

Parents of an Irish Child

This document provides information on:

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2. What was the Irish Born Child (IBC)/05 scheme?
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4. I was refused residency under the IBC/05 Scheme. I am still living in Ireland. What is my situation?
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1. Does having an Irish child entitle me to residency in Ireland?

There is no automatic entitlement for non-Irish parents and other family members of Irish citizen children to reside in Ireland.

Prior to February 2003, residence permits were routinely granted to parents of Irish citizen children. For a brief period between January 1, 2005 and March 31, 2005, there was a special administrative scheme in place which allowed non-Irish nationals to apply for residency in Ireland on the basis of being a parent of an Irish citizen child. This scheme is no longer in place.

However, it remains open to parents of Irish citizen children to apply for permission to come to, or remain in, Ireland on the basis of general immigration rules.

2. What was the Irish Born Child (IBC)/05 scheme?

The IBC/05 scheme was an administrative scheme introduced by the Department of Justice, Equality & Law Reform in January 2005 to allow the parents of Irish citizen children, who were born in Ireland before January 1, 2005, to apply for permission to stay in the country due to the fact that they had an Irish citizen child.

Anyone who was in this position could apply for residency. Conditions for the granting of residence permits included that the parent or parents had been living continuously in Ireland since the birth of their child and that they had no criminal record. The immigration status of the parents was irrelevant and people who were undocumented in the country could also apply for residency under the scheme.

The closing date for applications was March 31, 2005. More than 18,000 applications were received and approximately 17,000 people were granted residency under the scheme. Those granted residency were able to register with the immigration authorities and receive a Certificate of Registration for two years under Stamp 4 conditions which entitled them to work and to access social welfare payments.

Most of those people who were refused residency were refused on the basis that they could not prove continuous residency in Ireland since their child was born.

Parents of Irish children who received residency under the IBC/05 scheme could apply to have their residency renewed, in most cases for a further three years, when their initial permit expired in 2007. In most cases renewal was granted for a further 3 years until 2010.

3. What happens after the end of the next period of residence?

At the end of the second period of residence in 2010, most parents granted residency under the IBC/05 Scheme will have at least five years legal residence in the Irish State. They will be eligible to apply for renewal of this status for a further period of time and to make an application for naturalisation (Irish citizenship) should they wish to.

At the time of writing, details of the renewal process for 2010 have yet to be announced by the Department of Justice and service users are invited to telephone the ICI's Information and Referral line for more information over the coming months.

It is important to note that, while any application is pending applicants will need to renew their residence permit to ensure that they continue to reside in Ireland legally, while waiting for their application to be processed.

4. I was refused residency in under the IBC/05 Scheme. I am still living in Ireland. What is my situation?

The Supreme Court held on December 20, 2007 that the Minister for Justice, Equality & Law Reform was under no obligation to consider the Constitutional or Human Rights of Irish citizen children when refusing their parents' applications under the IBC/05 Scheme.

In allowing an appeal by the Minister for Justice, Equality & Law Reform against an earlier judgment by the High Court in November 2006, the Supreme Court held that "the IBC 05 Scheme was a scheme established by the Minister, exercising executive power, to deal administratively with a unique group of foreign nationals in a generous manner, on general principles". The Court recognised that "at no stage was it intended that within

the ambit of the scheme the Minister would consider, or did the Minister consider, Constitutional or Convention rights of the applicants”. And in accordance with the findings of the Court, “applicants who were not successful in their application under the IBC 05 Scheme remain in the same position as they had been before their application”.

In the view of the Supreme Court, Constitutional and Convention rights of Irish citizen children and their families are “appropriately considered” in the context of representations pursuant to Section 3 of the Immigration Act, 1999 – after receipt of a notice of the Minister’s intention to issue a deportation order.

♦ **What does this mean for Irish citizen children and their families in Ireland?**

People whose applications under the IBC/05 Scheme were refused, but who have not yet been issued with a Section 3 letter – notification of intention to deport – are likely to receive such notification. Representations would then have to be made within 15 working days of the date of the notification, setting out in detail the circumstances of the family as well as the situation and needs of the children involved.

It is current practice that people whose applications for permission to remain pursuant to Section 3 of the Immigration Act, 1999 are successful, will be granted permission to remain in the State on Stamp 4 conditions, that is, with the right to access employment and/or set up a business.

If this application is not successful, parents will be issued with a deportation order without any further appeal being available. The only judicial remedy open to parents at that stage would be an application to the High Court for the judicial review of the decision to refuse a residence permit and to issue a deportation order.

Parents who already have a pending Section 3 application are advised to update their applications frequently to ensure that the Minister for Justice, Equality & Law Reform has all relevant information regarding the situation of the Irish citizen child and his or her family members at the time of making the decision whether to grant a residence permit or to issue a deportation order.

It is open to people who have not yet made an application for permission to remain in the State on the basis of being a parent of an Irish citizen child to write to the Minister for Justice, Equality & Law Reform, setting out the reasons why they feel they need to be granted permission to remain. It is currently unclear whether the Minister has an obligation to consider such a ‘free standing’ application. In the view of the Supreme Court expressed in the Bode decisions, “the appropriate process within which to consider Constitutional or Convention rights of applicants is (...) the process under Section 3 of the Act of 1999”. However, the Supreme Court does not seem to have assessed the possibility of an obligation of the Minister for Justice, Equality & Law Reform to consider applications made pursuant to Section 4 of

the Immigration Act, 2004, for permission to be in the State or for the variation of an existing permission to be in the State.

For further information please contact the ICI's Information and Referral service (contact details below).

5. I was granted residency in 2005 under the IBC/05 scheme. My spouse/partner and other minor children remain in my country of origin. Am I entitled to bring them into the country?

Under the IBC 05 scheme, applicants were asked to sign a statutory declaration which stated that the applicant understood that, if they were granted residency, this would not give them any entitlement to reunification with any other family members residing outside of the country.

Despite this stated policy, the right to family life of Irish citizen children is a right protected by the Irish Constitution and the European Convention on Human Rights and Fundamental Freedoms. The Immigrant Council of Ireland is of the view that there cannot be a blanket refusal of family reunification and that the circumstances of each individual case must be taken into account when a decision on family reunification is made. Therefore, while the Minister for Justice, Equality & Law Reform has discretion as to whether or not to grant family reunification, he also has the duty to ensure that any refusal of family reunification is in accordance with the law, pursues a legitimate aim and is necessary in a democratic society.

For more information about applying for family reunification, please contact the ICI Information and Referral Service.

6. Where can I get more information on the rights of parents of Irish children?

Immigrant Council of Ireland – an Independent Law Centre

Information and Referral Service

Telephone: +353 1 674 0200

Days: Mondays, Tuesdays, Thursdays and Fridays

Times: 10.30am – 12.30pm and 2pm to 4.30pm

Our Information and Referral Service is offered by telephone and we no longer provide a drop-in service.

Clients with general enquiries may be referred to another agency for assistance.

Clients with complex cases may be offered an appointment to speak to a Legal Information Officer in person on a confidential basis.

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