

**The Union of Students in Ireland Written Submission to**   
**Consultation Paper on the Scheme to Regularise Undocumented Migrants in Ireland**

**May 2021**

**The Union of Students in Ireland (USI)**

The Union of Students in Ireland (Aontas na Mac Léinn in Éirinn) is the national representative body for third-level Students’ Unions in Ireland. Founded in 1959, USI now represents more than 374,000 students in Further and Higher Education Colleges across the island of Ireland. The goal of USI is to work for the rights of students and a fair and equal post-secondary education system in Ireland. USI is a full member of the European Students’ Union (ESU) which represents students from 46 National Students’ Unions in 39 countries, and a member of Eurodoc, the European Council for Doctoral Candidates and Junior Researchers.

The Union of Students in Ireland (USI) welcomes the opportunity to respond to the Consultation Paper on the Scheme to Regularise Undocumented Migrants in Ireland and we have grouped our submission to answer the following questions:

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?*
2. *Do you have any views on the proposed eligibility criteria and what supporting documentation should be required?*
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 you raise in relation to the permission to be granted?*
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?*
5. *It is proposed to have an online application system. How can we make this process as simple and accessible for applicants?*
6. *How will your organisation help to promote the scheme to eligible persons and support them to apply?*
7. *Are there any other points you wish to raise in relation to the proposed scheme?*

The Union of Students in Ireland have worked tirelessly over the past number of years to address and remove the barriers in accessing third level education in Ireland. Over the past year USI alongside STAND and Movement of Asylum Seekers in Ireland have campaigned to address the barriers faced by migrants, asylum seekers, those in Direct Provision and those who are undocumented in our [Migrant Minds Matter campaign](https://www.10000students.ie/migrantmindsmatter).

Within this campaign we had five important asks:

1. End the Direct Provision system in Ireland and introduce a more humane asylum reception process within Ireland.
2. Better resource the administration of the asylum process in Ireland in order to allow for a quicker asylum reception process.
3. Allow migrants, asylum seekers, those who are undocumented and those within the Direct Provision system to qualify for free fees initiative and be eligible for EU fee rates, with the aim to establish a publicly funded higher education system in the coming years.
4. Support access initiatives into higher education for migrants, asylum seekers, those who are undocumented and those within the Direct Provision system.
5. Oppose deportations of students studying in Ireland.

The Union of Students in Ireland welcome that the Department of Justice have made a clear commitment to regularise undocumented migrants in Ireland and outlined a clear timeline to address this within the Justice Plan 2021. Important moves have been made to support those who are undocumented in Ireland including the permission given will allow full access to the labour market and a path to citizenship, that the scheme will be open for a period of 6 months and the introduction of clear appeals process for those who are unsuccessful in their applications.

We share similar concerns to Migrant Rights Centre Ireland that the criteria currently being proposed could undermine the intention of this scheme to be broad and inclusive. Alongside this, we are concerned that the current residency requirements coupled with a lack of clarity on the inclusion of those in receipt of a deportation order and puts thousands of people at risk of being excluded from this scheme.

**The Union of Students in Ireland support the Migrant Rights Centre Ireland with the following 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. MRCI strongly recommend a shorter residence requirement be included as part of this scheme:
   * MRCI recommend that those who reach the residence requirement during the lifetime of the scheme be included.
   * MRCI recommend that the undocumented residence requirement should not have to be continuous and unbroken.
3. We strongly recommend that legal residence prior to becoming undocumented should also be taken into account. MRCI 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.
4. Seek a clear definition of criminality and that everyone would be included aside from those with serious criminal convictions.
5. Seek a clear definition of dependents and the age that is acceptable. MRCI recommend that all dependents up to age 24 are eligible for this scheme.
6. Lower the fee for application and registration as part of this scheme, especially in light of COVID-19 many have lost employment. This would allow workers and families engage with the process without any financial barriers.
7. Provide 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.
8. Ensure a flexible and pragmatic approach in terms of the documentation required to prove residence and undocumented residence.
9. *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?*

Within this scheme consideration should be given to all undocumented groups including:

1. the undetected undocumented population,
2. those with applications under section 3 of Immigration Act 1999,
3. And those with unenforced deportation orders.

Exclusion of those with applications under section 3 of Immigration Act 1999 and those with unenforced deportation orders would exclude a number of people from this scheme. Those with applications under section 3 of Immigration Act 1999 and those with unenforced deportation orders have no additional status or rights and therefore are still defined as undocumented, therefore still leaving them in a precarious position.

Exclusion of these groups would lead to discrimination as those who have yet to be detected would be in a more favourable situation than someone who has engaged with the state in order to rectify their legal status and reside in the State in order to become part of mainstream Irish society rather than living on its margins.

The definition of “undocumented” should also cover those who are within the Dublin III[[1]](#footnote-15939) process and have as a result ended up in the substantive international protection process. While also including applicants, who have either been given permission to take a subsequent asylum application or are seeking to do so pursuant to the relevant provisions of the International Protection Act 2015.[[2]](#footnote-22665)

While setting out the practical implementation of this scheme, it should be noted that many undocumented people face a number of challenges in relation to the provision of identification documentation, including bank accounts/statements, obtain driving licences or in some cases provide updated national identification documents.[[3]](#footnote-32077) Similar to the citizenship application process the scheme could adopt a tiered approach.

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

In developing this scheme, it is important to ensure the eligibility criteria is inclusive and includes dependents of applicants. Within the Youth Work Act, 2001[[4]](#footnote-1342) a dependent includes dependent children up to the age of 24. When 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[[5]](#footnote-10123) was opened this scheme included dependent children including aged out minors between the age of 18 to 23 years old.

The inclusion of family members of applicants is vital within the scheme in order to ensure that they are eligible to be considered without having to make a separate application and should include children, step-children (legal and de facto), spouses, civil partners and suitably qualified de facto partners. It would be difficult to potentially grant regularisation to one family member and leave other family members at risk of deportation. Ultimately, forcing a qualified applicant to choose between remaining in the state or continuing family life outside.

The possible introduction of an income requirement would have a disproportionate impact on applicants to this scheme and should not be considered given the negative impact that irregularity of residence status has on those undocumented and their families. Research undertaken by Migrant Rights Centre Ireland in 2015, found that irregularity impacts upon all aspects of life including work, family life, health services and education and has also led high incidence of low pay and exploitation.[[6]](#footnote-23897)

Outlining engaging in lawful work within the eligibility would also disproportionate impact on applicants to this scheme. Research undertaken by Migrant Rights Centre in Ireland in 2014 outlined that one-third of respondents were currently paying taxes with almost half reporting that they had paid taxes at one time in the past.[[7]](#footnote-30853) Research conducted by ESRI[[8]](#footnote-3744) highlighted that illegal employment is driven by the precarious nature of their status and the particular vulnerability as undocumented workers. Within this scheme supporting and not penalising individuals and employers who provide evidence of ‘cash in hand’ work is needed.

In developing this scheme, we recognise that there may be a need to include an evaluation of character and conduct yet determining eligibility based soley on character and conduct. Placing undue weight and regard should not be conducted in isolation and must be considered in the context of the other factors presented and people should not be excluded from this scheme for very minor misdemeanors.

The exclusion of applicants based on the length that they have been undocumented would be unfair. Requiring applicants to hold a period of 4 years residence in the State without an immigration permission does not take into account individuals that may have recently fallen out of status but may have prior to this spent an extensive period time in lawful residence. This would result in penalising those engaging in the process to regularise their position within the state and be against the basis of this scheme. The exclusion of applicants based on the length that they have been undocumented would be unfair. Requiring applicants to hold a period of 4 years residence in the State without an immigration permission does not take into account individuals that may have recently fallen out of status but may have prior to this spent an extensive period time in lawful residence. This would result in penalising those engaging in the process to regularise their position within the state and be against the basis of this scheme.

We would recommend a shorter residence requirement be included as part of this scheme, that those who reach the residence requirement during the lifetime of the scheme be included and that the undocumented residence requirement should not have to be continuous and unbroken.

As a group, many undocumented people face numerous difficulties in providing specific evidence as to their existence within the state, due to the very nature of them being undocumented. Therefore, many applicants may not have access to a tax record, lease or utility bills in their name of have access to PPS numbers or public service cards. As a result, taking a flexible approach to eligibility for this scheme is vital in order to prevent the exclusion of people from this important scheme once specific documentation can be proved in other reasonable ways. This could include taking into account factors such as the availability of exit/entry stamps on passport and sworn evidence from third parties or employers confirming the presence or otherwise of the applicant in the State.

1. ***It is proposed that the immigration permission to be awarded will allow unrestricted access to the labour market. Are there any points you wish you raise in relation to the permission to be granted?***

Providing full access to the labour market and a path to citizenship is very welcomed much welcomed by the Union of Students in Ireland. Establishing a complicated and unknown system to access the labour market would make gaining employment difficult for applicants. Introducing a simplified approach would aim to avoid unnecessary confusion for applicants and employers and would ultimately be of benefit to the Irish State.

In establishing this welcomed scheme, it is important at the very beginning to outline the process for renewal. Ensuring transparency and that no barriers exist in renewal is important to support the development of this scheme and applicants.

Considering COVID-19 and as we begin to move towards the reopening of many sectors of the Irish economy, it would be to the determent of this scheme and the applicants if a “no recourse to public funds” criteria was introduced. We would support calls from the Migrant Rights Centre Ireland in calling for these criteria to be waved and support undocumented people and their families return to work. Applicants and their families should not be penalised if they have availed of State support while we battled the COVID-19 pandemic.

For many young people, entering the workforce is vital in order to support themselves and their families. Therefore, providing for young people once they turn 16 whose parents or legal guardians applied for this scheme with a Stamp 4 is important. This would allow these young people to access the labour market alongside their studies while still in formal education or to enter the workforce upon completion of their formal education once they turn sixteen.

1. ***How can we ensure that all those eligible to apply are aware of the Scheme? What would assist those eligible in making their applications***

Engaging with all stakeholders and representative organisations is vital in the development of and awareness of this scheme. In the past, there was an over-reliance on the undocumented community in Ireland and groups who represent and support those who are undocumented to raise awareness of the Workers Scheme 2009 and the Student Scheme 2018. Therefore, in order to ensure those in which this scheme is targeted for reaches those people we need to ensure a variety of means to disseminate this information are incorporated.

The inclusion of employer groups, student representative groups including the Union of Students in Ireland and other community organisations who work with migrants would ensure this scheme reaches those who would benefit from it. Prior communication ahead of opening the scheme would be welcomed to allow for a lead in time to allow for dissemination of information to more isolated undocumented people and the inclusion of the scheme application and briefing documents in a number of languages would support those applying for the language in which English or Irish is not their first language.

The use of diverse communication channels including media, print media, social media and clear and timely communication with civil society organisations that have strong links to undocumented people would support the successful role out of this scheme.

Alongside clear communication addressing barriers to making an application are important. One of the largest barriers outside of lack of awareness is the financial implications of applying for the scheme. Ensuring fees associated with applying for this scheme are minimal is important. Many eligible persons are in low paid work and cannot afford high immigration and registration fees, applicants especially in light of COVID-19 may have experienced a drop or loss of their income and we need to ensure applicants and their families can access the scheme without difficulty.

Alongside addressing the communication and financial barriers, applicants need reassurance they will not be penalised for applying for the scheme. Providing assurances that the scheme will not result in penalties and 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. Alongside adopting a non-punitive approach for employers who have employed undocumented people and have assurance that there will be no negative consequences in validating time spent in the state is important. The absence of such assurances for both the applicant and the employer is vital to ensure take up of the scheme.

For many organisations and groups working with undocumented people supporting the implementation of this scheme will incur an additional workload and impact on already stretched resources. Therefore, making funding and support available to NGOs and community groups who assist and support undocumented people is vital. This important scheme will see a considerable uptake from those from the undocumented community and this additional pressure on NGOs and community groups will need to be offset.

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

In the development of this scheme it would be beneficial if the Department could consider both online and paper-based applications. While ensuring both are user friendly and accessible is crucial in the success of this scheme. For many undocumented people they may experience connectivity issues and digital literacy concerns while making both the online and paper-based applications as accessible and user friendly as possible is vital in addressing the digital divide and taking into account that for many English and Irish are not their first languages.

Through making the applications accessible they should also be available in a number of different languages and providing a system which allows applicants the ability to save their application throughout its development is important.

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

Over the past number of years, the Union of Students in Ireland have supported a number of schemes and supports developed by the Department of Justice. We would disseminate the information on this scheme with our 374,000 members through our member organisations and our communication platforms.

The Union of Students in Ireland have supported the work of a number of NGOs and community organisations who support those who are undocumented in the role out of this scheme.

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

The Union of Students in Ireland is committed to working closely with the Department of Justice, and all other stakeholders to ensure the success of this important scheme. We welcome the commitment by the Department of Justice within the Programme for Government this establishing this regularisation scheme. USI welcomes the clear commitment to support those who are undocumented in the state.

In providing this written submission to the Department of Justice, USI would be happy to be involved in further conversations relating to the development of the Scheme to Regularise Undocumented Migrants in Ireland and would welcome the opportunity to meet with Department officials to discuss the contents of this submission further.

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