

Briefing paper on immigrants' rights to social welfare in Ireland

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This briefing document sets out the position regarding EEA and non-EEA nationals' entitlements to social welfare in Ireland. It is provided in the hope that it will be a useful verifiable resource when addressing the issue of access to social welfare.

The paper is structured as follows: the first section looks at the general criteria needed to access social welfare payments that apply to all people, the second section details the situation for EEA nationals, the third section sets out information on the Habitual Residence Condition and the final section looks at the situation for non-EEA nationals in Ireland¹.

The Irish social welfare system

There are only two general mechanisms through which people in Ireland can be granted a social welfare payment. Firstly if someone has made adequate **contributions** to the social insurance system (via PRSI) he/she may be entitled to a payment. If someone is not entitled to such a payment then they can apply via the second mechanism, which is '**connection**' based.

If someone can prove an adequate **connection** with Ireland then they may be granted a payment provided they satisfy all the other specific qualifying criteria of the particular payment. In practice the strength of the connection is usually assessed by judging if the applicant is 'habitually resident' in Ireland – factors such as length of time in Ireland, employment record in Ireland, **connections** with Ireland and other family in Ireland are considered in making this judgement.

The Rights of EEA nationals

The freedom of movement of workers is intrinsic to the success of the European Union. The rights of EEA nationals and their families should be understood in this context.

EEA nationals have no automatic Irish social welfare entitlements on arrival in the state. Directive 2004/38 EC sets out that EEA nationals have the right to reside in another Member State for three months so long as they do not become a 'burden on the social assistance system' of the state.

In order to legally reside for longer than three months they must be a worker or self employed person or have sufficient resources for themselves and their family members.

¹ As of June 2009 there were 149, 203 non-EEA nationals registered in Ireland with the Garda National Immigration Bureau. Total population at Census 2006 – 4.2 million: Irish nationals 3.7million, non-Irish nationals 0.42m million (0.11m of which were UK nationals). Total population estimate at April 2009 - 4.46 million

Once they have entered the labour market they are defined as a 'worker' as long as that work is 'real and genuine, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary'². If a person becomes involuntarily unemployed they continue to be defined as a 'worker' under EU Law.

EEA nationals' right to equal 'social advantage'

Once the EEA national enters employment and becomes involuntarily unemployed or incapacitated they are entitled to a level of protection.

This level of protection is ensured in Article 7(2) of Regulation 1612/68, which specifies that EEA workers should enjoy the same social (and tax) advantages as national workers. In the Irish context Supplementary Welfare Allowance has been defined as a social advantage payment.

If the person is employed for a period of less than 12 months and becomes involuntarily unemployed they have a right to receive Supplementary Welfare Allowance for a period of six months from the date they finish work³.

If the person is employed for a period more than 12 months and becomes involuntarily unemployed they have a right to receive Supplementary Welfare Allowance so long as they are actively seeking work.

Contribution based payments

EEA nationals working in Ireland are subject to the same conditions as national workers. They need to have paid adequate PRSI **contributions** in order to receive a contribution based payment. It is possible for all EEA nationals to combine **contributions** made in other EEA states in order to receive a contribution based payment.⁴

For example Jobseeker's Benefit, depending on the number of **contributions a person has paid** is payable for a maximum of 12 months. If you have less than 260 paid **contributions** you can receive Jobseeker's Benefit for a maximum of 9 months.

Transfer of contribution based payments

A person who has been in receipt of Jobseeker's Benefit in one European country for at least 4 weeks, may transfer this benefit to another European country for a maximum of 13 weeks(78 days) provided the person is seeking employment in that country.

The person registers as unemployed in the country to which s/he travels. The local social services office pays the benefit and then recoups it from the home country. This opportunity is open to Irish claimants who may seek to find employment opportunities in other European countries.

Child Benefit

Child Benefit is classified under EU law as a Family Benefit⁵. One Parent Family Payment and Guardian's Payment (Non Contributory) are also classified as Family Benefits.

² *Brian Francis Collins v Secretary of State for Work and Pensions* Case C-138/0

³ EU Directive 2004/38/EC given effect in Irish Law by Statutory Instrument 656

⁴ The co-ordination of Benefit payments is brought into effect in European Law by Regulation 1408/71

⁵ Article 1 subsection u (i) of EU Regulation 1408/71 defines Family Benefits as 'all benefits in kind or in cash intended to meet family expenses'.

EU Law requires that if an EEA national is working in Ireland they have the same right to Family Benefits as an Irish national living in Ireland. This includes Child Benefit even if that child is residing in another state. However in this case the equivalent payment from the other state is taken into consideration and the person receives a payment from the Irish state to bring them in line with the rate paid in Ireland. This right continues if that person becomes unemployed and is in receipt of Jobseeker's Benefit.

If the EEA national becomes unemployed and does not have an entitlement to Jobseeker's Benefit they will have to prove that they are habitually resident in order to continue to receive Child Benefit even when the child/ren are resident in Ireland.⁶

Habitual Residence Condition

Since 1 May 2004, all applicants regardless of nationality are required to be habitually resident in the State in order to qualify for all means tested social welfare payments and Child Benefit.⁷ When bringing this qualification into being the then Minister for Social and Family Affairs stated that 'The new condition is designed to restrict access to social assistance and Child Benefit payments for people from other countries who have little or no connection with Ireland.'

In order to be considered habitually resident a person must show that they have an adequate **connection** with Ireland. When deciding that a person is habitually resident 5 factors are taken into account. No single factor is conclusive. The weight attributed to each factor depends on the case. The five factors are as follows:

- Length and continuity of residence in Ireland or in any other country
- Length and purpose of any absence from Ireland
- Nature and pattern of employment
- Applicant's main centre of interest
- Future intentions of applicant as they appear from all the circumstances.⁸

In addition to the above, changes to social welfare legislation brought into force in December 2009 mean that a person must have a 'right to reside' in the State to satisfy the HRC. This legislation sets out which persons will be regarded as having a right to reside and which persons will not.

Non-EEA nationals

As of June 2009 there were 149,203 non-EEA nationals registered in Ireland with the Garda National Immigration Bureau. All non-EEA nationals in Ireland need to have some legal status in the State in order to be eligible for a social welfare payment. There are 4 broad categories of non-EEA national registered with the Garda National Immigration Bureau. The categories are defined based on their main reason for being in Ireland, these reasons being:

⁶ DSFA Director General presenting to the relevant Oireachtas Joint Committee on the 12th June 2009 highlighted that EU and non-EU child benefit claimants have to certify their entitlements on a three-monthly basis.

⁷ <http://www.welfare.ie/EN/OperationalGuidelines/Pages/habres.aspx>

⁸ *Swaddling* C-90/97

For study

Non-EEA nationals here for the purposes of study are not entitled to access social welfare.

To be with Irish, EEA or non-EEA family members

Non-EEA nationals in Ireland for the purposes of being with family members are not always granted the right to work. If they do not have the right to work this automatically rules them out of applying for the main social welfare payments of Jobseekers Allowance and Jobseekers Benefit.

In this category those who are granted the right to work and have paid sufficient social insurance (PRSI) contributions may be eligible for a contribution based payment. Those who are granted the right to work and do not have adequate PRSI contributions will have to pass a means test and prove an adequate connection with Ireland via the Habitual Residence Condition in order to be eligible for a payment.

For employment

Non-EEA nationals in Ireland for the purpose of employment who have worked may be eligible for contribution based payments if they have paid sufficient PRSI contributions. Otherwise they will have to pass a means test and prove an adequate connection with Ireland via the Habitual Residence Condition in order to be eligible for a payment.

For protection reasons

Non-EEA nationals who are in the view of the Irish state at serious risk of persecution in their country of origin are granted forms of protection status in Ireland. This group is granted a right to work and if they have worked and made adequate PRSI contributions they may be eligible for a contribution based payment. If they do not have adequate PRSI contributions it is possible for them to apply for means tested payment. People in this category have to satisfy the Habitual Residence Condition in order to be eligible for a means tested payment.

Changes in Social Welfare Legislation brought in through the Social Welfare Act 2009 mean that Asylum seekers or others awaiting a decision on subsidiary protection or humanitarian leave to remain cannot satisfy the Habitual Residence Condition and therefore cannot qualify for any mainstream payment.

Should you have any further questions please do not hesitate to contact us.

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