



**The Migrant Rights Centre Ireland and the Justice for the Undocumented
Group**

Submission to the Department of Justice

On the proposed

Regularisation Scheme for Undocumented People in Ireland

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Introduction

The Migrant Rights Centre Ireland (MRCI) is a national organisation working to promote the rights of migrant workers and their families in low paid and precarious employment, those who are undocumented and are at risk of poverty, exploitation and social exclusion.

Our submission is informed by 20 years of work with undocumented people and 11 campaigning with Justice for the Undocumented - a community group led by undocumented people - for a broad and inclusive regularisation in Ireland. The views of the Justice for the Undocumented group have been incorporated into this submission.

This submission is also informed by the work of MRCI's Drop In Centre assisting people to regularise their immigration status and our experience of assisting people to apply for the IBC scheme 2005, Undocumented Workers Scheme 2009, Student Probationary Extension Scheme 2011 and the Special Scheme for non-EEA nationals who held a Student Permission in the State during the period 1 January 2005 to 31 December 2010 2018 (referred to hereafter as the Student Scheme 2018).

A regularisation scheme's criteria for eligibility needs to take account of a range of factors; the historical context of migration; the cohorts of people the scheme is trying to reach and respond to; and the complexity of people's lives to maximise the scheme's impact. This regularisation scheme needs be accessible, simple and clear so that eligible people can apply themselves without the need for additional support.

We very much welcome the priority given by the Department of Justice to this vital issue and the clear timeline put in place as part of the Justice Plan 2021 to introduce this regularisation. We welcome several aspects of the proposals made to date. We welcome that permission given will allow full access to the labour market and a path to citizenship. We welcome that the scheme will be open for a period of 6 months. We welcome a clear appeals process for those who are unsuccessful in their applications.

However we are deeply concerned that the criteria currently being proposed could undermine the intention of this scheme to be broad and inclusive. We are concerned that the current residency requirements coupled with a lack of clarity on the inclusion of those with Section 3's and deportation orders puts up to 8,000 people^{1 2} at risk of being excluded from this scheme.

¹ Question No: 468 DÁIL QUESTION addressed to the Minister for Justice (Deputy Helen McEntee) by Deputy Patrick Costello for WRITTEN ANSWER on 17/12/2020 (To ask the Minister for Justice the number of persons with an open application for leave to remain on humanitarian grounds at present.)

² 'We Live Here, We Work Here, We Belong Here' A survey of over 1,000 undocumented people in Ireland 2020.

Summary of key recommendations:

1. Any definition of undocumented used for the purposes of this scheme **MUST** include those in the Section 3 process and with deportation orders.
2. Any definition of undocumented for the purposes of this scheme must include dependents, spouses and de facto partners.
3. We strongly recommend a shorter residence requirement be included as part of this scheme
 - o We recommend that those who reach the residence requirement during the lifetime of the scheme be included
 - o We recommend that the undocumented residence requirement should not have to be continuous and unbroken
4. We strongly recommend that legal residence prior to becoming undocumented should also be taken into account. We propose to:
 - o Apply a simple residence requirement and a date from which applicants must be undocumented e.g. start date of the scheme/1st Jan 2021/1st Jan 2020.
5. We seek a clear definition of criminality and strongly recommend that everyone would be included aside from those with serious criminal convictions.
6. We seek a clear definition of dependents and the age that is acceptable. We would strongly recommend that all dependents up to age 24 are eligible for this scheme.
7. We strongly recommend a low fee for application and registration as part of this scheme, especially in light of the Covid 19 pandemic, so that workers and families can regularise without difficulty.
8. We strongly recommend an assurance that it is safe to apply and that information gained as part of the application process will remain confidential and will never be used in order to pursue those who are not successful in any way.
9. We strongly recommend a non-punitive approach to employers who may be required to provide documents and that assurances be given that they will not be pursued for employing an undocumented person.
10. We strongly recommend a flexible and pragmatic approach in terms of the documentation required to prove residence and undocumented residence.

Please see below our responses to the questions posed by the Minister for Justice and her officials.

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?

Response 1 A) in relation to how undocumented should be defined:

All undocumented population estimates for Ireland include three categories of people, (1) the undetected undocumented population, (2) those with applications under section 3 of Immigration Act 1999, and other appropriate pending applications (3) those with unenforced deportation orders. Failure to include the latter two groups will lead to low numbers taking up the scheme and has the potential to exclude between 4,000 to 6,000 people^{3 4}. This is not in line with figures expected by the Minister for Justice and being planned for by the Department of Justice.

Being in these situations confers no additional status or rights to a person, therefore they are still by definition undocumented, omitting them leaves a larger group of people in precarious positions. In the past schemes run by the Department of Justice, for example in the Student Scheme 2018, both groups were included. Given their success we can see no reason not to include these groups in the scheme, and believe it would be detrimental not to.

These exclusions would lead to discrimination. A person who has been undetected, is in a more favourable situation than someone who has engaged with the state. This punishes people who have come forward to rectify their legal status, and is at odds with Department's stated policy which encourages people to engage with the state if they are undocumented.

1. Any definition of undocumented used for the purposes of this scheme MUST include those in the Section 3 process and those with an unenforced deportation order.

The Department took on board a family approach in the design of the Student Scheme 2018, enabling the primary applicant to include their children, including aged out minors (aged 0-23) in the application, whether born here or born abroad. We recommend this approach is retained in this scheme.

A family approach was also taken to dependent partners, spouses and de facto partners of the main applicant. Again this approach must be retained. Evidence has shown that this ensures better outcomes for the family unit in terms of alleviating poverty and social exclusion.

³ Question No: 468 DÁIL QUESTION addressed to the Minister for Justice (Deputy Helen McEntee) by Deputy Patrick Costello for WRITTEN ANSWER on 17/12/2020 (To ask the Minister for Justice the number of persons with an open application for leave to remain on humanitarian grounds at present.)

⁴ 'We Live Here, We Work Here, We Belong Here' A survey of over 1,000 undocumented people in Ireland 2020.

Children who came to Ireland with their parents or legal guardians and/or those born in the state, who are undocumented, and who are now in the care of the State, must be included and supported with a clear process to apply for regularisation under this scheme.

- 2. Any definition of undocumented for the purposes of this scheme must include dependents, spouses and de facto partners.**
- 3. We strongly recommend this scheme must include and cater for undocumented children in the care of the state for whom there is no main applicant**

Response 1B) in relation to the residence requirements:

We are very concerned that the residency requirements are too narrowly drawn. Those left behind by this criteria will remain in Ireland undocumented in a desperate situation for no reason.

The proposed residency requirement does not recognise time spent on a valid immigration permission or on a tolerated status of a person who is now undocumented. This will penalise a person who managed to maintain a valid permission for a number of years and has become undocumented in the last 4 years. This punishes people who made efforts to maintain a valid permission. It is normal practice in schemes and mechanisms of this kind across Europe to apply a simple residence requirement rather than an undocumented residence requirement. For example: Belgium 2009⁵, Italy 2012⁶, Poland 2012⁷, Switzerland 2017⁸, France Ongoing⁹, and Spain Ongoing¹⁰.

- 1. We strongly recommend that legal residence prior to becoming undocumented should also be taken into account. We propose to:**
 - Apply a simple residence requirement and a date from which applicants must be undocumented e.g. start date of the scheme/1st Jan 2021/1st Jan 2020.

The Catherine Day report¹¹ suggested a time period of more than two years for people in the International Protection process to regularise their status, and we believe this sensible timeframe can be applied to undocumented people in this scheme.

⁵ <https://migrationonline.cz/en/e-library/regularization-campaign-in-belgium-a-breakthrough>

⁶ https://mpr.ub.uni-muenchen.de/59754/1/MPRA_paper_59754.pdf

⁷ <https://www.eurofound.europa.eu/data/tackling-undeclared-work-in-europe/database/amnesty-for-illegal-migrants-poland>

⁸ <http://www.abge.ch/fr/conseils/04-operation-papyrus.html>

⁹ <http://www.red-network.eu/?i=red-network.en.items&id=960>

¹⁰ Article 124 in <https://www.boe.es/buscar/act.php?id=BOE-A-2011-7703&b=61&tn=1&p=20180904#a38>

¹¹ <https://www.gov.ie/en/publication/634ad-report-of-the-advisory-group-on-the-provision-of-support-including-accommodation-to-persons-in-the-international-protection-process/>

The current residence requirement could leave behind between 2,000 and 3,000¹² people. A reduction of the timeframe to 2 years could reduce this to an estimated 4% of people¹³.

This scheme has the capacity to include as many children as possible by reducing this time period as well. All children whose parents don't meet the residence requirement will continue to grow up undocumented. Without any permanent mechanism for children, there will be a significant cohort of children who will be left behind and live out their lives undocumented. Furthermore, Ireland will remain out of step with the recommendations in the UNCRC 2016¹⁴.

It is important to note that there is no political opposition or potential negative consequences to a shorter residence requirement. There are also no obligations or limitations preventing a shorter residence requirement. The government is in a position to choose any criteria it deems appropriate.

There is no evidence of any pull factor from regularisations¹⁵. A more favourable scheme will not lead to increased future migration. Therefore there is no logic in thinking people would move based on very slightly more favourable criteria of a single time bound regularisation.

It is disappointing too that the scheme does not take the opportunity to operationalise the recommendation of the Catherine Day¹⁶ report to regularise people in the International Protection system two years or more by the end of 2020.

It is important to also note that many undocumented people can move in and out of status or secure temporary permission for a period of time. A cumulative rather than continuous approach will take this into account in a fair way.

- 2. We strongly recommend a shorter residence requirement to be part of the scheme**
- 3. We strongly recommend that people who reach the residence requirement during the lifetime of the scheme be included**
- 4. We strongly recommend that the undocumented residence requirement should not have to be continuous and unbroken**
- 5. We recommend that time spent on a status that was subsequently revoked should be included as undocumented residence.**

¹² 'We Live Here, We Work Here, We Belong Here' A survey of over 1,000 undocumented people in Ireland 2020.

¹³ 'We Live Here, We Work Here, We Belong Here' A survey of over 1,000 undocumented people in Ireland 2020.

¹⁴ UN Committee on the Rights of the Child (2016) Concluding Observations Ireland, CRC/C/IRL/CO/3,

¹⁵ Pg. 131 in https://ec.europa.eu/home-affairs/sites/default/files/e-library/documents/policies/legal-migration/pdf/general/regime_report_january_2009_en.pdf

¹⁶ <https://www.gov.ie/en/publication/634ad-report-of-the-advisory-group-on-the-provision-of-support-including-accommodation-to-persons-in-the-international-protection-process/>

Response 1C) in relation to verifying residency & undocumented residency requirements:

Verification of residency and undocumented residency must be made as simple as possible and a mixed methods approach should be adopted. We provide the following list of examples which is not exhaustive. While we recognise the need to show some proof of how long a person has been in the state, this must be kept at a low threshold to ensure the application process is fast and to avoid undue complications in sourcing documents.

Consideration must also be given to people who have lost or do not have full access to a set of documents, for example a lost and/or surrendered passport, tax records etc. and make provision to accept alternative evidence to be made on behalf of the applicant as in Tier B below. There is a particular issue at present with renewal of passports due to Covid 19. It has been impossible for people to renew passports during this time. As such a requirement for an up to date passport must not be a basis for exclusion from this scheme.

We believe a menu based and pragmatic approach be taken in terms of documentation requirements. Similar to the citizenship application process the scheme could adopt a tiered approach. An applicant would either have to produce 1 document from tier A or 2 documents from Tier B to demonstrate the point at which they were present in the state (if never held a valid permission), or the point at which they became undocumented (if they held a valid permission previously).

Tier A Examples

1. Passport & Expired Passport with record of entry into the state
2. GNIB Registration/s
3. Passport with last stamp
4. P60 or Tax record
5. Payslips
6. Utility Bill
7. Bank Statement
8. Driving Licence
9. Medical Insurance
10. Social Welfare record
11. Communication from the Department of Justice or other Government Department or agency
12. Evidence of Hospital, GP, dentist or solicitor visits
13. Phone Usage Reports/ Phone bills - mobile or landline
14. School or college records
15. Car Insurance

Tier B Examples

1. Letter from employer
2. Letter from youth service, community project/group, NGO, sports team, religious group, church etc.
3. Rent book/ Lease Agreement
4. Tickets with name included

5. Letter from friends or colleagues
6. Job application or interview record
7. Work rosters or any valid evidence of employment
8. Library cards
9. Gym and other membership records
10. Dated pictures

Question 2

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

Response 2A) in terms of eligibility

- 1. We recommend that criminality be defined as an offence punishable by a maximum term of imprisonment greater than 5 years or a custodial sentence of 12 months or more.** A criminality definition could also follow that outlined in the McMahon Report¹⁷. People should not be excluded from this scheme for very minor misdemeanours.
- 2. We recommend a clear definition of dependents up to age 24.** This is in line with the Youth Work Act 2001¹⁸, which defines a young person as anyone under 24. Dependent children, including aged out minors (dependent adult children 18-23 years) were included in the Student Scheme 2018. We recommend this approach is retained in this scheme.

Response 2B) in terms of documentation:

Our 20 years of work with undocumented people makes us acutely aware of the difficulties that undocumented people face in providing specific evidence as to their existence in the state. This is due to the very nature of being undocumented. It often means not having a tax record, lease or utility bills in your name and no PPS number/ public services card.

There are many ways to prove existence in the state. A flexible approach should be taken so as not to exclude people due to the impossibility of producing a very specific document, once the residency can be proved in other reasonable ways.

See above in Response 1C for detailed recommendations.

¹⁷ **The McMahon Report: The Working Group on the Protection Process and Direct Provision**

¹⁸ <http://www.irishstatutebook.ie/eli/2001/act/42/enacted/en/html>

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 to raise in relation to the permission to be granted?

Response 3

- 1. We welcome that permission given will allow full access to the labour market and a path to citizenship. We recommend that a renewable Stamp 4 for an initial period of two years is granted and allow for immediate family reunion in line with current rules.** This is the most widely known immigration permission by employers and will allow for faster uptake of employment. We also recommend that the “*no recourse to public funds*” criteria is waived as we are emerging from a global pandemic.
- 2. We recommend outlining at the outset the process for renewal. We recommend that on renewal this immigration permission be given without any restrictions.** We believe that a pragmatic approach be taken to renewal requirements, and people should not be penalised if they have availed of State support while emerging from a Global Pandemic.
- 3. We recommend that Children under the age of 16, whose parents or legal guardians applied for this scheme be granted stamp 4, with the right to work and study upon turning 16 (age of registration).** This will enable children to access their own rights and entitlements independent of their parents/legal guardians.

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?

Response 4A) in relation to making people aware of the scheme

Publicising the scheme is vital to ensure a wide uptake. The Department of Justice was reliant on the undocumented community and NGO's to get the word out to people about the Undocumented Workers Scheme 2009 and the Student Scheme 2018, as they were not widely publicised. This lack of dissemination meant that some people did not find out about the schemes in time to apply and/or could not get the required documents in place to apply on time.

- 1. We welcome the current proposal that the scheme will be open for 6 months.**
- 2. We recommend that the scheme be announced with a lead in time to allow for dissemination of information to more isolated undocumented people**

3. **We recommend clear information on the scheme criteria and requirements must be provided in the top 6 languages (Chinese, Portuguese, Tagalog, Mongolian, Urdu & Arabic) spoken by undocumented people.**
4. **We recommend that the Department of Justice should develop a communication plan which should include the production of social media friendly content in a range of languages to help communicate the scheme**
5. **We recommend clear and timely communication with civil society organisations that have strong links to undocumented people**

Response 4B) in relation to assisting those eligible in making applications

1. **We recommend that fees apply only to main applicants, to alleviate burdens on families.**
2. **We strongly recommend a low fee approach for main applicants especially in light of Covid-19 so that workers and families can regularise without difficulty.** Many eligible persons are in low paid work and cannot afford high immigration and registration fees. For the Student Scheme 2018, an application fee of €700 plus a registration fee of €300 per person excluded many. MRCI put in place a hardship fund to assist the most vulnerable people and families with fees to enable them to access the scheme.

Given the large number of applicants expected for this scheme (assuming exclusions are addressed as recommended in this document), a fee of between €60 and €300 per main applicant - will cover the cost of administering the scheme. We believe this is very reasonable considering the current fees applied by INIS for processing visa applications is €60 for a single entry visa processing fee.

3. **We recommend giving assurances that the scheme adopts a non-punitive approach to encourage people to come forward, giving confidence that it is safe to apply.** The Department of Justice must provide a guarantee that information gained as part of the application process will not be used to pursue unsuccessful applicants and issue them with intention to deport notifications. An absence of such an assurance could lead to a low take up of the scheme due to fear of negative consequences.
4. **We recommend a non-punitive approach for employers who have employed undocumented people.** Employers may be required to verify a person's employment for the purposes of validating time spent in the state and must be assured that there will be no negative consequences to do so.
5. **We recommend a simple, user friendly application process.** This includes plain language and a process that can be undertaken by the individual applicant without the need for legal support. Many undocumented people are in low paid, precarious situations and cannot afford to retain legal representation to avail of the scheme.

6. **We welcome that an appeals process has been included.** We recommend making it clear how this can be triggered and the time frame for appeal. We strongly recommend an appeals process based on discretion so that people refused in the main application who have strong cases may be included on appeal.

7. **We recommend that sufficient resources are allocated to processing applications and that there is clear communication on expected processing times.** Limited resource allocation for administering the Student Scheme 2018, meant that there was little communication on processing timeframes. Some applicants waited up to and over a year for a response from the time of their application.

8. **We recommend that funding be made available to NGOs/community groups to assist people to make their applications.** MRCI assisted over half of all applicants to navigate and make applications to the Student Scheme 2018. This scheme will see significantly more resources required to support the large number of applicants expected.

Question 5

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

Response 5

We believe that it is the right approach to create an online system for applications. However this must be made simple and user friendly and easy for undocumented people who may have limited IT capabilities to apply. In the Student Scheme 2018 it was necessary to merge several documents into one before uploading them. This was very time consuming and difficult for people without a high level of IT knowledge. Many people required a lot of additional support. It would be a huge advantage if the application process could be completed from mobile devices. Many undocumented people do not have access to desktop/laptop computers and if we are still under some form of restrictions accessing these devices may be very difficult for some.

1. **We recommend that applicants should be able to create a profile with a username and password for security reasons**

2. **We recommend that applicants should be enabled to save their application easily and come back to complete at a later point**

3. **We recommend that the application process allow for easy uploading of documents.**

4. **We recommend that applicants should be able to access the application process from mobile devices and that it be optimised for same**

Question 6

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

Response 6

Migrant Rights Centre Ireland, through our Justice for the Undocumented Group, is unique across Europe in terms of our level of contact with undocumented people. We have approximately 2,000 members who are undocumented and whom we can easily reach to inform them about this scheme.

We have identified community connectors in this group who can help us reach more isolated undocumented people in their communities. We will implement a series of physical or online outreach sessions to inform and answer questions about the scheme with a range of different undocumented communities.

As we did with the student scheme, we will put in place a communications plan to inform people about this scheme. This will include a social media campaign, an email campaign, physical flyers in locations such as shops, and places of worship etc.

Our Drop in Centre supported over one third of all applicants for the recent Student Scheme 2018. We are already putting plans in place to offer the same support for this scheme and are looking at redeployment of staff and a budget line to cope with what we expect will be a very demanding period for the organisation.

Due to the large scale of this scheme we anticipate a 'train the trainer' approach where very active members of Justice for the Undocumented group are supported by MRCI with their application first and, at the same time, trained to support other undocumented people to apply.

MRCI will also support other civil society organisations and engage with a range of stakeholders, including Embassies to get the word out to as many people as possible.

We see these efforts as vital to ensure that people are well informed about the scheme, are supported and feel comfortable applying for the scheme on an individual/family basis.

To ensure good uptake and the success of the scheme, vital funding must be provided to support civil society organisations with this work.

Question 7

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

- 1. We would like to commend the Minister for Justice and the Department of Justice on the introduction of this regularisation scheme and for honouring the clear commitments made in the programme for government.**
- 2. We believe there is no barrier or opposition to introducing a very broad and inclusive scheme as suggested in our submission above. Any undocumented people left behind will remain in Ireland and continue to live in a very precarious situation. An approach of inclusion should be taken to improve the lives of as many people living in Ireland as possible.**