

**An Coiste Comhairleach Náisiúnta
ar Chiníochas agus Idirchultúrachas**

**National Consultative Committee
on Racism and Interculturalism**

20 Harcourt Street, Dublin 2.

☎: (+353 1) 4785777

Fax: (+353 1) 4785778

Email: nccri@eircom.net

Website: www.nccri.com



**Submission to the Review of the Government's
Homeless Strategy:
Impact of the Habitual Residence Condition**

**National Consultative Committee on Racism and
Interculturalism (NCCRI)**

February 2005

Introduction

The National Consultative Committee on Racism and Interculturalism (NCCRI) was established in 1998 as an independent expert body focusing on racism and interculturalism. The NCCRI is a partnership body which brings together government and non-government organizations, and is core funded by the Department of Justice, Equality and Law Reform. For further information and a list of recent submissions see: www.nccri.ie.

As part of the independent review of the Homeless Strategy the NCCRI seeks to draw the government's attention to the impact of the introduction of the Habitual Residence Condition(HRC) on migrant workers and other immigrants in Ireland. There are other issues of concern to the NCCRI including the provision of Traveller accommodation and the transition from direct provision for refugees, however this submission will focus on the implications of the HRC.

The NCCRI has expressed its concerns regarding the introduction and implementation of the HRC to the Department of Family and Social Affairs on a number of occasions, and has been engaged in an ongoing dialogue with that Department.

Habitual Residence Condition

On 24 February 2004 the Department of Social and Family Affairs announced changes in the social welfare code in light of concerns regarding the impact of EU accession and UK moves to restrict access to social welfare. On 2 March 2004 the Minister issued a statement detailing a series of restrictions aimed at 'securing and protecting the social welfare system'.

Habitual Residence is a condition which you must satisfy in order to qualify for certain social welfare assistance payments and Child Benefit. This condition took effect from 1 May 2004 and affects all applicants regardless of nationality. 'Habitual residence' means you have a proven close link to Ireland or other parts of the Common Travel Area. For example, if you have lived in Ireland or other parts of the Common Travel Area all of your life, you will likely satisfy the Habitual Residence Condition. The most important factors for proving this link are the:

- length of time you have spent in the Common Travel Area
- continuity of your residence, and
- general nature of your residence.¹

The NCCRI has expressed its view that the introduction of the HRC was in response to a xenophobia campaign by the British tabloid press in the run up to EU accession on 1 May 2004. The NCCRI recognises the legitimate need of the government to manage migration and residency in Ireland. However it is concerned to ensure that this is achieved in a comprehensive and fair manner, which does not discriminate against any nationality or minority ethnic group.²

¹ See Comhairle, <http://www.cidb.ie/live.nsf/0/802567ca003e043d80256f2c003203aa?OpenDocument>

² See NCCRI (2004) 'Proposed Changes in the Social Welfare Code Arising from EU Enlargement', <http://www.nccri.ie/submissions/04MarEUAccession.pdf>

According to figures released by the Department of Family and Social Affairs, there has been a dramatic increase in the numbers of workers in from the 10 new Member States seeking employment in Ireland. It is estimated that currently the rate of migration from these countries is running at about 60,000-70,000 per annum. It is unclear, as yet, whether these levels of migration are likely to continue into the future. However no evidence has emerged over the last ten months which suggests that immigrants are coming to Ireland to access the social welfare system. This appears to be in line with the experience in the UK and Sweden, the only other EU countries which did not introduce restrictions on movement of nationals from the new EU Member States.³

Impact on homelessness of the HRC

Since the introduction of the HRC on 1 May 2004, groups working with minority ethnic communities have begun to record problems and concerns with its implementation. While the picture is still provisional, anecdotal evidence and case work activity does provide grounds for serious concern across a range of areas.

Particularly difficulties are being noted for migrant workers from the new EU Member States who come to Ireland unprepared for the cost of living in Ireland, or with job offers which do not materialise. A number of cases have been documented where migrant workers have travelled to Ireland, only to find themselves homeless, and destitute, when they get here. Recent reports from the Homeless Agency suggest that they have documented a significant number of such cases in recent months.

Migrant workers are particularly vulnerable to homelessness given the difficulties they face accessing social service, this situation is augmented and exaggerated by the introduction of the HRC.

The NCCRI would recommend that the review of the Homeless Strategy consider the implications of the HRC for minority ethnic communities in Ireland, and particularly the impact it is having in terms of nationals from the new EU countries.

For further information contact: Philip Watt, Director or Anna Visser, Research and Policy Officer, Tel: 01 4785777, Email: anna@nccri.ie

³ In January 2005 the NCCRI, in partnership with a number of other organisations, submitted a paper to the Department of Family and Social Affairs on the implementation of the HRC. The paper is contained in Annex 1 for further information.

Annex 1

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Habitual Residence Condition - Implementation Issues Paper December 2004

National Consultative Committee on Racism and Interculturalism (NCCRI)

In association with:

Comhairle

Free Legal Advice Centres (FLAC)

Immigrant Council of Ireland (ICI)

Irish Refugee Council (IRC)

Irish Traveller Movement (ITM)

Migrant Rights Centre of Ireland (MRCI)

Services, Industrial, Professional and Technical Union (SIPTU)

Introduction

On 24 February 2004 the Department of Social and Family Affairs announced changes in the social welfare code in light of concerns regarding the impact of EU accession and UK moves to restrict access to social welfare. On 2 March 2004 the Minister issued a statement detailing a series of restrictions aimed at 'securing and protecting the social welfare system'.

As part of ongoing discussions with the Department of Family and Social Affairs, this paper is intended to highlight a number of the implementation issues, which have been noted since the introduction of the Habitual Residence Condition (HRC) in May 2004, and which were highlighted in the meeting with the Department on 15 November 2004. It is based on an analysis of the casework activity of the organisations involved and their views on the implementation of the HRC to date. While concern continues regarding the introduction of the Condition in the first place, the focus of these comments will be on the first six months of the implementation of the condition and its impact on minority ethnic groups, including the Traveller community.

The organisations involved in this paper very much welcome the active engagement of the Department of Family and Social Affairs, and look forward to continued cooperation with regard to the implementation of the HRC.

Consequently this paper will be divided into three main sections. The first considers the context and emerging data relating to the efficacy of the HRC. This emerging data is considered in the context of the two other relevant EU Member States: the UK and Sweden. The second section explores the problems, which have emerged in implementing of the HRC. These include procedural concerns, which are considered in terms of how they impact on minority ethnic groups, including: refugees and asylum seekers, migrant workers and their families, and the Traveller community. There is particular concern regarding the most vulnerable groups within these communities. The final section posits a number of recommendations for consideration under the review of the HRC.

1. Migration from the New EU Member States

Public statements made during the year before EU enlargement clearly show that the government expected enlargement to drastically reduce the need for migrant workers from outside the enlarged EU, especially to fill low-skilled jobs. In August 2004, the Department of Enterprise, Trade and Employment announced that it will only consider new work permit applications from employers who want to hire highly qualified or highly specific personnel that cannot be found in the expanded EU labour market.⁴

According to figures released by the Department of Family and Social Affairs, there has been a dramatic increase in the numbers of workers in from the 10 new Member States seeking employment in Ireland. It is estimated that currently the rate of migration from

⁴ Ruhs, M (2004) "Ireland: A Crash Course in Immigration Policy", Migration Policy Institute, available at: <http://www.migrationinformation.org/Profiles/display.cfm?ID=260> (15.10.04)

these countries is running at about 60,000-70,000 per annum. It is unclear, as yet, whether these levels of migration are likely to continue into the future. Data from the HRC Unit demonstrates that only a very small proportion of these migrants are attempting to access social welfare.

Consequently it appears that despite the significant increase in the numbers of migrant workers coming to Ireland from the new EU Member States, there have not been high levels of social welfare claims from such nationals. According to figures from the HRC Unit as of 11 October 2004, they have dealt with 682 claims from nationals of the new EU countries (this is the lowest category of applicants at just 11% of total claims).

This provisional picture appears to be reflected in the two other EU Member States who did not introduce restrictions on the freedom of movement in light of accession – the United Kingdom and Sweden. Similar to Ireland, the trend in the UK and Sweden seems to be that there have been increased numbers of migrants from the new EU Member States, though by no means the ‘flood’ which was predicted; no evidence has emerged that these migrants are seeking access to the social welfare system in the manner which had been predicted by those warning of ‘welfare tourism’.

Despite the fact that no new limitations were introduced to social welfare provision in Sweden, in August the government announced that there was no evidence of ‘social welfare tourism’.⁵ A report by the UK Home Office released on 7 July found that there has been no dramatic increase in arrivals from the new EU Member States since accession, in Britain workers register under a special ‘workers registration scheme’. The same report demonstrated that only a small number of immigrants attempted to access UK social security.

2. The first six-months of implementation

Since the introduction of the HRC on 1 May 2004, groups working with minority ethnic communities have begun to record problems and concerns with its implementation. While the picture is still provisional, anecdotal evidence and case work activity does provide grounds for serious concern across a range of areas. In particular confusion regarding the application of the HRC appears to be leading to discrepancies in decision making, which are adversely affecting members of minority ethnic groups including the Traveller community.

Procedural difficulties

There is evidence of confusion on the part of Community Welfare Officers and Social Welfare Officers as to the implementation of the HRC. For example it has emerged that in one centre deciding officers are referring cases to the MRCI, when there is doubt regarding the impact of the HRC.

⁵“Sweden sees no sign of ‘social tourism’ after EU enlargement”, *EU Observer* (25.08.04)

A number of decisions have emerged which do not appear to be consistent with the condition, this has led to fears that there are discrepancies in the way in which the HRC is being applied. For example there is some evidence of respective decision making

The implementation of the Condition in relation to child benefit has proved particularly difficult. In cases reported to the ICI child benefit payments have been refused to individuals who have been living in Ireland for a number of years but as the dependent spouse of a migrant worker, their passport is stamped 'visitor'. In one case which was brought to the attention of the MRCI a claim for child benefit was refused on the basis of failing to meet the HRC, despite the fact that one of the child's parents was Irish.

There is also confusion and uncertainty with regard to emergency and supplementary allowance payments during the investigation process. In a case reported to the IRC a client was advised by the Community Welfare Services that they do not make payments pending decisions on claims for Unemployment Assistance.

Problems with implementation are having a significant impact on minority ethnic groups, particularly the most vulnerable groups in society including refugees, migrant workers and their families, and the Traveller community.

Refugees and asylum seekers

In recognition of the fact that the asylum procedure does not allow individuals to establish habitual residency, the Department of Family and Social Affairs has stated its intention that gaining refugee status will be equivalent to habitual residence. A similar approach will be adopted for individuals who have been granted leave to remain.

However, feedback from organizations working with refugees and asylum seekers suggests that this approach is not being consistently applied by Community Welfare Officers and Social Welfare Officers. Refugees are having their claims rejected on the basis of the HRC. Reasons which have been reported to the IRC, as to why Unemployment Assistance is being denied to refugees include that: the client has not been living in Ireland for two years or more; the client's family reside outside of Ireland (even though a family reunification case is pending).

Migrant Workers

Reports from a number of organizations working with migrant workers and their families, suggest that some deciding officers have taken the view that by virtue of their work permit status it is not possible for migrants to meet the HRC. For example in one case which was brought to the attention of the MRCI, a migrant worker who had been in Ireland over four years failed the HRC; despite the fact that he is only a few months short of applying for residency (this case study is detailed in the box below).

Particularly difficulties are being noted for migrant workers from the new EU Member States who come to Ireland totally unprepared for the cost of living in Ireland. A number of cases have been documented where migrant workers have travelled to Ireland, only to find themselves homeless, and destitute, when they get here. Recent reports from the

Homeless Agency suggest that they have documented a significant number of such cases in recent months.

Mr X

Mr X is from India and has been working in Ireland since 2000. He is currently on his fourth work permit. In July 2004 he was allegedly unfairly dismissed from his job. At the point of his dismissal he had a residency stamp which was due to expire in October 2004. He made an official complaint to the Labour Relations Commissions concerning his conditions of employment. On being dismissed he went to his local Community Welfare Officer, who referred him to the No Fixed Abode Office in Gardiner Street. The reason given was that 'work permit expired, no current status'. He was not advised that he should sign on for social benefits having made the necessary contributions. He has paid tax and made PRSI contributions since 2000. Mr X's wife and son also live in Ireland as his dependents. Following discussions with the CWO the MRCI was informed that the reason for refusal was that he was unable to prove his long term interest in Ireland, as his residency stamp was due to expire in October. This is, in effect, was what been written on the determination form. The MRCI was told that it is a real possibility that any person holding a work permit would not qualify for social protection, as they cannot show that their centre of interest is in Ireland. Mr X's son is in school and planning to sit his leaving certification in 2005. This was not considered relevant. Neither was the fact that his wife also lives here with him along with an extended family network. An appeal was made, the result of which is pending.

-Case study documented by the Migrant Rights Centre Ireland (November 2004)

Returning Irish emigrants and Travellers

There has been significant public debate regarding the implication of the HRC for returning Irish missionaries however, these are not the only group of returning Irish emigrants who are being negatively impacted by the implementation of the HRC. According to Comhairle's Social Policy Records Quarterly Report for April – June 2004 Citizens Information Centre's are dealing with a number of queries from clients working in the UK who intend to return to Ireland. While not directly relevant to the application of the HRC the cases documented by Comhairle (see box below) do highlight the potential of social welfare restrictions, such as the HRC, to negatively impact perceptions of the value of growing diversity in Irish society.

Evidence is also emerging that the implementation of the HRC is having a particular negative impact on members of the Traveller community. A number of cases have been reported to the Irish Traveller Movement, where Travellers who have returned from England have failed the HRC. It is likely that these individuals are being affected by an inability to prove and address or rent record in the UK during their stay there.

An information provider dealt with a number of telephone queries from clients working in the UK who intended to return to Ireland. All four clients contacted Roscommon CIC to clarify their entitlement under the Irish Social Welfare system, and then expressed their disappointment that there was so little support available to them. Two of the CIC's

clients used particularly strong language to express their dissatisfaction. They felt particularly aggrieved, having supported family members at home during their time working in the UK, that they as Irish citizens, would not be treated as 'well' as non-nationals.

“There appears to be some confusion amongst members of the Irish expatriate community, in particular, surrounding the direct provision system for asylum-seekers, and the rights of refugees under Irish law. It seems that the perception is quite common that non-nationals are 'fleecing' the State”.

-Extract from Comhairle Quarterly Social Policy Report, April – June 2004

Vulnerable groups within minority ethnic communities

The cases which have emerged to date demonstrate that the most vulnerable groups within minority ethnic communities are particularly at risk, these include women and children.

The National Women’s Council of Ireland in its budget submission of October 2004, has called on the government to ‘abolish the Habitual Residence Condition that serves to impact negatively on women seeking accommodation including returned Irish emigrants and non-nationals seeking accommodation here’. In a press release issued on 14 May 2004 the Children’s Rights Alliance called on the government to ‘reverse its decision to deny Child Benefit payments to incoming asylum seekers families with children’.

Concern has been raised that the application of the HRC to social welfare payments which are intended to protect these groups is causing hardship for minority ethnic communities in Ireland. These payments include: one parent family payment; child benefit; and maternity benefit.

3. Recommendations

The HRC was introduced largely in reaction to fears generated in the UK tabloid press that there would be ‘floods’ of ‘welfare tourists’ coming to the UK and Ireland following EU Accession. As argued by the NCCRI at the time of the introduction of the HRC, these fears have proved unfounded. Given the level of implementation problems that have been documented it is clear that, while unintentional, the HRC is having an unfair and discriminatory impact on minority ethnic groups in Ireland.

Given the intention to move from a centralised approach to deciding HRC claims to one where the condition is incorporated into the overall welfare decision, it is important that the implementation issues highlighted in this paper are resolved before this roll out is completed. In light of these concerns the following actions are recommended for consideration during the review of the HRC.

1. Review of monitoring and training procedures: Given the level of concern regarding confusion amongst deciding officers and discrepancies in decision making, there should be a full review of the procedure for monitoring of, and training for, the implementation of the HRC.

2. Explicitly link refugee status to habitual residence: Recognising that the asylum process does not allow individuals to establish a centre of interest in Ireland, the Department's stated commitment to facilitating individuals who have been granted refugee status (or leave to remain) should be fully implemented. An exemption could be applied to anyone who has been granted refugees status in Ireland in the two years preceding their claim.

3. Work permit status should not be a factor in assessing the HRC: Concern has emerged that there is a view amongst some deciding officers that it is not possible to hold a work permit and pass the HRC. In order to avoid any possible misinterpretation of the significance of holding a work permit, it should be made clear to all deciding officers that whether or not an individual is in possession of a work permit should not be a factor in making a negative determination of habitual residence.

4. Provision of pre-departure information for migrants: The importance of pre-departure information for migrant workers is well documented. In relation to the application of the HRC it is important that migrants from the EU Member States have access to information about the cost of living and available supports before they arrive in Ireland.

5. The Traveller community should not be adversely affected by the HRC as a result of their cultural heritage: As people with a shared history, culture and traditions including, historically, a nomadic way of life, the Traveller community are vulnerable in the application of the HRC. The implementation of the HRC must be responsive to the particular circumstances of the Traveller community.

6. Restoration of the universality of Child Benefit: Child Benefit has heretofore been a universal payment in respect of all children in Ireland, and the universality of this child income support must be restored in order to protect the rights of all children in Ireland. The introduction of the HRC has introduced a distinction between Irish citizen children residing in the State.

7. Undertake research to ascertain whether the HRC is necessary: Initial indicators from the experience in the UK and Sweden, and the emerging Irish statistics seem to confirm that fears of 'welfare tourism' in the aftermath of the EU Accession were unfounded. The Department of Family and Social Affairs should initiate an independent research study to assess the requirement for the HRC in Ireland, and its impact on vulnerable groups in Irish society. This research would be a significant contribution to the review of the HRC which is currently being undertaken by the Department.