



Comhshaol, Oidhreacht agus Rialtas Áitiúil  
Environment, Heritage and Local Government



24 September 2010

**Circular SHIP 2010/19**

To: Directors of Service (Housing)  
Town Clerks

**Re: Access to social housing supports for non-Irish nationals**

Dear Director/Town Clerk,

On foot of an increasing number of queries in relation to access to social housing supports for non-Irish nationals, I have been asked by the Minister for Housing and Local Services to clarify this advice to ensure that there is a consistent and equitable approach being taken by housing authorities. Regard should therefore be had to the following in assessing a household's eligibility and need for social housing support. This circular is mostly a consolidation of guidance on access to social housing supports for non-Irish nationals and as such replaces Circular HPS 4/08, Circular N14/08 and Circular SHIP 2/2010. The two main changes to policy set out in this Circular relate to access to social housing support for non-EEA nationals, who are **not** classed as either refugees, programme refugees or who have subsidiary protection status.

The following rules will now apply to such persons -

- an non-EEA national applicant for social housing support must have a Stamp 4 endorsement for at least 5 years in order to be eligible for consideration for social housing support; and
- the spouse and/or dependents of an eligible non-EEA national applicant, who are usually given a 'Stamp 3' endorsement, must have that endorsement for at least 5 years in order to be eligible for consideration as part of an application for social housing support.



In the context of EEA nationals, this circular consolidates advice given in previous circulars on the entitlement of such persons to access social housing support. In general EEA nationals are entitled to seek housing support from a housing authority on the same basis as an Irish citizen if they have been residency in Ireland for longer than 3 months and are working. Section 2 sets out the detail of these requirements including the particular rules that apply to –

- Bulgarian and Romanian nationals, and
- Non-EEA spouses of EEA nationals.

A description of the main stamp endorsements and a sample of the categories of person to whom these may be granted is attached for your information at Appendix 1.

### **1. Determining a household's residency status**

All household applying for social housing support must have a legal right to remain in the State on a long term basis in order to be considered. This right to remain is determined by legislation set down by the Department of Justice and Law Reform. Rules in relation to residency can be broken down into two main areas:

- European Union (EU) based legislation governing the movement of EEA<sup>1</sup> [European Economic Area] nationals and their families within EEA States; and
- Mostly national legislation governing the access of non-EEA nationals to Ireland and their residency rights thereafter.

In general immigration stamps (which are endorsed on a persons passport), in conjunction with the Certificate of Registration issued by Garda National Immigration Bureau (GNIB), are evidence of permission to be in the State. Attached at Appendix 2 is a copy of a Certificate of Registration for your information. As you will note it is a credit card size document which should be easily recognisable. Authorities, in examining stamps and registration certificates as part of their assessment of need, should note the following points –

- the expiry date on the registration card should match the expiry date endorsed in a non-EEA nationals passport;
- a person granted refugee status in the State will not have a passport for you to examine; and

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<sup>1</sup> The EEA includes the following EU Member States: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Republic of Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom – and the following non-EU States: Iceland, Liechtenstein, Norway and Switzerland.



- there are other non-EEA nationals to whom Stamp 4 status may be granted – the sample list given in Appendix 1 is therefore not exhaustive.

## **2. EEA NATIONALS**

The primary EU legislation governing the movement of EEA-nationals between Member States is the European Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. That Directive was transposed into Irish law by the European Communities (Free Movement of Persons)(No. 2) Regulations 2006 and 2008. It replaced a number of earlier EU instruments governing free movement rights and it replaced Articles 10 and 11 of EC Regulation 1612/68 on the freedom of movement of workers within the Community.

***The most important effect of Regulation 1612/68 is Article 9 which establishes that, after the initial 3 months residence, any Union citizen who is working in the State has the same entitlements to housing as any Irish national.<sup>2</sup>***

Any EEA-national therefore is entitled to apply for social housing support from housing authorities in accordance with the following criteria;

- 1) they are in employment/self-employed in the State; or
- 2) where they are not currently working/employed it is because -
  - they are temporarily unable to work because of illness/accident;
  - they are recorded as involuntarily unemployed after having been employed for longer than a year, and they have been registered as a job-seeker with Department of Social and Family Affairs and FAS.

After 5 years legal residence in the State an EEA citizen is entitled to seek permanent residency.

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<sup>2</sup> The basis of the residency determination in such circumstances is generally on the proviso that the person has sufficient resources to support themselves and their family; not having sufficient resources being defined by the 2006 Regulations as being where the union citizen or their dependants would qualify under Part 3 of the Social Welfare Consolidation Act 2005, if a claim were made.



### ***Non-EEA Spouses of EEA Nationals***

In relation to non-EEA nationals that are married to EEA nationals, a European Court of Justice ruling in 2008 clarified that these persons are entitled to the same rights of free movement under Directive 2004/38/EC on the basis of family relationship alone irrespective of when and where the marriage has taken place or of how the non-EEA spouse entered the host Member State. This means that a non-EEA national married an EEA national can be considered to have the same rights and entitlements as afforded their EEA-national spouse in relation to accessing social housing supports i.e. if the EEA national is assessed as being entitled to support then their spouse will have the same entitlements.

### ***Bulgarian and Romanian Nationals***

The rules for EEA nationals apply to citizens of all Member States within the EEA with two exceptions. For Bulgarian and Romanian nationals, these rules apply slightly differently. As a general rule, social housing support is not made available to those persons who are working in Ireland under only an employment permit; regardless of nationality. The same rule is applied to Bulgarian and Romanian nationals.

On 17 December 2008, the Government announced its decision that from 1 January 2009 it would continue to restrict access to the Irish labour market for nationals of Bulgaria and Romania. Bulgarian and Romanian nationals therefore still require work permits to take up employment in the State. Notwithstanding this, however, the requirement to enter employment in accordance with a work permit only applies to the first continuous twelve months of employment in the State. At the end of this twelve-month period, Bulgarian and Romanian nationals are free to work in Ireland without any further need for a work permit.

In that context, Bulgarian and Romanian nationals, who have had an employment permit for a continuous 12 months period are now free to work in Ireland without a permit, will be entitled to apply for social housing support from housing authorities in the same way as any other EEA national in accordance with the criteria applied to an EEA national resident in Ireland i.e. that they are in employment/self-employed in the State; or where they are not currently working/employed it is because they are temporarily unable to work because of illness/accident or they are recorded as involuntarily unemployed after having been employed for longer than a year, and have been registered as a job-seeker with Department of Social Protection and FAS.



### **3. NON-EEA NATIONALS**

The legislation governing the residency of non-EEA national in the Irish State is extensive and complex. Ranging from the Immigration Act 2004 and various Visa Orders, in respect of general immigration matters, to the Immigration Act 1999, as amended, which governs amongst other things deportation proceedings. Statutory instruments that are also included in this are the Refugee Act 1996, as amended, EU Directive 2004/83/EC [which provides the legal basis for subsidiary protection status in Member States] and the various statutory instruments which give detail to these Acts/Directives. Non-EEA nationals can be divided into a number of sub-groups which are defined essentially by the basis for the persons stay in the State:

- asylum seekers [Refugee Act 1996];
- refugees, including programme refugees [Refugee Act 1996];
- those granted subsidiary protection status; and
- other non-EEA nationals.

#### ***Asylum Seekers***

Asylum seekers are essentially persons who are seeking refugee status in the State. They have **no rights or entitlements** in relation to accessing social housing support as asylum seekers. They are permitted to enter and reside in the State until such time as their application for refugee status has been considered and a decision is made. While awaiting that decision they are not entitled to work in the State or to carry on any business, trade or profession.

If granted refugee status, they will be given a 'declaration' of their status as a refugee (which is a statement in writing) by Minister for Justice and Law Reform and thereby acquiring the same entitlement to apply for social housing support as any other refugee.

#### ***Refugees***

Those that have been granted status as refugees in the State are entitled to the same access to social housing support as an Irish citizen as per the terms of Section 3 of the Refugee Act 1996. Section 3 provides that a refugee for whom a declaration is in force is entitled to receive, subject to any terms and conditions applicable to Irish citizens, the same social welfare benefits to which Irish citizens are entitled. Social welfare benefits are defined in the Refugee Act as including any payment or services provided for in or under the Social Welfare Acts, the Health Acts 1947 to 1994, and the Housing Acts 1966 to 2009. Therefore a refugee is entitled to seek social housing support from a housing authority. As with any applicant, Irish, EEA or non-EEA, in order to be eligible the applicant must meet all of the other eligibility criteria for social housing support.



### ***Programme Refugees***

These are a particular subset of refugees who are sometimes called resettlement refugees and who are given permission to enter and remain in the State. The entry and residence of these particular refugees in the State is a product of commitments made by Ireland to the United Nations High Commissioner for Refugees. Arrangements for the resettlement of these refugees are co-ordinated by the Reception and Integration Agency (RIA) and the Office of the Minister for Integration. In accordance with Section 24 of the Refugee Act 1996, these programme refugees are entitled to the same rights and privileges granted to other refugees under Section 3 of that Act, as detailed above.

### ***Subsidiary Protection Status***

This form of residency was introduced in Ireland in 2006 on foot of an EU Directive 2004/83/EC which provides for minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the context of the protection granted. This Directive is transposed into Irish law by the European Communities (Eligibility for Protection) Regulations 2006 [SI No. 518 of 2006].

This Regulation is applied to persons who do not qualify as refugees but in respect of whom it can be shown that, if returned to their country of origin, would face a real risk of suffering serious harm [serious harm being defined as: death penalty or execution; torture, inhuman or degrading treatment or punishment; and serious and individual threat to a civilian's life by reasons of indiscriminate violence in situations of international or internal armed conflict].

Where it is determined that an applicant is to be given subsidiary protection status, the Minister for Justice and Law Reform will give the applicant leave to remain in the State. This permission is usually for 3 years and is renewable unless compelling reasons of national security or public order require otherwise. As per Article 19 of the 2006 Regulations, those who have been granted subsidiary protection status are given the same entitlements to access State supports as given to refugees under Section 3 of the 1996 Refugee Act i.e. they are entitled to apply for social housing support.

### ***Other Non-EEA Nationals***

All non-EEA nationals' need some form of permission to remain in the State which is usually in the form of an endorsement in a passport confirming the conditions and period of time for which permission to remain in the State has been granted. In addition, in relation to social housing support in particular, there is a requirement that the



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basis of that permission to remain be long term. The endorsement that is generally acceptable for consideration for social housing support is the Stamp 4, however, members of a household with only a Stamp 3 may be considered to be eligible in specific circumstances, as set out below.

Non-EEA nationals who have been in receipt of a Stamp 4 endorsement for at least 5 years prior to application are eligible to be considered for social housing support. Their current Stamp endorsement must be in date.

Non-EEA nationals who are in receipt of a Stamp 3 endorsement for at least 5 years prior to application can be considered in an application for social housing support where that Stamp 3 has been granted to a spouse or dependent of a non-EEA national who has been in receipt of a Stamp 4 endorsement for at least 5 years prior to application as set out above.

For further information or enquiries in relation to this circular, please contact Lisa Clifford, Social Housing (MIR) at [lisa\\_clifford@environ.ie](mailto:lisa_clifford@environ.ie).

Yours faithfully,

Eddie Lewis  
Social Housing (Modernisation, Integration & Regulation)



## Appendix 1

### Immigration Stamp Endorsements (from Department of Justice and Law Reform)

Note: This an outline of the main immigration stamps as currently used by the immigration authorities. The immigration stamps, in conjunction with the Certificate of Registration issued by GNIB, are evidence of permission to be in the State. They are not an indicator of, nor an interpretation of, legal entitlements other than those explicitly set out in the stamps.

The immigration authorities have the right to assign or refuse immigration stamps to the various categories of persons as appropriate.

The information below is an indicative list of categories of persons who may be granted permission to remain in the State but it is not exhaustive. This table does not give any assurance that a person in one of the categories will obtain the immigration stamp indicated. The immigration authorities have the right to grant or refuse permission to remain on a case by case basis.

#### **STAMP 1**

This person is permitted to remain in Ireland on conditions that the holder does not enter employment unless the employer has obtained a permit, does not engage in any business or profession without the permission of the Minister for Justice and Law Reform and does not remain later than a specified date.

#### ***Categories of Person who may receive a Stamp 1 Endorsement***

Non-EEA national issued with a work permit

Non-EEA national issued a Green Card Permit

Non-EEA national who have been granted permission to operate a business in the State

Working Holiday Authorisation holder

#### **STAMP 1A**

This person is permitted to remain in Ireland for the purpose of full time training with a named body until a specified date. Other employment is not allowed.



***Categories of Person who may receive a Stamp 1A Endorsement***

Non-EEA national studying accountancy

**STAMP NUMBER 2**

This person is permitted to remain in Ireland to pursue a course of studies on condition that the holder does not engage in any business or profession other than casual employment (defined as 20 hours per week during school term and up to 40 hours per week during school holidays) and does not remain later than a specified date. Also the person has no recourse to public funds unless otherwise provided.

***Categories of Person who may receive a Stamp 2 Endorsement***

Non-EEA national attending a full time course of study

**STAMP NUMBER 2A**

This person is permitted to remain in Ireland to pursue a course of studies on condition that the holder does not enter employment, does not engage in any business or profession, has no recourse to public funds and does not remain later than a specified date.

***Categories of Person who may receive a Stamp 2A Endorsement***

Non-EEA national attending course of study not recognised by the Department of Education and Science

**STAMP NUMBER 3**

This person is permitted to remain in Ireland on conditions that the holder does not enter employment, does not engage in any business or profession and does not remain later than a specified date.

***Categories of Person who may receive a Stamp 3 Endorsement***

Non-EEA visitor

Non-EEA retired person of independent means

Non-EEA Minister of Religion and Member of Religious Order

Non-EEA spouse/dependant of employment permit holder (Stamp 4)

**STAMP NUMBER 4**

This person is permitted to remain in Ireland until a specified date.



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***Categories of Person who may receive a Stamp 4 Endorsement***

Non-EEA family member of EEA citizen

Non-EEA spouse of Irish citizen

Refugee

Non-EEA person granted family reunification under the Refugee Act 1996 Programme refugee

Non-EEA parent of Irish citizen child where parent was granted permission to remain in the State

Non-EEA family member of EU citizen where family member qualifies under the European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I 656 of 2006)



Appendix 2

Sample GNIB Certificate of Registration Card

*Garda National*  
*Immigration Bureau*  
*Biuró Naisiúnta Inimírca*  
*An Garda Síochána*

OF REG  
OF REG  
CERTIFICATE OF REG  
CERTIFICATE OF REG

Name  
Sample Document

Nationality  
Irish

Date of Birth  
01/01/1970

Sex:  
M

Stamp No:  
Stamp 4

GNIB No.  
16877

Dept No.  
69/103152/01

Expiry Date:  
24/10/2002

Registration Office: G.N.I.B.

CERTIFICATE OF REGISTRATION




GNIB 001

APPLICANT'S SIGNATURE

This certificate indicates that the person named on the certificate has registered with the Garda Síochána as required by Irish Immigration Law.

This Certificate is the property of the Garda National Immigration Bureau.

THIS IS NOT AN IDENTITY CARD

