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Best Practice and Limitations in Ireland's 2022 Regularisation Scheme: Submission to inform the Special Rapporteur's Report to the Human Rights Council at its 53rd session in 2023 on how to expand and diversify regularisation mechanisms and programmes to enhance the protection of the human rights of migrants

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THE MIRREM PROJECT

MirreM examines estimates and statistical indicators on the irregular migrant population in Europe as well as related policies, including the regularisation of migrants in irregular situations.

MirreM analyses policies defining migrant irregularity, stakeholders' data needs and usage, and assesses existing estimates and statistical indicators on irregular migration in the countries under study and at the EU level. Using several coordinated pilots, the project develops new and innovative methods for measuring irregular migration and explores if and how these instruments can be applied in other socio-economic or institutional contexts. Based on a broad mapping of regularisation practices in the EU as well as detailed case studies, MirreM will develop 'regularisation scenarios' to better understand conditions under which regularisation should be considered as a policy option. Together with expert groups that will be set up on irregular migration data and regularisation, respectively, the project will synthesise findings into a handbook on data on irregular migration and a handbook on pathways out of irregularity. The project's research covers 20 countries, including 12 EU countries and the United Kingdom.

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Introduction

This submission focuses on the example of Ireland's 2022 Scheme for the Regularisation of Long-Term Undocumented Migrants¹ as a way of identifying, for the Special Rapporteur's report to the Human Rights Council at its 53rd session in 2023, promising practices at the national level regarding regularisation. To this end, the submission highlights a number of best practice elements of the 2022 Scheme that foster integration, labour market mobility and human rights protection, which might be replicated in future regularisation initiatives in Ireland and other jurisdictions. The submission also identifies limitations that could be addressed in future regularisation measures as a way of expanding the pathways to regular migration status for migrants in an irregular situation in a host state.

The 2022 Irish Regularisation Scheme

Ireland has implemented a number of de facto and ad hoc regularisation measures over the past three decades, focused on discrete categories of irregular migrants,² and sometimes in response to court rulings.³ In 2020, following decades of civil society advocacy and growing calls for regularisation from an increasingly wide cross-section of actors, the Government committed to 'create new pathways for long-term undocumented people and their dependents, meeting specified criteria to regularise their status'.⁴ This commitment to a broad regularisation measure crystallised in the introduction of the Scheme for the Regularisation of Long-Term Undocumented Migrants which was open for online applications from individuals and family units from 31 January – 31 July 2022. The primary eligibility criterion was four years of **continuous undocumented residence** immediately prior to 31 January 2022 for an individual applicant. Where a family unit application was made, the main applicant's family members (spouse, de facto partner, civil partner, children 18-23), were required to meet a two-year residence requirement. Where an applicant had a child under 18, the residence requirement was reduced to three years for the main applicant, as long as the child had been resident in the state and living with the main applicant immediately prior to the date of publication of the Scheme. The minimum age requirement for an individual applicant was 18, meaning that children under 18 were precluded from applying except as members of a family unit.

¹ Due to space constraints, the submission does not address a parallel regularisation scheme opened to asylum-seekers in Ireland whose application for international protection had been awaiting final determination for at least two years prior to the commencement of the scheme. For further detail, see the Information Note provided by the Irish Refugee Council at <https://www.irishrefugeecouncil.ie/regularisation-scheme>.

² For example, undocumented fishermen with a contract of employment were entitled to apply for 'an atypical worker permission' under the Atypical Working Scheme that was open to them for three months commencing 15 February 2016. For further information see Inter Departmental Government Task Force, *Report of the Government Task Force on Non-EEA Workers in the Irish Fishing Fleet* (Dublin: Dept of Agriculture, 2015); Migrant Rights Centre Ireland (MRCI), *Left High and Dry: The Exploitation of Migrant Workers in the Irish Fishing Industry* (Dublin: MRCI, 2017).

³ For example, the Irish Supreme Court ruled in *Fajjonu v Minister for Justice* [1990] 2 IR 151 that Irish citizen children have a constitutional right to the company of their parents within the state, subject to the exigencies of the common good, leading the state to adopt a general policy of granting the irregular migrant parents of such children the right to remain in Ireland, a policy that operated until February 2003. More recently, in response to the Supreme Court judgment in *Luximon & Balchand v Minister for Justice & Equality* [2018] 2 IR 542, the Government operated regularisation scheme, which was open for applications for four months, for irregular migrants who had arrived to study in Ireland between 1 January 2005 and 31 December 2010.

⁴ Programme for Government: Our Shared Future (2020) 76, available at <https://www.gov.ie/en/publication/7e05d-programme-for-government-our-shared-future/>

Other eligibility criteria included a requirement to show good character, proof of identity, proof of each undocumented year of residence in the state, and payment of an application fee of €550 for an individual, or €700 for a family unit.

In 2022, the population of the Republic of Ireland was 5.1 million⁵ while the state's undocumented population was estimated to be between 15,000 and 17,000, including up to 3,000 children.⁶ As of 6 December 2022, 6,548 applications for regularisation had been submitted to the Scheme for 8,311 persons. The overwhelming majority, 5,654 (86%) were single applications, while 894 (14%) were family applications. The vast majority of applications to the Scheme were approved. Out of the 4,794 decisions issued, 4,654 (97%) were positive. Only 94 (2%) were negative decisions and a small number, 46 applications (1%), were withdrawn.⁷

Best practice

Inclusionary eligibility criteria

By comparison with previous regularisation initiatives in Ireland and other European states, the eligibility criteria for applicants were on the less restrictive end of the spectrum, thereby opening up the Scheme to a broad swathe of Ireland's undocumented population. For example, there was no requirement for applicants to have been in employment, or to have a guarantee of future employment. Similarly, there was no requirement of prior lawful residence, nor of a family connection to an Irish citizen or a lawfully resident migrant. Proof of integration was not required, there was no need for applicants to demonstrate that they would not be a financial burden on the state, and individuals with existing deportation orders were entitled to apply. Applicants would satisfy the continuous residence requirement, even if they had been absent from the state for up to a combined maximum total of 60 days.

Wide range of documentation accepted as proof of identification and proof of each year of undocumented residence

Applicants could prove their identity by submitting, for example, a valid or expired passport, travel document or Irish-issued drivers' licence. Applicants could prove their residence in Ireland by submitting, for example, previous Irish Residence Permit cards; utility bills (from electricity, phone, gas, cable television, or broadband providers); letters from doctors or hospitals in Ireland; COVID-19 vaccination cards issued in Ireland; proof of money transfers between the applicant and a third party, carried out at a money transfer facility in the state such as Western Union.⁸

⁵ Central Statistics Office, *Census of Population 2022 - Preliminary Results* available at: <https://www.cso.ie/en/csolatestnews/pressreleases/2022pressreleases/pressstatementcensusofpopulation2022-preliminaryresults/>

⁶ Laura Fletcher, 'More than 7,200 apply to scheme for undocumented migrants which closes on Sunday' RTÉ 29 July 2022, available at: <https://www.rte.ie/news/ireland/2022/0729/1312683-undocumented-migrants/>

⁷ This information was provided by the Minister for Justice in response to a parliamentary question on 6 December 2022. See <https://www.oireachtas.ie/en/debates/question/2022-12-06/37/?highlight%5B0%5D=regularise&highlight%5B1%5D=regularisation&highlight%5B2%5D=regularisation>

⁸ The full list of accepted documents is provided in *Policy Paper on the Scheme to Regularise Long-Term Undocumented Migrants in Ireland* (Irish Dept of Justice, 2022).

Residence of those regularised eligible for citizenship applications

Successful applicants were granted a two-year residence, renewable for a further three years subject to continued satisfaction of the good character requirement. After five years of lawful residence, those regularised under the 2022 Scheme will be entitled to apply for citizenship by naturalisation.

Unrestricted access to labour market

Successful applicants are granted full and unrestricted access to the labour market and do not, for example, require an employment permit.

Limitations

Requirement of continuous undocumented residence (4, 3 or 2 years)

The requirement that applicants' continuous residence for the purposes of the Scheme had to have been unlawful residence excluded otherwise eligible applicants. For example, an individual who had been lawfully resident in Ireland for four years as a student, but only six months unlawfully resident prior to the opening of the 2022 Scheme, was precluded from applying. It is difficult to ascertain the rationale for this limitation which excluded long-term residents with a mix of lawful and unlawful residence.

Temporal limitations

The six-month window for submission of applications (31 January – 31 July 2022), coupled with the aforementioned minimum residence requirement, means that similar initiatives will have to be repeated to address the presence of future long-term undocumented migrants.

Minimum age requirement

Individual or principal applicants had to be at least 18 years of age. This excluded undocumented children in Ireland without a parent or guardian, a particularly vulnerable category of undocumented migrant, from the scope of the Scheme.

Fees (application fee of €550 for an individual applicant / €700 for a family unit application)

Application fees could have prevented otherwise eligible migrants from applying to the Scheme, were it not for the financial support provided to necessitous applicants by civil society organisations such as Migrant Rights Centre Ireland (MRCI). While it is legitimate to charge a fee to cover the administrative costs of running a scheme, it makes little sense to set fees at such a level as to effectively prevent some otherwise eligible applicants from applying, particularly given the consequences of continued undocumented status and the goal of the Scheme to address the situation of long-term residents whose irregular status means they 'face greater challenges in integrating into society and maintaining labour market mobility.'⁹

⁹ Ibid p. 1.

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