. You should be aware that if your situation or the situation in your country of origin has changed in a way that makes it easier for you to return there, your permission to remain may not be renewed and you may be asked to leave the country.

In order to renew your permission to remain, you are required to apply to the Minister for Justice for permission to renew it. This should be done in writing at least 6 weeks before the expiry of your current Certificate of Registration. You should include all relevant documents in support of the renewal of your application, as you did when making the first application.

It is important to note that it frequently takes a couple of months for a decision to be taken. If your Certificate of Registration expires while

you are waiting for a response you should go to the Garda National Immigration Bureau to inform them that you have re-applied and are awaiting a decision.

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

The Minister for Justice, Equality and Law Reform may decide to refuse your application for 'leave to remain'. If this happens, you will be notified of the Minister's decision in writing and you will be served with a Deportation Order. You will be required to present yourself at the Garda National Immigration Bureau and to make travel arrangements for leaving Ireland.

7.1 How Do I Respond to a Deportation Order?

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

7.2 Can I Appeal a Deportation Order?

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

- Apply to the Minister to revoke the deportation order
- Seek to challenge the validity of the Deportation Order. This can only be done by making an application to the High

Court seeking leave for a ‘judicial review’ of your case.

7.3 How Do I Apply for a ‘Judicial Review’?

If you want to apply for a ‘judicial review’, you have to get a solicitor to advise you whether you have grounds (good reasons) for taking a case, and to issue court proceedings on your behalf.

The application for a ‘judicial review’ needs to be made within 14 days of the date you were notified of the Government’s decision to deport you. It is then up to the High Court to decide on your application.

8 What Are the Rights of People Granted ‘Leave to Remain’?

The rights of people who are granted ‘leave to remain’ in Ireland are not defined in law. However, if you have been granted ‘leave to remain’, generally, you have many of the same rights as Irish nationals, while you are living in Ireland. For more information, see below.

8.1 What Are My Rights to Work?

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

Everyone who has permission to work in Ireland has the same rights in the workplace, regardless of their nationality. This means that they have a right to a legal contract, to

lawful hours of work, a salary that is not below the minimum wage, as well as full holiday, illness and parental leave as set down in Irish employment law. For more information, contact the ICI's Information Service.

8.2 What Are My Rights To Family Reunification?

Although you do not have a right based in law to family reunification if you have been granted 'leave to remain', the Government may allow your immediate family members, such as spouses and minor children, to join you in Ireland. You may also make an application for other dependent family members to join you, for example elderly parents, or children over the age of 18 years.

The Minister for Justice has full discretion in these decisions, and applications require evidence that the person with 'leave to remain' in Ireland can support their family members financially while they are in Ireland. For more information on family reunification rights, see the ICI's factsheet 'Rights to Family Reunification in Ireland,' or contact the Immigrant Council of Ireland.

8.3 What Are My Rights To Social Welfare?

Since May 2004, anyone who wishes to apply for social welfare support in Ireland must pass a residency test known as the 'habitual residence condition', irrespective of their nationality. There are various conditions involved, but generally it means that anyone who has not been resident in Ireland for two years before making the application may not be entitled to social welfare benefits.

8.4 What Are My Rights To Vote?

People from outside the EU who are over 18 years of age and are legally resident in Ireland may vote in local elections if their name is on the Register of Electors.

Do You Want More Information on the Rights of Immigrants?

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

Reading Other Factsheets in this Series:

- ‘Rights to Long Term Residency and Citizenship in Ireland’
- ‘Rights of International Students in Ireland’
- ‘Rights to Family Reunification in Ireland’

Reading the Information for Migrants Section of our website:

www.immigrantcouncil.ie

Contacting our free and confidential Information Service:

The ICI provides a free and confidential Information Service on the rights of immigrants and their families such as migrant workers, international students, business people and visitors. Information is available on topics such as:

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

For the opening hours and contact details of the ICI’s Information Service see back of factsheet.

Other Useful Contacts

Immigration and Citizenship Division

Department of Justice, Equality & Law Reform
13/14 Burgh Quay, Dublin 2
+ 353 1 616 7700
www.justice.ie

Passport Office

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

Visa Office

Department of Foreign Affairs
13/14 Burgh Quay, Dublin 2
+ 353 1 663 1000
www.foreignaffairs.gov.ie

Garda National Immigration Bureau

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

Information Service of the Department of Social and Family Affairs

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

International Organisation for Migration

9 Marlborough Court
Marlborough Street, Dublin 1
+ 353 1 878 7900
www.iomdublin.org

