

NEW IMMIGRATION REGIME FOR FULL TIME NON-EEA STUDENTS

**Final Report and Recommendations of the
Interdepartmental Committee**

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AN ROINN DLÍ AGUS CIRT AGUS ATHCHÓIRITHE DLÍ
DEPARTMENT OF JUSTICE AND LAW REFORM

Irish Naturalisation and Immigration Service



New Immigration Regime For Full Time Non-EEA Students

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Introduction

The provision of educational services to overseas students is a vital sector of the economy, contributing not just in terms of the fees charged by universities and colleges but also in terms of accommodation, hosting services and living expenses while the student is in Ireland. While no definitive data exists as to the overall annual economic value to Ireland of international education services, various sectoral estimates have been made and these, if accurate, would suggest a gross cumulative value of up to €1bn per annum¹. Although this is a highly competitive market internationally, Ireland has the capacity to increase substantially its share of that market and the Government is committed to putting in place measures to bring this about.

It should also be borne in mind that bringing overseas students to Ireland has other non monetary benefits in terms of cultural interaction and in creating connections with the Irish State around the world. Attracting the right international students assists in raising overall standards and the contribution of quality international scientists and researchers is a key driver of research and innovation in our educational institutions.

At the same time, immigration policy makers cannot afford to be naive. Economic migration is a global phenomenon and by far the easiest way of moving legally from a developing country to live and work in a much wealthier society is as a student. Even minimum wage employment in Ireland provides a substantial multiple of the average earnings in many countries. Therefore legal residence status coupled with access to the labour market is of considerable economic value in itself, often exceeding that of the educational course. The impact of this factor on the market for international education should not be understated. Indeed virtually all of the immigration abuse that is associated with student immigration is driven by this factor, whether through the operation of disreputable colleges or the behaviour of students

¹ A November 2007 report 'International Competitor Analysis and Benchmarking of Ireland's English language learning sector' prepared for Fáilte Ireland by Indecon International Economic Consultants estimated the annual economic contribution of the English Language sector at €500m.

The International Education Board of Ireland 'International Students in Higher Education in Ireland 2009/2010' - Report of May 2010 estimated over €430m as the value of the higher education sector. No figures are available for further education but if the overall annual economic contribution from each full time student in that sector was €10k, this would bring the total estimate towards €1 billion, (this is an estimate of all expenditure in total by non-EEA Students and is the subject of a multiplier) which may represent a peak value.

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who do not attend their classes. This phenomenon is not of course unique to Ireland. On the contrary, other jurisdictions are constantly reviewing their student rules in response to immigration abuse.

Therefore any approach to reforming the student immigration regime necessarily seeks a balance between the imperative of developing a vital services industry and the need to ensure that the wider immigration system and labour market is not undermined.

While abuses of the Irish system are confined to a small minority of colleges and it is important to reiterate this, there is nonetheless a clear need for reform of the regulatory environment. It is also widely acknowledged that a more co-ordinated and strategic approach is required.

The Government has adopted a twin track approach on this matter. Two complementary processes and accompanying structures have been put in place.

The first of these is a reform of the student immigration regime by the Department of Justice and Law Reform, taking into account the need to develop Ireland's international education industry, but in a manner that is consistent with immigration policy generally and deals in an effective way with immigration abuse. An Inter-Departmental Committee was established to oversee this process and this report is the outcome of their deliberations.

The other pillar of the Government's approach is a series of measures announced by the Minister for Education and Skills including the establishment of a High Level Group on International Education to facilitate a more joined-up national approach to the promotion of Ireland as a centre of education for international students by both public and private sector stakeholders. These other measures include;

- The amalgamated qualifications and quality assurance body will be given the role of regulating international education providers. In advance of its establishment, the National Qualifications Authority of Ireland (NQAI) has absorbed the Advisory Council for English Language Schools (ACELS), who are responsible for quality assurance in the English language sector, and has taken over the administration of the Internationalisation Register, the list of programmes whose students can avail of the work concession.

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- Enterprise Ireland will now take responsibility for marketing and promoting the 'Education Ireland' brand overseas and Fáilte Ireland will continue to develop and promote the English language sector.
- Creation of a 'Q Mark' which would be awarded to colleges complying with a statutory code of practice requiring, among other things, that all courses be quality-assured to a high standard; course entry requirements, including those relating to English language proficiency, be clearly stated; a high proportion of international students undertake exams and achieve awards within the advertised timeframe of courses; and the needs of international students be met including those relating to tuition fees, access to information and grievance procedures.

Scope of the Report

The new arrangements outlined in this document are confined to non-EEA students. EU/EEA students represent the majority of those coming for educational purposes but, since they have rights of free movement, no immigration issues arise in these cases.

For the purposes of this document the relevant educational services are divided into three broad yet distinct groupings. Clearly there are different subgroups within these but for the present it is intended to deal broadly with the following:-

- (1) Higher Education (Universities, Institutes of technology and private higher education providers) offering validated courses at National Framework of Qualifications (NFQ) level 6 and above.
- (2) Further Education (For the purposes of this document, further education should be defined as programmes of education outside of the higher education sector, not including either English language courses or attendance at primary and post-primary school. Such programmes correspond to Levels 1-6 of the NFQ)
- (3) English Language Sector

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Notes

- (i) This document deals with non-EEA persons who are registered as students. It does not in any way limit any other immigration rights that a non-EEA person might have².
- (ii) The report is also confined to immigration related matters and it does not set aside any other obligations students may have, such as compliance with employment legislation and taxation requirements.

² For example a non-EEA national residing in Ireland as spouse or partner of an Irish or EU national and whose rights are derived from that is not, as long as that position subsists, impacted by the student immigration rules.

Overview of the Consultation Process

On 1 September 2009, following approval by the Government, the Minister for Justice, & Law Reform, Mr Dermot Ahern T.D. published a Consultation Paper entitled " Review of the Immigration Regime for Full Time non-EEA Students".

The proposals outlined in the review document were open to public consultation until 9 October 2009. (A copy of the Consultation Paper is available online at www.inis.gov.ie).

In total approximately 110 submissions were received from a range of stakeholders including from education providers, the Social Partners, individual students and State Agencies.

As part of the consultation process the Irish Naturalisation and Immigration Service (INIS) met with the Irish Business Employers Confederation (IBEC) and the Irish Congress of Trade Unions (ICTU). INIS also held meetings with MEI which is the main representative group for English Language schools in Ireland and the Joint Managerial Board which is the umbrella body for the AMCSS (Association of Management of Catholic Secondary Schools) and the ISA (Irish School Heads' Association) which represents the Protestant Schools in the State.

Key issues raised through the Consultation Process

The key issues raised through the public consultation process reflected the proposals as outlined in the original Consultation Paper and are set out hereunder;

- Limit on length of stay
- The tiering of the student immigration system
- The Quality Mark for education providers
- Inspection and Regulation including a licensing system
- The Visa system
- The Student Work Concession

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Concerns were raised by stakeholders with regard to some of the proposals particularly with regard to the proposed tiering of non-EEA Student education, time limits, the visa regime and the student work concession.

There was broad support for the introduction of a statutory Quality Mark as well as the proposed stronger inspection and regulation regime particularly with regard to the licensing of providers.

While the issues outlined above can be regarded as the most common issues raised during the consultation process a number of other issues were also raised.

These include;

- Family Reunification
- Placement of Children in Secondary Schools
- Position of those studying for professional Accountancy qualifications
- Future Policy Co-ordination
- Long Term Strategy for International Education
- Timing of Transitional Measures
- Matters in relation to individual Immigration status

All submissions were circulated to and evaluated by the Interdepartmental Committee set up by the Minister for Justice and Law Reform, which provided an all of Government perspective on this issue.

Arising from the submissions received and discussions held by the Interdepartmental Committee, the proposals outlined in this document set out the agreed final proposals with regard to the non-EEA Student immigration regime in Ireland. These proposals have sought to address the concerns outlined by the international education sector and other contributors whilst delivering on the stated aim of strengthening the regulatory framework in this area. A more detailed summary of the submissions received during the public consultation process will be available online at the INIS website www.inis.gov.ie.

Review of Consultation Process and Recommendations by the Committee

Section A. General Structure and Time Limits

Initial Proposal in summary

The original consultation document set out clearly that the "one size fits all" approach previously adopted in respect of student immigration is no longer appropriate. It expressed concerns at the lack of emphasis on academic progression and at the inflexibility of the existing framework in terms of targeting incentives at students of a particular strategically desirable category. The complete absence of any effective time limits for students (in some instances students were clearly signing up to a series of courses merely to continue their residence in Ireland) was also identified as a significant weakness.

The Consultation Paper outlined moving to a two tiered approach with Tier 1 consisting of higher education with a cut off at level 7 on the National Framework of Qualifications with language courses and further education in Tier 2. A time limit of 2 years was proposed for Tier 2 with an overall limit of 5 years with certain exceptions.

Result of Consultation Process

Having considered the submissions the Committee considers that the original general conclusions in the Consultation Paper remain valid. International education is a very broad spectrum ranging from short term language courses at one end to PhD studies at the other with much in between. The system must have the flexibility to deal in a more targeted manner with the different streams of students and this is reflected in the new arrangements proposed. This would allow for better targeting of incentives to students of high ability, in line with Irish economic policy objectives generally.

In order to preserve the credibility of the system, the Committee cannot endorse continuation of the current practice where students can maintain their residence on

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an ongoing basis without progressing in their studies. Time limits are therefore necessary. These limits should reflect the nature of the education and the need to progress academically.

During the consultation process the general thrust of the original recommendation was largely supported, although concerns were expressed by the language sector in particular, that this sort of hierarchy could be taken to imply that courses in tier 2 were considered of less intrinsic value and accordingly of a lower priority.

The Committee has taken note of this view and wishes to stress that the differentiated approach originally outlined was not intended to treat language courses as of a lower priority or value but rather to reflect that the sectors were substantially different in character, curriculum, academic level and student profile and the system therefore required a more nuanced immigration response. However to address the concerns of the language sector, the terminology has been changed. Two distinct programmes are recognised. These are;

- (a) Degree Programme
- (b) Language and Non Degree Programme

The original proposal had also indicated that the cut-off point for Tier 1 should be at level 7 of the NFQ. In this regard a number of submissions pointed out that Level 6 of the NFQ contains both Higher and Further education courses. It is accepted that the original description of the higher education sector as Level 7 and above omitted the fact that some courses at NFQ level 6 are included. In terms of the future regime however the Committee is of the view that level 7 is the appropriate point to differentiate between academic courses. The cut-off point is based on the NFQ rather than on the sector or current accrediting body.

The Committee has given some consideration to the issue of further education. The original proposal would exclude any courses below NFQ 5 and no relaxation of this restriction is proposed. However the retention of courses at level 5 is debatable and it is not clear as to where courses at this level fit into Ireland's policy of international educational promotion. On balance however the Committee is recommending that the original proposal in this area be unchanged for the present.

Several submissions received during the consultation process argued that a 2 year limit for what was regarded as Tier 2 was insufficient. They pointed out that some

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courses at level 6 ran for two years and that an overall 2 year limit prevented people from first learning English and then progressing to a sub-degree academic programme. The Committee has taken this on board and is now recommending a limit of 3 years outside the Degree Programme.

Similar concerns were expressed at the overall limit of 5 years. The Committee have taken these concerns on board and is therefore recommending that the overall limit be extended to 7 years.

Final Recommendations on General Structure and Time Limits

With Effect from 1 January 2011

- (R1) Student Immigration will in the future operate on a differentiated basis. The student regime will be divided into two categories. The Degree Programme will apply to students enrolled in a nationally accredited higher education programme at National Framework of Qualifications (NFQ) level 7 or above. The Language and Non Degree Programme will consist of students engaged in English³ language courses or academic courses below Level 7 in the National Framework of Qualifications (NFQ) with NFQ Level 5 being the minimum level of study allowable.
- (R2) The maximum aggregate time a student may be present in the State for the purpose of attending courses in the Language and Non Degree Programme will be limited to **three years**. Permission to remain in the State will expire at that stage, unless the student has been accepted onto a nationally accredited higher education programme at NFQ Level 7 or above in the National Framework of Qualifications (Degree Programme). The only other exception to the three year limit will be where the Minister for Justice and Law Reform determines that special circumstances exist (e.g. illness preventing the student from completing their course in time). It will not be permitted for a student to move from the Degree Programme to the Language and Non Degree Programme. Students coming to Ireland for the purpose of enrolling on a course at NFQ level 7 or above must satisfy themselves that they have an appropriate standard of English to follow the

³ Any reference to English language courses should be taken to apply equally to courses in any other language, including Irish, where it is studied at below degree level.

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programme before they leave their own state. If they require a foundation English language programme in Ireland to bring them up to the required standard, this should be arranged in advance and be clearly stated in any application for a visa or leave to remain.

Where foundation courses are required and where Higher Education providers are not in a position to offer such courses, Higher Education providers are encouraged to form links with Quality Assured English Language providers to deliver these courses.

(R3) Non-EEA student permission overall will be limited to 7 years in total except where;

- The course is at PHD level or the programme of study is of such long duration (e.g. medicine) as to make it difficult to complete the course in that time.
- The Minister for Justice and Law Reform is satisfied that special circumstances exist (e.g. illness preventing the student from completing their course in time).

(R4) Students enrolled in courses on the Degree Programme will be required to demonstrate that they are progressing academically (e.g. passing exams) in order to maintain their permission.

It will be a matter for the student to plan his/her educational programme to fit in with this seven year schedule.

Interim and Transitional Measures

The Consultation Paper indicated that there would be a need for transitional provisions to deal with existing students. The transitional arrangements need to be transparent so that students, colleges and immigration officers are clear as to how to deal with cases arising. The Committee is mindful also that the time limits outlined in the Consultation Paper were more restrictive than those now being recommended.

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It also recognised that introducing a new student regime will result in a substantial number of students finding themselves in a situation where they have already exceeded the duration permitted for their stay in the State and provision is necessary for these cases. In this regard it would not be unreasonable to assume that students who exceed the relatively generous time limits now proposed are predominantly workers and, in the main, already in paid employment. That being the case, it makes sense to allow an appropriate period for them to seek to move more formally into the workforce through the employment permit system. Once they have obtained an employment permit then their immigration status can be adjusted accordingly⁴.

On 1 January 2011 the new time limits will come into operation. On the basis that a student's immigration permission is granted to cover the next full year of the course it can be concluded that when a student looks to re-register this is on the basis of either commencing a new course or proceeding to the next year of a multi-year course. With that in mind it is possible to devise a simplified transition regime. A number of worked examples illustrating how these provisions will operate are set out at Appendix 3.

Transitional Provisions For Existing Students

Notes:

(1) For the purpose of this recommendation, language courses will be taken to have a maximum duration of 1 year (i.e. a person who spends two years in language tuition is regarded as attending two discrete one year courses rather than an overall course of 2 years duration).

(2) Registrations are on an annually renewable basis.

Registration expired prior to 1 January 2011

Any student whose current immigration permission (as per stamp in passport and recorded on GNIB card) expires prior to 1 January 2011 is governed by the existing system rules and is free to enrol in a further course of any type and to complete that course (subject to compliance with any conditions imposed as part of the new regime on 1 January 2011 as regards progression and attendance at courses).

⁴ Students in this position who succeed in gaining an employment permit/green card permit will be permitted to remain in the State. Their passport will be endorsed with the appropriate immigration Stamp which in this case will be Immigration Stamp 1. This permission to remain will be subject to the holder remaining in employment and holding an employment permit/green card permit.

Registration expired on or after 1 January 2011

(a) Language and non-Degree Programme

- Legally resident students whose registration expires on or after 1 January 2011 presenting to immigration officers seeking renewal of their registration and who have completed less than 3 years registration as a student at that time will be permitted to continue any language or non-degree course on which they are enrolled. Such non-Degree courses are deemed to have a maximum duration of 2 years⁵. They will also be permitted to register for a further language or other non-Degree course at NFQ 5 or 6 provided that attendance at that course does not extend beyond the new 3 year limit for immigration permission. Following completion of three years the only way of staying in Ireland as a student will be through the Degree Programme⁶.
- Legally resident students whose registration expires on or after 1 January 2011 presenting to immigration officers seeking renewal of their registration and who have completed 3 or more years immigration registration as a student will only be permitted to re-register if they are commencing their second year of a non language course at NFQ level 5 or 6. They will not be registered in respect of a new course. Courses at NFQ 5 or 6 will be deemed to have a maximum duration of two years. Following completion of that course the only way of staying in Ireland as a student will be through the Degree Programme.

(b) Degree Programme Students (NFQ 7 +)

- From 1 January 2011 legally resident students presenting to immigration officers seeking an extension of their registration and who have not completed 7 years immigration registration as a student will only be permitted to re-register, on an annual basis for one year up to the end of their seventh year unless they are at that point entering the second or subsequent year of

⁵ Students and colleges must ensure that students undertake assessment and are submitted for certification to keep pace with the advertised course duration. Students will not be allowed stay beyond two years, even if they have not received certification in all modules required to achieve the major award to which the course leads.

⁶ This does not of course impact on any higher immigration rights the person might have.

their course in which case they will be permitted to complete this course (subject to compliance with any conditions imposed as part of the new regime on 1 January 2011 as regards progression and attendance at courses).

- From 1 January 2011 legally resident students presenting to immigration officers seeking an extension of their registration and who have already completed 7 years immigration registration as a student will only be permitted to re-register if they are commencing their second or subsequent year of a degree programme at NFQ level 7 or above. They will be permitted to complete this course (subject to compliance with any conditions imposed as part of the new regime on 1 January 2011 as regards progression and attendance at courses) and may be allowed to enrol on a course at Masters or PhD level provided they meet the progression and attendance criteria.

Timed out students

- All timed out students (i.e. those who because of the new rules have exceeded the permitted duration of stay as a student) will be entitled to a six month special extension of their permission. This 6 month special permission⁷ is non-renewable and will be available to all timed out students whose current immigration permission expires between 1 January 2011 and 31 June 2011. At the end of that period the student will have to leave the State unless they have secured another form of immigration permission to remain in the State.
- All timed out students will be permitted to work during their 6 months concession period on the same terms as during the academic holidays. Their status will continue to be that of student.
- All students availing of the 6 month concession will be permitted to apply for an employment permit or Green card during this time and may, as an exception to the normal rule, do so without first returning to their country of origin. Such applications will be considered by the Department of Enterprise, Trade and Innovation in accordance with the established criteria for the employment permit and green card schemes. If successful they will be treated

⁷ A temporary permit extending their student permission would be issued (on payment of the registration fee of €150) to cover their residence during this period.

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in the same manner as any other worker. At the end of the 6 month extension the student will either be reclassified as a worker with an employment permit (currently Stamp 1) or, should they fail to secure an employment permit in that time, their permission to be in the State will expire. It would not be permissible to re-register as a student at this point.

NB: All transitional arrangements set out in this section are subject to the normal immigration controls, to the student abiding by any conditions applicable to their residence in Ireland and their satisfying the immigration authorities as to their bona fides. Students will also be required to progress in their courses (including passing their examinations) and may not seek to prolong their course as a means of remaining in the State.

Section B. Student Work Concession

In 2001 a student work concession was introduced which allowed students to take up casual employment to help support themselves during their studies. Students were permitted to work 20 hours per week during term time and 40 hours per week outside of this. The introduction of this concession was aimed at ensuring that Ireland did not fall behind competitor countries who generally offer this sort of labour market access.

Initial Proposal in Summary

One of the key elements underlying reform of student immigration and the consultation process is the necessity to broaden the context in which student immigration is seen. Clearly promotion of education services is a major component of the overall mix but other issues, including those relating to the labour market and access to the State benefit systems, are important also.

In the Consultation Paper it was stated "*...the Department notes that, in light of the current economic environment, Ireland has necessarily adopted a more restrictive approach to the issue of employment permits. In the circumstances, there is a prima-facie contradiction in continuing to offer indiscriminate access to the same labour market to anyone enrolling on an educational course. At the same time there is an obvious imperative to develop and support viable industries in the face of international competition and the internationalisation of education is such an industry*". The paper recommended that a separate evaluation take place on this issue, carried out by the Committee.

Whilst the Department of Justice and Law Reform is effectively neutral on this issue it was considered necessary in the interests of general policy coherence for the matter to be considered in the Review. It is also recognised that any changes to the concession would have a significant impact on individual institutions.

Result of the Consultation Process

Several submissions stressed the importance to the education sector of the work concession. Competitor countries operate similar systems and its removal would have negative implications for Ireland's capacity to compete in this area.

While the evaluation exercise referred to has not yet commenced the Committee has given this matter some consideration. While no change to the original recommendation is planned there is some merit in giving the new measures some time to work. In short, if the new restrictions and the general tackling of abuses is bearing fruit then the risks to the labour market are mitigated. Having considered the issue, the Committee has no difficulty in deferring this exercise until 2011.

Recommendation;

(R5) A detailed evaluation of the effectiveness and rationale for the student work concession should be undertaken in 2011. This activity will be co-ordinated by the Department of Justice and Law Reform and key Government Departments will be consulted on and involved in this process. The primary focus of this exercise should be on the language and further education sectors. The output from this work, under the auspices of the Interdepartmental Committee on Student Immigration, would be a separate report and regulatory impact analysis in respect of the concession. Among the issues to be taken on board would be;

- The state of the labour market and Ireland's policy regarding non-EEA migration;
- A cost benefit analysis on a sectoral basis taking into account, issues such as fee and other revenues generated, the net employment benefit to the State, and also related issues such as costs of State services, including those derived from employment (e.g. PRSI);
- The importance of the work concession in terms of marketing;
- The impact of any changes introduced as part of this review;
- The effectiveness of the other regulatory measures proposed following their initial operation;
- Issues raised during the consultation on the review as a whole;

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- Any recommendations from the High Level Group on International Education.

(R5)(a) Further data regarding the economic impact of the student work concession should be collated to inform and facilitate a full and effect review of the Student Work Concession during 2011.

Note: Students are not currently permitted to be self employed and there are no plans to change this.

Section C. Accountancy Students

The original proposals in the Consultation Paper did not address the issue of professional accountancy students. However, since publication of the paper the Irish Naturalisation and Immigration Service has received several queries on the matter. In addition some practices have come to light that would suggest a need for some tightening of the current rules in this area. Therefore, it is considered appropriate that this report should make some comment on the matter.

The character of professional accountancy education is somewhat different to purely academic programmes and can include professional work experience. However, those non-EEA persons pursuing professional accountancy qualifications remain students and there is a need to ensure that the regime for non-EEA accountancy students is more in line with the immigration regime for full time non-EEA students generally. It should be noted in this regard that the fact that professional accountancy bodies allow their students up to 10 years to qualify cannot imply an entitlement to immigration status for that length of time. Accountancy students must make consistent exam progress within a reasonable time frame in the same manner as other students. In addition, there is a need to consider the issue of work placements. Such placements must be appropriate to the course of study. The permission to work for non-EEA students engaged in professional work experience should also be considered in the context of the general review of the student work concession.

Rather than make a formal recommendation in this area the Committee is suggesting that INIS should address this issue as part of a general exercise it is carrying out in the area of internship and professional trainees. It is understood that new arrangements governing this area will be outlined in the coming weeks. As part of this exercise INIS should engage with the Accountancy bodies to develop clearer guidelines, to address the issues which have arisen.

Section D. Inspection and Regulation

Initial Proposals in summary

The Consultation Paper as published made reference to the current inspection regime, as carried out by the Department of Education and Skills, the Garda National Immigration Bureau (GNIB) and the Irish Naturalisation and Immigration Service's Investigations Unit. It highlighted the need to address the weaknesses in the system and provided a commitment to address issues of quality control and also to the introduction of a more co-ordinated and robust regulatory environment as a matter of urgency. The Consultation Paper was also supportive of the Department of Education and Skill's proposal to introduce both a statutory Quality Mark and streamlined accreditation process.

Result of Consultation Process

The submissions received by the Committee supported an increased emphasis on inspection and regulation. The submissions received agree that an enhanced inspection and regulatory system will serve to cut down on the abuses in the Non-EEA student sector and will help to enhance Ireland's reputation as a destination for international students, particularly with regard to the introduction of a statutory Code of Practice for International Education and a Quality Mark, attesting that institutions are in compliance with the Code.

In the course of the Public Consultation process the provision of the Code of Practice and Quality Mark for the international education sector was strongly welcomed. It is clear from the submissions that the industry fully agrees with the proposals to put in place a Quality Mark which, it is considered, will help grow the overseas education sector in Ireland.

In that context it should be noted that the Minister for Education and Skills, announced plans on 1 September 2009 to establish the Quality Mark for English language schools and further and higher education colleges as part of efforts to get more overseas students to study in Ireland. It is intended that the legislation providing for the Code of Practice and Quality Mark for international education will be published

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by the end of 2010. The amalgamated qualifications and quality assurance body to be established under the legislation will be given the role of regulating international education providers and will be responsible for developing the Code of Practice and implementing the Quality Mark. In preparation for this, the National Qualifications Authority of Ireland (NQAI) has been given the role of regulating international education programmes. NQAI absorbed the Advisory Council for English Language Schools (ACELS), who are responsible for quality assurance in the English language sector, in January 2010 and took over the administration of the Internationalisation Register, the list of programmes whose students can avail of the work concession, in March 2010.

A high-level group was established in late 2009 to drive the international education agenda under the chairmanship of the Department of Education and Skills bringing together key Government departments and agencies involved with education providers.

The Committee strongly supports the introduction of the Code of Practice and Quality Mark and sees it as critical not just to help market Ireland as a premier destination for international education but also as a key indicator for immigration personnel. As work is progressing with regard to introducing the Quality Mark there is no need to restate the original proposal in the Consultation Paper, merely to confirm the Committee's full support for these initiatives.

An important issue that arises from the introduction of the Quality Mark is how the immigration system should deal with those institutions that do not have this accreditation. It is difficult to justify setting up a structure that provides for a quality assurance framework and then to operate an immigration regime that continues to permit persons to come for study and work in Ireland by registering with institutions that are outside the framework. The ultimate aim must be to ensure that any course being offered by the Irish State to overseas students is quality assured. The challenge for the institutions must be to reach the quality standard.

It is accepted that there may be some institutions that do not fit easily into the academic accreditation framework. These might include cultural bodies and other establishments and a solution may be necessary for these. Any exemptions would however need to be on a strictly limited basis.

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The Committee is therefore making the following recommendations.

- (R6) From a date not later than 12 months from the introduction of the Quality Mark, students will not receive immigration registration in respect of attendance at institutions that do not meet the Quality Mark and Code of Practice.
- (R7) The Department of Justice and Law Reform should explore the creation of an alternative immigration status for persons coming to Ireland to attend courses or to engage in activities as part of a course of a social or cultural nature. Such persons would not be entitled to the student work concession and any such alternative immigration channel should be tightly controlled so as not to undermine what is being done in respect of students.
- (R8) All schools and colleges seeking to offer courses to non-EEA students should be liable to unannounced inspection by immigration and National Qualifications Authority of Ireland (NQAI) personnel with possible use of joint inspection teams. The overall level of inspections should be increased, with a greater emphasis on sharing of information between immigration and education officials.
- (R9) Educational establishments will be required to produce on demand to an immigration officer or official of the National Qualifications Authority of Ireland (NQAI) records showing all registered students by course, their attendance records and also the timetable and location of classes (students will not be free to choose their own hours of attendance but will be obliged to follow a set timetable). Access to all classrooms must also be given whether or not in use. Subject to some variations to be agreed for the Higher Education Sector, establishments will also be required to report early leavers from courses or students who are failing to keep up a sufficient level of attendance. Schools that do not co-operate fully with such inspections or in any way obstruct an immigration officer in the performance of his/her duties will be liable to refusal of recognition for the purposes of student immigration. Similar sanctions will be applied to schools engaged in fraud or abuse of the visa system.

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- (R10) Following an appropriate lead-in period, all further and higher education courses on the internationalisation register accredited by international awarding bodies will be required to be aligned with the National Framework of Qualifications. It is open to international awarding bodies to apply to the National Qualifications Authority of Ireland to have their awards aligned with the NFQ⁸. English language courses on the internationalisation register should be on or aligned with the National Framework of Qualifications at level 5 or above or operate under the ACELS quality assurance and inspection system (or its successor in the amalgamated qualifications body).
- (R11) Further education courses below NFQ level 5 will be phased out in terms of eligibility for bringing in non-EEA students. From 1 January 2011 no new immigration registrations will be permitted for such courses. From 1 January 2012 no student may be registered for immigration purposes to attend a course at this level.
- (R12) Consideration should at some point in the future be given to developing a licensing system for providers of education to overseas students. Such a system would in effect combine the statutory Quality Mark framework and the requirement for institutions to attain this mark with the requirement for institutions to show that they have been fully compliant in immigration matters and are also fully tax compliant.

⁸ This process removes any doubt as to the correct level of the Framework that applies to the programme and ensures that the awarding body's quality assurance regime applies in Ireland in the same way as in their home state.

Section E. Access by Students and Dependants to Services

The Consultation Paper did not propose any new restrictions with reference to access by students and dependants to State Services. However it was considered appropriate to include as part of this review process a clear restatement that current restrictions will continue to apply in this area, notably in the context of access to social welfare payments and access to medical cards. It also proposed limitations on family reunification. However the paper did not perhaps outline in sufficient detail the rationale for this approach.

Perhaps the main rationale for establishing an Interdepartmental Committee in this area is to obtain a whole of government view of student immigration. This necessarily involves consideration not just of issues that are clearly educational or relate to the immigration system but more widely. This includes some element of cost benefit analysis on the basis of the students interaction with the State as a whole.

To take an extreme example, if it were permissible for a student coming for a modestly priced educational course to bring with them a substantial family of school going children and if that family were entitled to free education and perhaps other state funded services then the net economic impact of that student's presence in the State would be very strongly negative and giving permission for entry and residence in these circumstances would appear to be economically unsound. This is not to suggest that such activities are widespread as, for example, measures such as the Habitual Residence requirement applied by the Department of Social Protection continues to limit the States exposure to the costs of providing State Services. What the example set out above seeks to do is to explain the rationale for maintaining the restrictions already in place to ensure that the State's exposure to such costs remains limited. Where exceptions are permitted, such exceptions are based on an assessment that, on the whole, it is in the State's ultimate interest to allow them.

From an immigration perspective a person who applies to come to Ireland as a student enters into some form of a contract with the State. Their immigration status is conditional. Moreover the conditions that the State applies are inseparable from the decision to admit them. In other words, the State will only admit the migrant on the basis that they agree to abide by certain conditions. Breach of that "agreement"

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by the migrant undermines the rationale for admitting them to the State and ultimately the basis of their residence permission.

One of the key conditions currently applicable to a student coming to Ireland is that they will not apply for social welfare payments while here and it is proposed to continue with this approach. Another is that the student should have private medical insurance. It is proposed that these measures will continue to apply. A third condition relates to the possibility that the State would recoup, through an immigration levy some of the costs of educating the children of the student. The recommendations in this area are not intended to rewrite any of the existing rules of the various Government Departments and State agencies as to entitlements to services or benefits, nor indeed could they. Such rules are in many cases enshrined in legislation. In fact, the issue of whether the student is, under the rules and schemes operated by service providers, eligible for these services is not strictly relevant for immigration purposes. The student is being admitted on the basis that he or she will not make claims on State funds and this is irrespective of eligibility⁹. Any permission to be accompanied by family members is on the same basis.

What all of these conditions have in common is protection of the Exchequer. The principles outlined here inform what is proposed in the following sections.

⁹ There are many examples of this sort of agreement in other areas. For instance a person accepting a severance package may agree not to work in the same industry for a period. They clearly have an entitlement to work but agree not to exercise it.

Section F. Placement of Children not accompanied by Parents

Initial Proposals in Summary

There has been evidence that non-EEA children not accompanied by parents have been permitted to enrol in non-fee paying State schools, contrary to the policy of the Department of Education and Skills and in breach of immigration conditions. In seeking to address this issue, and to clarify the position in relation to this group, the initial proposals as contained in the Consultation Paper recommended that the distinction between fee paying and non-fee paying schools be abolished in the case of non-EEA children. This would be subject to new requirements and would therefore only be applicable where;

- (i). the placement is part of a Government approved exchange programme with another state or
- (ii). the school operates entirely without State funding or
- (iii). the parent has paid an immigration levy set by the Government as a means of recovering the costs of the child's education and the Department of Education and Skills has approved the placement either on an individual basis or via a general sanction for all placements.

Result of Consultation Process

Whilst the Committee received only a small number of submissions on this issue - from 'fee paying schools' and representative bodies - the submissions argued against the introduction of the new rules as set out above. The submissions argued that the new rules would effectively ban non-EEA children from attending fee paying schools or would place an extra burden on parents wishing to send children to Ireland to fee paying schools through the imposition of the proposed immigration levy. In order to clarify the position with regard to the placement of children not accompanied by parents INIS met with the Joint Managerial Board which is the umbrella body for the AMCSS (Association of Management of Catholic Secondary Schools) and the ISA (Irish School Heads' Association) which represents the Protestant Schools in the State.

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Having regard to the submissions and meeting held it is necessary to emphasise that it is not the intention to ban non-EEA children from coming to Ireland. What the proposed changes sought to achieve was to avoid a situation where the Irish taxpayer was effectively subsidising the education of overseas students placed in schools in the State. The immigration levy was identified as a means whereby such children could attend Irish schools whether wholly private, fully State funded or those where part of the cost of education is covered by fees paid with the rest funded by the State. It would be envisaged that any immigration levies determined by the Minister for Education and Skills would be on a sliding scale that sought full or partial recoupment, and that account would be taken of the lower level of state support given to schools outside the free education scheme. It is recognised that in some cases the level of tuition fees paid by non-EEA students is at such a high level and consequently makes a significant economic contribution to the State. It may be appropriate in these circumstances to take some account of this in assessing the levy.

The issue of accompanied non-EEA children was also raised. However the Committee sees no reason why established policy in this area should not remain and in general agrees that children of non-EEA students should not be permitted to accompany the primary student. Specific exceptions are provided for.

Further discussion will be required with regard to how to proceed with the introduction of an immigration levy in this area. In the meantime the transitional measures will apply until the recommendations can be fully implemented. Therefore the Committee is making the recommendations set out hereunder:-

(R13) Commencing with the school year 2011-12

- (a) no further placement of unaccompanied non-EEA children in Irish Schools will be permitted except where
 - (i). the placement is part of a Government approved exchange programme with another state or
 - (ii). the school operates entirely without state support or
 - (iii). the parent has paid an immigration levy set by the Government as a means of recovering some or all of the costs of the child's education and the Department of Education and Skills has approved the

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placement either on an individual basis or via a general sanction for all placements.

Transitional Measures

(a) Unaccompanied children being placed in non-Fee paying schools.

Placements of unaccompanied children in non-fee paying schools will continue to be prohibited. However those who are already in the system (i.e. prior to the 2010-11 school year) will be permitted to remain on to the end of July 2011. Thereafter such placements would be liable to attract an immigration levy.

(b) Unaccompanied children being placed in fee paying schools

New placements will be permitted for the 2010-11 school year. Those who are already in the system will be permitted to remain on to the end of July 2012. Thereafter such placements would be liable to attract an immigration levy.

(c) Children of Students

The current policy whereby the children of persons who are themselves in Ireland as students (holding Stamp 2 or 2a) must attend a fee paying school is being continued. However all children who are already in the system will be permitted to remain on to the end of the parents course or to the end of July 2011 whichever is the earlier.

Explanatory Note: Prior to 1 January 2011 the current policy limiting placements to fee paying schools will continue. Placements of unaccompanied children in non fee-paying schools will continue to be prohibited.

Section G. Family Reunification

Initial Proposals in Summary

The original Consultation Paper as published in September 2009 reinforced the current practice that family reunification would in the main not be allowable for non-EEA students in Ireland. However, INIS prepared to recognise the value of some flexibility to the above policy and accordingly certain exemptions were outlined in the original document.

Result of Consultation Process

The Interdepartmental Committee agreed with the recommendations as outlined in the original Consultation Paper. Therefore there has been no substantial change to the recommendations as originally published.

The Committee considered the potential impact of students and permitted dependents to access State benefits as a significant issue in relation to Family Reunification. The Committee was of the view that as a matter of general principle all non-EEA students coming to Ireland should satisfy themselves of what means are required to support themselves before they travel. Also, given that the work concession allows non-EEA students to be self financing, it was considered reasonable to maintain the current restrictive approach with regard to non-EEA students seeking further assistance from the State. It is equally logical to seek to ensure that dependants of students who might give rise to significant State expenditure should only be admitted in limited circumstances and where on balance it is in the State's best interest for this to take place.

In this context and subject to the exemptions set out below, students will continue to have no rights of family reunification. Partners and spouses will be considered as applicants in their own right but cannot advance their application for entry or residence on the basis of their relationship to another student. Students will not be permitted to be accompanied or joined by children other than those born during their stay. Students will be informed of these conditions and also asked to confirm that they do not intend to be joined by dependents of any kind.

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- (R14) Exemptions from the above policy will be allowed where;
- (a) The student is pursuing a course at PhD level¹⁰ (NFQ 10). In these cases the student will be required to progress academically (verified by letter from academic supervisor) and to complete their doctorate within 4 years; or
 - (b) The student is a participant in an academic programme agreed between the Irish State and another state whereby the student and dependents are sufficiently well funded in respect of all expenses in Ireland, or where any such agreement provides an exemption; or
 - (c) The student can demonstrate private means on an annual basis at a level that clearly allows them to support themselves and their family without recourse to public funds and without engaging in employment and where children are accompanying the parent has paid an immigration levy set by the Government as a means of recovering the costs of the child's education; or
 - (d) The child is on a short visit to their parent(s) who can show special circumstances and can guarantee that the child will return home at the end of their holiday. Failure to comply with this condition could result in the termination of the parent's own permission on the basis that they had breached their immigration conditions.

In the case of points (b) and (c) above prospective students will be required to show that sufficient funding is guaranteed and in place to provide for both themselves and in respect of any family members accompanying the student.

- (R15) Permission to remain in the State for students will generally continue to be conditional on their ensuring that no claims for social welfare benefits are made on their own behalf or on behalf of any dependents accompanying them. Students will also continue to require private medical insurance. Breach of these fundamental conditions may render the student and any accompanying dependents liable to have their immigration permission terminated regardless of their course of study. This does not prejudice the position of the Health Service Executive and Department of Social Protection who have responsibility for deciding the eligibility criteria which

¹⁰ This cohort could be extended to target persons of high academic ability engaged in masters level courses of study considered to be of strategic importance to the State.

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will apply for such services, merely it reinforces the long established immigration position that non-EEA students should not have recourse to State services such as social welfare, medical cards or the free education scheme.

Students will continue to be required on registration to produce evidence of private medical insurance. Students registering for a second or any subsequent year will be required to produce a letter of medical insurance renewal from their insurance provider and where medical insurance has been purchased evidence of such.

Section H. Work Placements and Internship

Initial Proposals in Summary

The proposals as outlined in the Consultation Paper sought to strike a balance between study and work placement/internships as an integral part of that study. It proposed to permit work placement/internships at NFQ Level 7 or above subject to a maximum of 50% of study time (e.g. 2 years of a 4 year degree), the work placement/internship being integral to the course and at an appropriate level, adherence with rules regarding employment as set out by the Department of Enterprise, Trade and Innovation and colleges providing all necessary documentation outlining the detail of the course.

While it is accepted that there is a valid academic reason for work placements/internships, it is also a potentially problematic issue. It is obvious that unrestricted use of work placements as part of an academic programme would create an avenue to almost full-time work and a method of bypassing Ireland's employment permits regime. It is also open to exploitation of the worker who is dependent on the employer for their ultimate qualification.

Result of Consultation Process

Submissions received by the Committee welcomed the new proposals. For the main part these proposals will apply to the third level sector. The clarification regarding what is permissible in terms of length of work placements/internships, and, that non-EEA students are permitted to take part in work placements/internship programmes without a separate work permit, subject to the conditions outlined being met, will bring greater clarity to this area.

It should also be noted that the Committee did receive an interesting submission regarding the development of an Unpaid Internship Programme from the English language sector. The proposed new programme seeks to place English language students in matching internship programmes in high end companies such as Engineering, IT and Pharmaceutical Companies.

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Whilst the Committee considered that there is merit in the proposal, it was concerned at the lack of a direct linkage between the course objective and the work placement (i.e. work experience is not an academic component contributing to the final result). It considered that what was being offered to the student was more in the nature of two complementary modules. It should also be noted that currently there is scope for English language providers/students to avail of internships within the scope of the work concession i.e. English language schools are not precluded from securing a placement for students in an internship programme so long as the student does not breach the allowable working hours of the student work concession. In addition the Irish Naturalisation and Immigration Service is currently looking at developing a stand alone scheme for short term internship (for qualified students and high end employers). This needs careful consideration to ensure that the intern is not exploited nor used as a source of cheap labour or that an internship programme is not seen as a method of bypassing the employment permits regime. It also needs to be considered in the context of the student work concession. Nevertheless, proposals will be produced in the coming months on this and there is no difficulty in English Language providers becoming associated with the programme provided that the ultimate placement is in accordance with internship criteria to be developed. It is recognised that there is potential for marketing a package that combines work placement with developing language skills and the Immigration authorities will be available to progress this with the industry.

The recommendations in this review relate to internship as an integral part of a course at NFQ Level 7 or above (or in the case of certain named exceptions) and should be read as such. Other internship issues are being considered in the context of the stand alone internship scheme currently being developed by INIS.

In that context the committee is making the following recommendations in relation to work placement and internship.

- (R16) (a) Internships will be permitted only in courses at NFQ 7 and above. Certain named exceptions may be permitted in relation to EU-funded programmes ¹¹.

¹¹ For example, established Fáilte Ireland approved and certified training programmes, including those funded under the Leonardo, Comenius and Grundvig Grant Programmes.

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- (b) The internship or work placement component of the course cannot exceed 50% of the duration of the course. e.g. a 4 year course would permit 2 years of work placement. In addition the employment cannot be in a self employed capacity.
- (c) The employment will be subject to any requirements determined by the Department of Enterprise Trade and Innovation, in the area of employment rights, rates of pay or related to the operation of the labour market. This will be a matter for the Department of Enterprise, Trade and Innovation. The employment will also be subject to the relevant taxation requirements such as PAYE.
- (d) The colleges will need to furnish details of any courses on which internship is offered, setting out;
 - The qualification offered,
 - The duration of the course,
 - The length of the internship,
 - The proportion of the final credits allocated to the internship component,
 - An assurance that this course has students from Ireland or the EU (i.e. persons who do not need permission to work)
- (e) Work placements as part of an academic programme must form an integral part of the course as accredited and their completion contribute to the final award. Educational establishments must also ensure that the placements are appropriate to the nature and level of the academic programme being pursued.

Section I. Post Study Pathways and Integration with the Wider Immigration System

Initial Proposals in Summary

One of the difficulties identified in dealing with student immigration was the fact that it has been seen as a stand alone channel rather than a subset of the immigration regime as a whole. There is an identified need to integrate student migrants better into the overall immigration system.

With this in mind the Consultation Paper outlined the need for a greater emphasis in respect of graduate and post-graduate students on progressing the student not just through their education but beyond that. In such a context, matters such as post graduate internship, family reunification and, ultimately, access to long term residence could be re-examined to provide further incentives to students of high ability. The Consultation Paper also suggested that there was some scope for looking at some form of “scholar programme” which specifically targeted immigration incentives at persons of high academic capacity working in fields considered to be crucial to Ireland’s future economic development. The possibility of linking graduation at a high academic level with a programme of circular migration¹² could also be explored. The effectiveness of the existing graduate extension scheme could also be examined.

Result of Consultation Process

There was broad support for enhancing the incentive to high end students and it was argued that the current 6 month graduate extension scheme was insufficient.¹³ In some respects this concession is less favourable than that offered by some competitors and the Committee would accept that the 6 month period may be too restrictive, although it would point out that there is nothing to prevent a prospective graduate from commencing their employment seeking in advance of their final results. It also notes that there is considerable emphasis in the workplace on the acquisition of higher degrees. In many forms of employment a primary degree is no

¹² Circular Migration is an evolving form of immigration permission that envisages a migrant being able to divide his/her time between the country of origin and destination subject to certain rules. Ireland does not currently make provision for circular migration but the issue will be explored.

¹³ At present students who qualify at degree level can avail of a post-graduate concession whereby on completion of their degree they are given a further 6 months residence permission under student conditions in order to apply for an employment permit.

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longer sufficient and post graduate qualifications tend to become the norm for high skills entry.

The Committee gave considerable thought to this issue. It was clear that more needs to be done to provide incentives to students in the post graduate sector to encourage overseas students to go on to further study, in the knowledge that they will not only be more employable at the end of their studies but will have more time in which to seek employment. Similarly, although with less certainty the Committee accepts the case for an extension in the case of honours graduates at primary degree level. The Committee is therefore recommending that the 6 month extension be increased to 12 months for all students who obtain a post-graduate qualification (NFQ 9-10) or honours primary degree (NFQ 8) having been a full time student in Ireland. The existing 6 month scheme should be retained for those at NFQ 7. This recommendation is consistent with recommendations outlined in 'Innovation Ireland' - the Report of the Innovation Taskforce which was published in March 2010.

In addition to providing extra time incentives to graduates at NFQ Level 8 and above the issue of easing the income thresholds for graduates at these levels was also raised. However, the employment permit regime is essentially outside the remit of this exercise. Any suggestions made in this area have been passed to the Department of Enterprise, Trade and Innovation for their consideration.

It is also recognised that many start-up high-tech businesses, particularly in the United States, are formed by people who have just completed their studies. The Committee notes that the Department of Justice and Law Reform has been looking at ways of opening out its current business permission scheme to tap into the student resource. The Department intends as part of a general exercise in business facilitation and also building on any recommendations that emerge from the "Smart Economy" Initiative and the Innovation Taskforce, to develop a system for business evaluation that would allow for students and certain other categories of skilled migrants to move into the business world as entrepreneurs as well as employees. This is not a simple matter. A difficulty the Department has faced in the past is in evaluating the potential viability of a business. Capacity to undertake this sort of assessment is not part of the skill set of immigration personnel. What is required therefore is some form of validation process that involves people with business knowledge or experience looking at whether the prospective business has sufficient potential for the Department to give immigration permission. The Department will

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need to engage with either the relevant State agencies or look at some private sector involvement. The Committee endorses this approach and would urge the Department to advance this matter as soon as possible.

It must be clearly stated that what is envisaged here is not the creation of "brass plate" operations or registering companies merely in the hope of enhancing the immigration status of the people involved. The businesses have to be real and have potential. Similarly businesses that merely displace other traders but add nothing to the overall economy would not be envisaged. What we are looking for is start up companies that build on the study undertaken by the non-EEA national in an Irish third level institution.

Recommendations

(R17) To extend the current graduate concession by six months, to students who having studied in Ireland complete a qualification (NFQ 8-10) granted by an Irish Authority (overseas accreditation will not be accepted). This will afford students one year transition permission for the purpose of gaining relevant work experience, developing a business idea or seeking an employment permit. The person will be permitted to work for 1 year in any employment under the same conditions as a student on the same terms as during the academic holidays. A separate immigration category should be available to these persons.

(R18) At the end of the transition period the graduate would be required to progress to employment eligible for an employment permit or green card permit, be working as a researcher under the scheme operated by the Departments of Enterprise, Trade and Innovation and Justice and Law Reform¹⁴ or be engaged in a viable business which has passed a rigorous business evaluation process. The transition permission is not of itself renewable. It will not be permissible for that person to re-enter full time education.

The Department of Justice and Law Reform has indicated that it is open to looking at a system whereby further and more extended transition periods could be granted to students of exceptional academic achievement, in fields that are of strategic

¹⁴ Details can be found on the respective websites www.deti.ie and www.inis.gov.ie

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importance. Such a system would take some time to set up as there are many institutions of higher education and assessing one against the other is far from simple. However the general principle is that some additional effort should be made to retain particularly gifted students post graduation.

It should be noted that;

- (a) No family reunification would apply during the transition period unless it was already availed of through the concession available to a PHD student or the student otherwise met the conditions set out in Section G of this report.
- (b) Students must have sufficient resources to avoid becoming a burden on the State.
- (c) The current six month permission will remain for students who qualify at ordinary degree level (NFQ 7)

Section J. Visa Issues

Initial Proposal in Summary

The original proposal indicated two changes. First and most significant, the Consultation Paper as published proposed to introduce from 1 January 2011 a visa requirement for all students staying beyond 3 months. This proposal would also have considered whether there are any countries, by reference either to traditional two-way migration patterns or proven low risk, who may be exempted from this requirement¹⁵. The second proposal was to fast track visa applications for higher education students.

Result of Consultation process

The visa system is frequently commented upon and indeed a significant number of the submissions received during the consultation process made comments on the system. The contributions related both to the specific recommendations and also to the general operation of the visa regime. There was a good deal of criticism of the current regime in terms of procedures, refusal rates and turnaround times. There is also a good deal of ongoing media comment on the issue extraneous to the current process.

Given that many of the issues are of an operational nature, are more complex than may sometime appear, and need to be looked at to a level of detail that is not appropriate for this sort of report, the Committee feels that this is a matter best addressed directly by the Department of Justice and Law Reform. The Committee is therefore confining its recommendations to issues of broader policy. It notes that in parallel with this review the Department has undertaken its own analysis of the visa issue and has come up with a number of potentially beneficial proposals which should, if implemented improve matters. The Department's paper is available from the website www.inis.gov.ie.

¹⁵ The Irish visa system differs significantly from that of most other countries, including the UK. A visa exemption in the UK applies only to short term visitors (i.e. less than 6 months). For people who want to stay longer than that, a visa requirement is applied irrespective of nationality. Under the Irish system, countries are either visa required or they are not, irrespective of the proposed length of stay of its nationals.

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In terms of the Committee's own analysis, it is proposed to address the issue of the general visa requirement for students coming for more than 3 months. The consultation process provoked a mixed response on this issue. There was appreciation of the general desirability of bringing the visa system more into line with other countries, while at the same time, a number of contributors expressed concern that such a move would damage our competitiveness. The Department of Justice and Law Reform for its part has reconsidered the matter and is now of the view that if such a visa requirement or pre-clearance system was to be implemented it should be done across the board rather than applied solely to students. That is a much larger issue involving a restructuring of the Irish Immigration System generally. As such, it is beyond the scope of the current exercise. The Department is therefore willing to withdraw this recommendation. The Committee supports this action.

The initial proposals indicated that some work could be done in fast tracking higher education visas. There was general support for this proposal although providers outside this sector had understandable concerns that this could lead to a diminution of the service to their clients. What is proposed should not however have this effect.

- (R19) Visa Applications from Degree level Students should be fast tracked. The possibility of making greater use of online facilities for recording course placements and fee payment should be explored. Any fast tracking in this area should not have a negative impact on the service provided to applicants for other courses.

- (R20) The Immigration authorities should explore ways in which the existing student visa system can be enhanced. Understanding that there are elements of risk in any immigration process the possible use of pilot schemes should be explored to build mutual trust in new arrangements.

Section K. Information

Initial Proposal in Summary

The discussion document indicated that while there was explicit and detailed information on visa requirements, the entry requirements for non-visa required nationals and the residence conditions and entitlements of students needed to be set out much more clearly and in greater detail. This deficit must be addressed under the new regime.

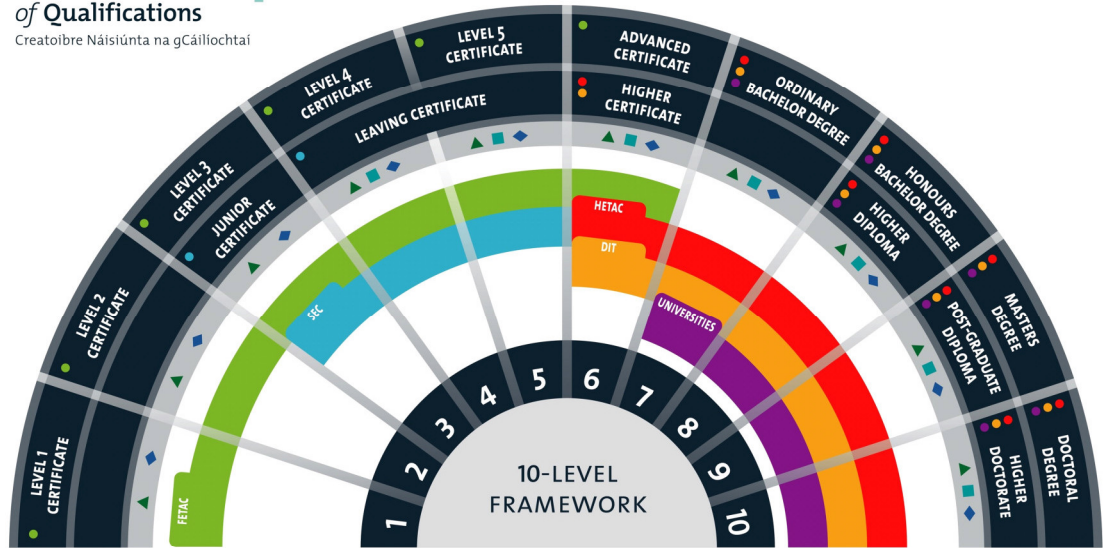
Result of Consultation process

There was general agreement to this in the consultation process and the original recommendations stand.

(R21) The immigration authorities will publish on its website detailed student guidelines in terms understandable to both immigration staff and students setting out the regime applicable to student immigration to Ireland. These details will cover not just the visa process as at present but also the terms and conditions applicable to students living in Ireland (whether or not visa required). Each student on registration should receive a fact sheet on the terms and conditions of student permission. Initially this would be in English but by 2011 versions in other languages should be made available. Information leaflets for strategically important countries will be fast tracked in order to facilitate and maximise marketing opportunities .

(R22) Where any State Agency or Department is promoting a scheme with overseas Governments, involving the migration of students to Ireland, they must consult in advance with the Irish Naturalisation and Immigration Service and other relevant Departments. The scheme should then be set out in writing and agreed by all parties so as to provide transparency for State authorities and students.

Appendix 1 – National Framework of Qualifications



KEY

- FETAC - Further Education and Training Awards Council
- SEC - State Examinations Commission (Department of Education & Science)
- HETAC - Higher Education and Training Awards Council
- DIT - Dublin Institute of Technology
- Universities

AWARDS IN THE FRAMEWORK

There are four types of award in the National Framework of Qualifications:

- Major Awards: are the principal class of awards made at a level
- ▲ Minor Awards: are for partial completion of the outcomes for a Major Award
- Supplemental Awards: are for learning that is additional to a Major Award
- ◆ Special Purpose Awards: are for relatively narrow or purpose-specific achievement

Appendix 2 : Interdepartmental Committee on non-EEA Student Immigration

In line with proposals outlined in the Consultation Paper as published, the Minister for Justice and Law Reform directed that an Interdepartmental Committee be established to review the submissions received as part of the Public Consultation process. This was to ensure that an all of government approach was taken to the issue of non-EEA student immigration. In that regard all Government Departments were invited to nominate representatives to participate on the group. Some departments did not participate as the issue would fall outside of their remit.

The basis for the discussions held by the Interdepartmental Committee was centred on the submissions received during the public consultation period. In that regard a folder containing all submissions as received was circulated to the Interdepartmental Committee as well as an overview document outlining the key points raised during the consultation process.

In total the Interdepartmental Committee met on three separate occasions on 21 October 2009, 16 November 2009 and 1 March 2010. Various bi-lateral meetings were also held with individual Departments.

The membership of the Interdepartmental Committee is set out below :

Chairman Mr. Kevin O'Sullivan	Irish Naturalisation and Immigration Service, Department of Justice and Law Reform
Ms. Margaret O'Connor	Irish Naturalisation and Immigration Service, Department of Justice and Law Reform
Mr. Phil O'Flaherty	Dept. of Education and Skills
Mr. Ray O'Leary	Dept. of Tourism, Culture and Sport
Ms. Gerri O'Sullivan	Dept. of Tourism, Culture and Sport
Ms. Geraldine Kelly	Dept. of Health and Children
Ms. Angela O'Farrell	Dept. of Foreign Affairs
Ms. Elizabeth McCullough	Dept. of Foreign Affairs

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Ms. Margaret Whelan	Office of the Revenue Commissioners
Mr. Brendan Ellison	Dept. of Finance
Mr. John Shaw	Dept. of the Taoiseach
Mr. Larry O'Grady	Dept. of Enterprise, Trade and Innovation
Mr. Brendan Shanahan	Dept. of Enterprise, Trade and Innovation
Ms. Ann Mulrennan	Dept. of Social Protection
Ms. Anne McManus	Dept. of Social Protection
Secretary Mr. Ian Kelleher	Irish Naturalisation and Immigration Service, Department of Justice and Law Reform

Appendix 3 - Some Practical Examples of the Transitional Arrangements

Registration expired prior to 1 January 2011

EXAMPLE 1

Student A - Is an English Language Student who is enrolled on a course. Student A has been registered in Ireland since October 2009 and is currently registered to 1 October 2010. This is the first year the student has been in Ireland.

Implications of the new regime

Student A will be permitted to enrol in a further English Language or a Further Education course for one year subject to the new regime regarding progression and attendance at the course.

At the end of that year the Student will be permitted to enrol in an English Language Course or a Further Education course for a maximum period of one year.

At that time they will be required to leave the State or to enrol in a degree level course at NFQ Level 7 or above.

Registration expired on or after 1 January 2011

(a) Language and non-Degree Programme

EXAMPLE 1

Student B - Is a Further Education Student who is enrolled on a 2 year further education course which began in April 2010. The student is registered to 1 April 2011 and has been in Ireland since 1 April 2009 and has also completed one year as an English Language Student.

Implications of the New Regime

Student B will be permitted to enrol for a further year to 1 April 2012. This will facilitate the completion of the Further Education Course.

At that time Student B will have been in the State for three years and will have been enrolled on courses below NFQ Level 7. Student B will only be allowed to enrol as a student in a course at NFQ Level 7 or above.

EXAMPLE 2

Student C - Is an English Language student who is registered up to 1 July 2011. Student C wishes to enrol on a Further Education course commencing in July 2011.

New Immigration Regime For Full Time Non-EEA Students

Student C has been present in Ireland since 1 July 2007 and has engaged in both English Language and Further Education courses.

Implications of the New Regime

Student C will not be permitted to enrol on any Further Education course. Under the new regime Student C will have completed three years on courses below NFQ Level 7. The Further Education course would constitute enrolment on a new course which is not allowable under the new regime.

Therefore, the only way Student C can remain in Ireland as a student will be as a higher education student enrolled on a course at NFQ Level 7 or above.

(b) Degree Programme Students (NFQ 7 +)

EXAMPLE 1

Student D - Is a higher education student enrolled on an Honours Degree course at NFQ Level 8. Student D has been in the State since 1 September 2004. During that time Student D has been enrolled on English language courses and Further Education courses. Student D began the Honours Degree course on 1 September 2009. The Degree course is a four year course.

Implications of the New Regime

Student D will have been in the State for 7 years on 1 September 2011 and will therefore have reached the maximum time allowable for a non-EEA student to be in the State.

However as Student D is enrolled on a course at NFQ Level 8 and will be beginning year two of that course in September 2010 Student D will be allowed to complete the course. Student D can (subject to the progression and attendance criteria being satisfied) therefore be registered on an annual basis to 1 September 2013.

If, at that time, Student D wishes to remain as a student then he/she must enrol on a course at a higher point on the NFQ scale i.e. in this example on a Masters, NFQ Level 9 or PhD course NFQ Level 10. Student D will not be permitted to enrol on a course at an equal or lower level to the latest course completed.

Alternatively Student D can also avail of the Student Graduate Scheme.

EXAMPLE 2

Student E- Is a higher education student enrolled on an Honours Degree course at NFQ Level 8. Student E has been in the State since 1 September 2002 and has exceeded the maximum time allowed for a student to be in the State under the new regime. Student E began the Honours Degree course on 1 September 2008. The Degree course is a four year course.

Implications of the New Regime

Student E will have been in the State for 7 years on 1 September 2009 and will therefore have reached the maximum time allowable for a non-EEA student to be in the State.

However as Student E is enrolled on a course at NFQ Level 8, and Student E will be beginning year three of that course in September 2010, Student E will be allowed to complete the course. Student E can (subject to the progression and attendance criteria being satisfied) be registered on an annual basis to 1 September 2012.

If Student E wishes to remain as a student then he/she must enrol on a course at a higher point on the NFQ scale i.e. in this example on a Masters, NFQ Level 9 or PhD, NFQ Level 10 course. Student E will not be permitted to enrol on a course at an equal or lower level to the latest course completed.

Student E can also avail of the Student graduate scheme.

Timed out Students

EXAMPLE 1

Student F - Is a Further Education Student who has been in the State since 1 March 2002. Student F is registered up to 1 March 2011. Student F will be completing the second year of the Further Education course in February 2011.

Implications of the New Regime

Student F - will in March 2011 - have been in the State for 9 years as a student. Under the new regime the maximum length of time a student can remain in the State is seven years (except where a student can satisfy the conditions set out in the earlier examples).

In this case Student F is not enrolled on year two or subsequent year of a course at or above NFQ Level 7 and also has completed two years of a further education course.

Student F has also exceeded the maximum time allowable to study in both the degree and non degree sectors. Therefore Student F will not be re-registered as a student.

Instead Student F can avail of a six month special extension to their permission which is available to all timed out students whose current immigration permission expires between 1 January 2011 and 31 June 2011. This 6 month permission¹⁶ is non renewable.

Student F will be allowed to work during their 6 months concession period on the

¹⁶ A temporary permit extending their student permission would be issued (on payment of the registration fee of €150) to cover their residence during this period.

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same terms as during the academic holidays. Their status will continue to be that of student for this six month period.



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DEPARTMENT OF JUSTICE AND LAW REFORM

Irish Naturalisation and Immigration Service

