



Submission

To

**Joint Oireachtas Committee on Justice, Equality, Defence
and Women's Rights**

Immigration, Residence and Protection Bill 2008

Irish Council for International Students
41 Morehampton Road
Dublin 4
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Introduction

This submission is made on behalf of the Irish Council for International Students (ICOS). ICOS was established in 1970 to promote the rights and welfare of international students in Ireland and its mission is to enhance the quality and the benefits of international education in Ireland by providing expert support services to international students and the institutions which host them. ICOS is an independent, non-profit organisation with over 30 institutional members which include all the universities, most of the institutes of technology and the main independent colleges interested in international education (see attached list).

ICOS welcomes the Government's initiative through the publication of this Bill to introduce much needed reform to our Immigration and Protection system and the organisation appreciates the opportunity to contribute to the discussion. ICOS believes that immigration into this country is a permanent and positive reality and supports any attempt to make our immigration policies more transparent, accessible, and respectful of the human rights of all prospective migrants including international students. ICOS will focus its comments on elements of the proposals that impact on immigration for the purposes of study.

In terms of the admission and temporary residence of international students to the state, the policy context is very important and we note the Government's previous commitment to the internationalisation of Irish Education Services¹. Higher Education institutions (HEIs) are enthusiastic partners in this process for educational as well as economic reasons and have enjoyed the active support of other state agencies in their marketing and promotional efforts notably the Department of Education and Science through IEBI (International Education Board Ireland) and the Department of Enterprise, Trade and Employment (DETE) through Enterprise Ireland. The most recent statistics reveal that there were over 27,000 international students enrolled in Irish HEIs in 2006/2007 with a value to the economy conservatively estimated at over €370 million². To ensure continued growth and success, it is particularly important that our immigration system supports the education sector in attracting more international students to Ireland. In this context, transparent and efficient visa and residency rules and procedures will be important. Clear, flexible and fair regulations around family reunification and the right to access the labour market both during and after completion of studies will also be crucial in attracting students and supporting their integration into Irish life.

ICOS again welcomes the opportunity to contribute to the discussion on the Immigration, Residence and Protection Bill 2008 and would remind the Committee of its earlier contribution on this matter which is attached for easy reference. ICOS' comments are summarised under headings as follows:

¹ Internationalisation of Irish Education Services, Report of Interdepartmental Working Group, Nov, 2004

² International Students in Irish Higher Education 2006-2007, IEBI, Feb., 2008

- **Customer Service:**

ICOS is disappointed that this Bill does not reiterate as a statement of policy the Government's intention or ambition to achieve international best practice in customer service in immigration matters as had been included in earlier proposals. We acknowledge that substantial improvements have been made especially in visa processing, however, the immigration service generally remains under resourced leading to unacceptable levels of customer frustration and many complaints. Long queues outside GNIB offices and poor communication generally when attempting to engage with the system are common complaints from international students and education providers working on their behalf. ICOS would welcome the re-instatement of a customer service dimension to this Bill including a commitment to developing a communications strategy which will make essential information regulating entry and residence in the state readily available to all categories of immigrants and visitors including international students.

- **Clarity regarding regulations**

ICOS is also disappointed that this legislation has not brought the desired clarity to our immigration processes. International students are scarcely mentioned in the Bill and it is clear that much of the regulation connected to entry for the purposes of study will be dealt with in secondary legislation and administrative measures. While ICOS accepts that there should be some flexibility and that the serving Minister should have some discretion in this area, members' experience of this approach has not always been positive with both students and institutions being left vulnerable to rule changes sometimes made at short notice and without prior consultation with stakeholders. However, ICOS is encouraged that the Minister has on this occasion and with reference to section 127 of the Bill, signaled his intention to engage in consultation with other relevant Departments and to adopt "a whole-of-government approach"³ when setting out regulations governing various categories of permission in the future. The input of the education and enterprise sectors among others would be very important in terms of the regulations regarding immigration for the purposes of study. ICOS, on behalf of its members, would also be happy to contribute to this process.

- **Lawful and Unlawful presence in the State**

ICOS has concerns that the Minister's elaboration in this Bill of what constitutes lawful and unlawful presence in the state is overly simplistic and does not take fully into account all the circumstances in which a person can become unlawful in the State through no fault of their own. The situation of migrant workers who have become illegal because of exploitation, redundancy and other circumstances has been articulated by other agencies and has been backed by a call for a bridging visa mechanism to allow people time to regularise their situations. ICOS supports this call for a bridging visa. ICOS is aware of students who come legally into the State but who subsequently become illegal due to exploitation by bogus and sub standard educational providers. Many are afraid to approach the authorities because of their status and so compound the problem by becoming undocumented for extended periods. Having a mechanism such as a bridging visa which would allow victims of exploitation including international students a chance to come forward and to re-engage with the system would be a humane response and would also allow for the exposure and prosecution of rogue operators who undermine the reputation of the sector as a whole.

³ Minister Lenihan's speech in the Dáil, Feb 2008

The Internationalisation report⁴ referred to earlier noted the need for regulation of the sector through a licensing or similar arrangement which would award a quality mark to approved providers who reached certain standards in the provision of education and support services to international students. This quality control system would also greatly facilitate the immigration service in making decisions regarding entry and residence for the purposes of study by easing the path for legitimate students enrolling in approved institutions while severely limiting the operations of bogus and sub-standard education providers. To its credit and in the absence of the promised statutory agency to lead the way, a widely representative group of education sector organisations, both public and private and including ICOS⁵, have come together under the auspices of the Irish Higher Education Quality Network (IHEQN) to draw up a voluntary code of practice for the sector. A draft version of this Code of Practice entitled, “Provision of Education to International Students, Code of Practice and Guidelines for Irish Higher Education Institutions” has now been produced and will be further reviewed and discussed at a consultation seminar at the end of April, 2008 with publication due shortly afterwards.

It is hoped that this document which, among others, specifically addresses visa and other immigration issues pertinent to students will be viewed by the DoJELF and the Government generally as a genuine effort on the part of the education sector to assist in providing a proper framework for the admission and welfare of international students who chose Ireland as an educational destination. Such a framework can, however, only be properly guaranteed through the establishment of a single statutory agency to co-ordinate policy and promotion. ICOS would like to avail of this opportunity to call on the Government and specifically on the Minister for Education and Science (DES) to urgently establish this statutory agency, to be called Education Ireland. Recommendations for its establishment were published in the Government’s own interdepartmental report back in November, 2004. This delay, now well over 3 years, is unacceptable and the lack of policy coherence across different Departments on internationalisation matters is impeding the sector’s growth at a time when the market is more competitive than ever⁶.

- **Visa approvals and reviews**

ICOS welcomes the fact that this Bill places the Irish visa entry system on a statutory footing which hopefully will bring more consistency and transparency to the process for intending applicants. A process for review of negative visa decisions is laid out, however, this review process is not independent and so falls short of what ICOS members had hoped for. It is also less than the visibly independent appeals process in relation to immigration decisions which was promised in the Programme for Government⁷.

⁴ Internationalisation of Irish Educational Services Report, Nov 2004

⁵ IUA (Irish Universities Assoc), HECA (Higher Education Colleges Assoc), HETAC (Higher Education & Training Awards Council), ICOS (Irish Council for International Students), Institutes of Technology, IUQB (Irish Universities Quality Board), USI (Union of Students in Ireland) and DIT

⁶ International Students in Higher Education in Ireland, 2006-2007, IEBI Feb 2008

⁷ Programme for Government 2007-2012 pg 57

- **Pre-clearance for visa exempt nationals planning to stay for over 3 months**

This is a new dimension to our entry system and will have an impact on, among others the sizeable international student market (over 5,500) from the US⁸ which is also an important and growing segment of the market for Ireland. ICOS is not opposed to the introduction of pre-clearance, for nationals of currently visa exempt countries such as the US, per se. In many ways, pre-clearance will serve to pre-empt some of the problems currently experienced by students and others at port of entry and the subjective and sometimes inconsistent nature of document checks and passport stamps issued. ICOS would call on the Government to carefully consider the resource implications of this measure so as to ensure that a pre-clearance service can be delivered efficiently especially in countries where the demand is likely to be highest.

A fast-tracked, low cost service will be necessary if Ireland is to retain its place in a competitive international student market. It may also, in this context, be pertinent to re-examine the 90-day cut off point for pre-clearance. A sizeable majority (up to 80%) of all students from the US come on short-term or semester programmes lasting an average of 4-6 months. While ICOS members recognise that there have been some cases of abuse of the current entry system, the disadvantages including the extra costs and administrative burden of introducing a pre-clearance system for a short-term, largely compliant group of students should be weighed up against its potential advantages. The UK, Ireland's nearest and biggest competitor in this market has adopted a 6-month ruling with respect to pre-clearance for visa exempt countries.

- **Family Reunification**

While acknowledging the Government's intention to set down a comprehensive family reunification policy in the future, ICOS feels that the failure to do so in the current Bill is a missed opportunity. The right to reside with members of your immediate family is a fundamental human right as well as being an essential ingredient of successful integration. ICOS feels that international students should not be treated differently from other categories of immigrant in this respect. Currently international students have no entitlement to bring spouses and dependent children to reside with them while they are studying in Ireland. This position is unsustainable in an increasingly complex and sophisticated international student market and at a time when we are competing with other countries to attract the most talented students and researchers to our shores in the context of economic development generally and more specifically in the context of the Government's strategy for Science, Technology and Innovation. The most recent statistics reveal that almost half (48%) of full-time students from the US are on post-graduate programmes. The figure for India is even higher at 58%⁹. Clearly, increasing numbers of international students and especially PhD students and researchers will have family considerations and their choice of Ireland as an educational destination will be heavily influenced by answers to fundamental questions like: can my family reside with me while I am in Ireland and under what conditions; will my spouse be able to work in Ireland; what services will my family be able to access while in the country? Disappointingly, these important questions remain unanswered in this Bill.

⁸ Open Doors 2007, Institute of International Education (IIE), Jan, 2008

⁹ International Students in Higher Education in Ireland, 2006-2007, IEI 2008

ICOS would like to draw particular attention to the current anomalies surrounding the education of the minor children of some legal migrants including the children of long-term international students and researchers. The organisation's case work in this area is on the increase and it is difficult to justify the DoJELR's position on this matter which maintains that children of non-EEA international students must attend private fee paying schools. Access to education is a fundamental human right and the fact is that not all areas in the country particularly outside the capital have private schools with or without available places. A review of this regulation in the context of our immigration laws and family reunification policies specifically is urgently needed.

Conclusion

We thank the Committee for the opportunity to make these comments. For clarification or further information please contact:

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