

6. MY RIGHTS AS A MIGRANT OR REFUGEE

Do migrant children have the same rights as other children in Ireland?

If you or your parents have come to Ireland from another country, you will be known as migrants. Migrant children or children of migrants have different rights and entitlements depending on their own or their parent's citizenship or immigration status. Ireland has rules about who can come here to live, work, study, visit as a tourist, seek asylum or start a business. These are known as immigration rules.

If you were born in Ireland but your parents are not Irish citizens or have no legal right to reside/live in Ireland, different immigration rules may apply to you.



6.1 Citizenship

Am I automatically an Irish citizen if I am born in Ireland?

No. If you were born in Ireland after 1 January 2005, you are entitled to be an Irish citizen only if:

- either one or both of your parents is Irish or British; or
- one of your parents was legally living (resident) in Ireland or Northern Ireland for at least three out of the four years immediately before you were born.

You will not qualify for Irish citizenship based on your birth in Ireland if your parents were:

- living in Ireland on a student visa;
- waiting for a decision on a claim for asylum or 'leave to remain' (this is explained on pages 57-60); or
- entitled to diplomatic immunity (this could relate to either of your parents).

How can I become an Irish citizen if I am not an Irish citizen through birth?

Those who are not entitled to become an Irish citizen through birth may make an application to become one under certain circumstances. Generally, you must be 18 years of age before you can apply in your own right. However, if you were born in Ireland after 1 January 2005 or one of your parents has become an Irish citizen, your parent or guardian can apply for citizenship on your behalf before you turn 18. You will need to meet certain conditions to qualify for citizenship.

There are a few other ways you could qualify to become an Irish citizen either as a child or an adult. You can qualify through:

- descent – if you were born outside Ireland but are the child or grandchild of an Irish citizen, you are entitled to Irish citizenship provided your birth is registered in the Foreign Births Register;
- naturalisation –
 - if you have lived in Ireland for a certain length of time and fulfill certain conditions; or
 - if you marry or are civilly partnered to an Irish citizen under certain conditions;
- adoption – if you are adopted by an Irish citizen or a couple where one spouse is an Irish citizen.

For more information about becoming an Irish citizen, visit the Citizens Information website at www.citizensinformation.ie.

What rules apply to me if I am an EU citizen or the family member of an EU citizen?

European Union citizens and their families are generally allowed to visit or live in any EU country if they are moving for a job, to look for work or to study. They may have to prove that they have health insurance and enough money to support themselves and their families while they are in Ireland.

Do I have a right to live in Ireland as an EU citizen even if my parent(s) are from outside the EU?

You may be entitled to live in Ireland but your parents must follow the immigration rules. If your parents are legally living in Ireland, they are entitled to live here with you if they follow the conditions attached to their immigration status which they will have received from the Department of Justice and Equality.

Even if your parents are not allowed to live in Ireland, you may be able to stay. This is a complicated area of law and depends on many things. You should ask a solicitor for advice about your particular situation.

What rules apply to me if I am not an EU citizen?

You must be registered with An Garda Síochána (Ireland's police service).

- If you are under 16, you will be registered on your parents' registration certification.
- If you are over 16 and you are not an EU citizen or a citizen of Iceland, Liechtenstein, Norway or Switzerland, you must register with An Garda Síochána. They will give you a registration certificate called a Garda National Immigration Bureau (GNIB) Card, and you must carry this with you at all times. If you are under 18 at the time of registration, you do not have to pay the registration fee.

Do I have the same right to access education as an Irish citizen?

Almost all migrant children have the same right to access education as Irish children. The only exception is the children of international students from outside the European Union. If your parents are in Ireland to study, they may have to prove that they have enough money to provide for you. They will have to get the permission of the Department of Education and Skills before you can attend a non-fee paying school. They may also have to pay an immigration levy (a special tax) for you to attend a non-fee paying school. The Department of Education and Skills has not finalised the rules on this or decided the amount of the levy.

If you are not an EU citizen you may have to pay for your higher education course of study but this will depend on what type of immigration status you have. You may be entitled to free tuition fees if you meet certain conditions such as living in Ireland for three of the past five years and have a certain immigration status before you start third-level education. If you become an EU citizen during your time studying you will not have to pay third-level fees for the remaining time you are studying. You should check with the institution where you wish to study to establish your entitlements to free fees. Information is also available on the website www.studentfinance.ie.

Do I have the same right to access health care services?

Every child has the same right to access healthcare. However, your right to free medical care through a medical card will depend on the immigration status of your parent(s).

If your parents are not EU citizens, they may need to have private health insurance and they will not be able to get a medical card for you. However, if you or your parents have applied for asylum or been granted refugee status, subsidiary protection (this is explained on page 57) or permission to stay in Ireland, they may be entitled to a medical card for you. There are special rules and income limits for this.

Do I have the same right to access social protection?

This will depend on your parents' legal status in Ireland.

Do I have the right to protection from neglect, harm and abuse?

Yes. No matter where you are from, all children and young people in Ireland have the right to be protected from all forms of abuse, neglect and harm.

What can I do if my family don't live in Ireland but I want them to join me here?

This depends on why you are living in Ireland and whether you or your family members have any rights under EU law. If you are an Irish citizen or an EU citizen, your family members may have a right to live with you in Ireland under the EU Citizenship Directive or case law of the Court of Justice of the European Union.

If you have been granted refugee status, you are entitled to be joined by your parents. You can also apply for other family members, such as your sisters and brothers, to join you. However, the Minister for Justice and Equality does not have to approve the application.

If you are not a refugee, you can apply for a visa or residence permit for a family member and say why you think they should be allowed to join you. However, the Minister does not have to approve the application.

6.2 Seeking asylum

What is asylum?

The term asylum means the protection given by a government to someone who has left another country in order to escape being harmed. The term asylum is a general term that includes two specific types of protection that can be applied for in Ireland: **refugee status** and **subsidiary protection**. Refugee status is a form of legal protection that the State gives to people escaping persecution on the basis of race, religion, nationality, membership of a particular social group or political opinion in their own country. Subsidiary protection is another form of protection given to persons fleeing torture, a death sentence or a serious risk of violence during war. If someone is granted asylum, they have been recognised as a refugee or as a beneficiary of subsidiary protection status in Ireland. An asylum seeker is someone who has applied for refugee status or subsidiary protection status.

How does the asylum application process work?

Usually, an individual or family will apply for asylum at the Office of the Refugee Applications Commissioner (ORAC). They can also apply for asylum at the airport or port when they enter Ireland.

Your parent or guardian may include you in their application for asylum and any decision on their case will then apply to you. If your parent or guardian makes a separate asylum

application for you, the State must consider it separately. If you were born after your parent(s) arrived in Ireland, they can also make an application for asylum for you.

You can find out more about the asylum application process at www.orac.ie and www.inis.gov.ie.

What are my rights if I apply for asylum?

If you are with your family, you will get accommodation and food through a system called direct provision. Your family will also get a medical card so you will be able to get free healthcare. The Reception and Integration Agency (RIA) runs the direct provision system and decides where you will live. RIA may also transfer you and your family to a different accommodation centre while you are in the direct provision system.

Your parent or parents will get a weekly payment of €19.10 each and €9.60 each for you and any sisters or brothers you may have. You may also get money for clothes, usually twice a year, but you do not have an automatic right to this. Your parents cannot receive Child Benefit or other social welfare payments for you.

You can go to primary and post-primary school on the same basis as an Irish child.

You have a right to access legal representation through the Refugee Legal Service (RLS), a section of the Legal Aid Board. There are services in Dublin, Cork and Galway. The

Irish Refugee Council also provides legal services – see the contacts section on page 83.

What will happen to me if I arrived in Ireland on my own?

If you arrive in Ireland on your own without the care of an adult, you will be dealt with as an unaccompanied minor (also referred to as a separated child). The Child and Family Agency will look into your situation and decide what is best for you. This may involve applying for asylum and you may be placed into the care of the Child and Family Agency.

Who will look after me if I am a separated child?

The Child and Family Agency will take care of your needs. A social worker will talk with you about your needs, and then develop a care plan for you. The social worker may place you with a foster family or in 'supported lodgings' which will prepare you for independent living at 18. See page 41 for more about children in state care.

What will happen if my application for asylum is refused?

You, or your parents on your behalf, may appeal a refusal of refugee status or subsidiary protection to the Refugee Appeals Tribunal (RAT). If the RAT decides that the original decision to refuse asylum was wrong, you will be granted refugee status, or subsidiary protection as the case may be.

What are the different steps in the process?

When you or your parents or guardian make an application for refugee status you will also have the option of applying then for subsidiary protection if you wish, although it is not necessary at this time. The Office of the Refugee Applications Commissioner (ORAC) will first make a decision on refugee status. If the decision is a refusal you will then have the option of appealing that decision to the RAT. If the RAT do not change the decision at this point your application for refugee status will be refused.

Following a refusal of refugee status, if you have not yet made an application for subsidiary protection at this time you will be given three more weeks to do so. If you apply, ORAC will then make a decision on subsidiary protection and if that decision is negative you can also appeal this decision to the RAT.

At any point during this process, if you or your parents or guardian are advised that the proper procedures were not followed or a decision taken contained a legal error, then you can ask the High Court to review them. This is a separate procedure called judicial review. If the High Court agrees with you they will not give you a decision on asylum, instead you will go back to ORAC or the RAT so that the decision can be taken again following the correct procedures.

You are entitled to legal advice and a lawyer to represent you regarding these applications and during all of these proceedings.

Can I apply for any other permission if my asylum application is refused?

If your application for asylum has been refused, you may still ask the Minister for Justice and Equality to grant you 'leave to remain' in Ireland based on your particular circumstances. 'Leave to remain' is a special type of permission to live in Ireland and the Minister for Justice and Equality can decide whether to grant it or not.

How do I apply for leave to remain?

Once an application for refugee status is refused, if you choose not to apply for subsidiary protection or you are unsuccessful in your application, then the Minister for Justice and Equality will write to you to tell you there is a possibility that you may receive a deportation order to return you to your country (called a section 3 letter). However, before deportation happens, you may apply for leave to remain or you can choose to return to your country under the Assisted Voluntary Return scheme. In this application, you can tell the Minister why you think you should not be deported. You must make this application within 15 working days from the date the 'section 3 letter' was sent to you.

Can I appeal if I am refused leave to remain?

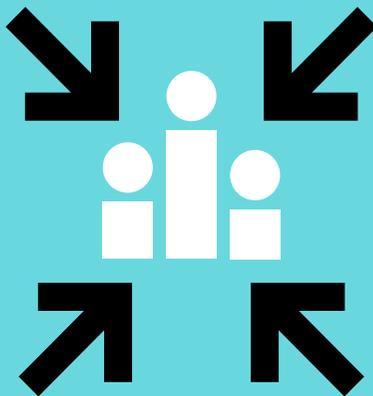
If your application for leave to remain is refused there is no right of appeal and a deportation order will be made against you. This will require you to leave the State, and if you do not the State may try to remove you. If however you or your parents or guardian are advised that a legal mistake was made in coming to this decision you may still ask the High Court to prevent this from happening, and to have them make the decision again.

6.3 Refugee or subsidiary protection status

If you or your family's application for asylum is successful, you will be granted refugee status or subsidiary protection status. This means you can stay in Ireland and you have more rights. The two forms of status have almost the same rights but there are a few small differences.

What are my rights as a refugee?

As a refugee, you will have the same rights in Ireland as an Irish citizen to look for work, get a job, and access education, training, medical care, social protections and services. As a refugee you are entitled to be issued with an Irish travel document, to leave Ireland and to re-enter the country. However, you could lose your refugee status if you return to the country from which you have fled, and you may need visas to enter other countries.



What are my rights if I have subsidiary protection status?

If you or your family's application for subsidiary protection is successful, you will have the same rights and entitlements as a refugee but there are some small differences. In particular it may be more difficult for you to obtain a travel document and you will have to wait five years rather than three before you can apply for citizenship.

What can I do if my family don't live in Ireland but I want them to join me?

If you have been granted asylum and you are unmarried and aged under 18, you can apply for your family to join you in Ireland. This is called 'family reunification'. The Minister for Justice and Equality will allow your parents to join you if they want to, but the Minister does not have to allow your sisters, brothers or other family members to join you.

For information on how to apply for family reunification, see: www.inis.gov.ie/en/INIS/Pages/Family_Reunification_Information_Leaflet.