



Ireland – Immigration

Recent Developments - What's New?

July 2008

Recent headlines in Ireland have focused on the Immigration, Residence & Protection Bill 2008, which marks a milestone in consolidating and updating existing legislation. In addition, there have been a number of recent EU developments which have implications for Ireland and which are highlighted in this bulletin.

Immigration, Residence & Protection Bill 2008

The Immigration, Residence and Protection Bill 2008, which replaces all existing immigration legislation (some of which dates back to 1935), aims to put in place statutory processes for each step of the immigration cycle. The Bill sets out for the first time in statute the procedures for applying for a visa and also outlines the processes for entry to, residence in and removal from Ireland.

Entry visa

The Bill provides for the possibility that nationals of current "visa-free" countries (i.e. individuals that do not currently require a visa to travel to Ireland) may require a visa if their visit to Ireland will be for a duration of more than 3 months. A visa will not be required where the visit is for less than 3 months.

Long Term Residence

A key innovation of the Bill is the introduction for the first time of statutory Long Term Residence status.

An individual may be entitled to apply for Long Term Residence once he/she has been legally resident in Ireland for at least 5 years (any time spent in Ireland as a

student or asylum seeker is not counted towards an application for Long Term Residence).

In addition, when the Green Card was introduced last year it was indicated that the holder would be entitled to access to an accelerated pathway to Long Term Residency in Ireland.

The Bill makes provision for this accelerated process for Green Card holders, to enable them to obtain Long Term Residence in a shorter period.

Other Provisions

Of other particular interest in the Bill are specifications dealing with the provision of biometric data by foreign nationals and new provisions in relation to recognition of marriages in the State between foreign nationals.

Online Visa Application System

The Irish Naturalisation and Immigration Service (INIS) have launched a new online visa application service. This initiative is in response to the significant increase in visa applications in recent years.

INIS currently receive 150,000 visa applications annually including re-entry visa applications. In order to facilitate these significant numbers, and to improve the efficiency of visa processing, a system has been developed with the technology capable of handling online applications and tracking Irish visa applications. The new online service was piloted in November 2007 and is currently available in a number of countries across the world including India, China, Egypt and a number of European countries. A full list of the countries is set out on the INIS website www.inis.gov.ie. It is expected that the roll out will be completed by the end of 2008.

Developments Regarding the Application of the Van Der Elst Ruling

The "Van Der Elst Ruling" may apply in the case of a non-EEA worker legally employed in one EU member state who is sent on contract to work in another EU member state. The effect of the ruling is to facilitate workers in performing duties in more than one EU member state, but only where certain conditions are met.

Some EU countries, including Ireland, have to date insisted that the employee must have been employed in the first EU member state for at least 12 months before permission to work under the Van Der Elst Ruling was granted.

However, as a result of the ruling in *Commission of the European Communities v Germany* [Case C-244/04], this requirement can no longer be imposed as it was found to be a restriction on the freedom to provide services through posted workers who are nationals of non-EU member states.

A qualifying non-EEA national will also be entitled to work in Ireland under the Van Der Elst Ruling, where it is established that he/she will be working on a specific project for a defined period of time. Previously, where an individual qualified to work in Ireland under the Van Der Elst Ruling, he/she was only permitted to work in Ireland for a maximum period of 5/6 months.

Update on EU Treaty Rights

A foreign national (who is not a citizen of the EU) is required to register with the Department of Justice, Equality and Law Reform and obtain a residence permit in order to reside legally in Ireland.

An appeal was previously brought to the High Court who upheld the requirement that a non-EU spouse of an EU national will not be granted permission to reside in Ireland (nor clearly will he/she have a right to work) under EU Treaty Rights legislation unless the couple can provide evidence of having lived together in another EU member state prior to coming to Ireland.

An appeal against this ruling has been lodged to the Supreme Court and the outcome is awaited.

Pending the determination of this appeal, we understand that the spouse may be granted permission to reside and work in Ireland under Irish national immigration provisions (although an application must still be made to the EU Treaty Rights Section).

Work Permits Proposed for Students

Students from outside the EEA are in general allowed to work up to 20 hours per week during term time and up to 40 hours per week outside term time.

Trade unions have expressed concern that some non EEA students are being exploited and employed as cheap labour, leading to the displacement of Irish staff.

The Minister for Enterprise, Trade and Employment is therefore considering introducing a new scheme whereby all students from outside the EEA will be required to obtain work permits if they wish to work in Ireland.

EU Blue Card

The European Commission has unveiled plans for a Blue Card scheme (which is based on the US Green Card) in order to attract highly qualified migrants from outside the EU (including Asia and Africa) to take up high end jobs within the EU.

The Blue Card (named after the EU flag colour) would give appropriately qualified workers a right to live and work anywhere in the EU subject to the proviso that the migrants are taking up posts which cannot be filled by EU workers.

So far, it is understood that Ireland and some other EU countries such as the UK and Denmark may not vote to approve the introduction of the Blue Card.

Holiday Working Agreement with Argentina

The Minister for Foreign Affairs has signed a Holiday Working Agreement with Argentina, the first agreement of its kind between the countries.

The agreement applies to individuals from both Ireland and Argentina who are under 35 and will allow the individual to stay and work for extended periods of time in either country.

Employment Permits Regime

The Department of Enterprise, Trade & Employment's processing times for Green Cards and Work Permits has improved with a current turnaround time of approximately 3 weeks for Green Cards and Work Permits.

According to statistics prepared by the Department of Enterprise, Trade &

Employment, more than 50% of Green Cards were issued to healthcare workers in 2007. After healthcare, the sectors most represented were information technology, financial services and construction.

National Employment Rights Authority

The National Employment Rights Authority (NERA) is an Office of the Department of Enterprise, Trade and Employment. NERA's aim is to secure compliance with employment rights legislation and to foster a culture of employment rights (including immigration) compliance in Ireland. In the course of 2008, NERA will carry out targeted inspection campaigns focussing on the hospitality, retail and catering sectors to ensure that employees are in receipt of their employment rights entitlements and that employers are fulfilling their legal obligations.

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