

# Same-Sex Couples and Immigration Provisions in Ireland

GLEN - Gay and Lesbian Equality Network

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## Major Progress on Recognition of Same-Sex Couples in Irish Immigration Provisions

Major progress has been made in providing for recognition of same-sex couples in Irish immigration provisions. Same-sex civil partners are treated the same as opposite-sex married spouses and *de facto* same-sex couples are treated the same *de facto* opposite-sex couples<sup>1</sup>.

**1. Civil Partners.** The Irish Naturalisation and Immigration Service (INIS, the Government agency with responsibility for immigration policy and regulation) state that the immigration authorities will treat a same-sex civil partnership in the same way as a marriage. The INIS states that any references to marriage in their information notices or on their website in relation to provisions for immigration can be read as applicable in like manner to civil partnership. This is outlined on the [INIS website](#). [For full web addresses used throughout this document refer to the web version in the immigration section of the GLEN website [www.glen.ie](http://www.glen.ie)]

As a result of the Civil Partnership and Certain Rights of Cohabitants Act 2010, which was brought into effect on 1 January 2011, same-sex couples can now register as civil partners in Ireland which confers on them most of the rights and obligations of civil marriage.

A civil partner for immigration purposes is defined as:

- a) Either of the two persons of the same sex who are parties to a civil partnership registration carried out in Ireland in accordance with the Civil Partnership Act where the partnership has not been dissolved or is the subject of a decree of nullity. Since the commencement of the Act in January 2011, same-sex couples are entitled to register their civil partnerships in Ireland if they meet the requirements set out by the General Register Office (GRO) in their [information note on Civil Partnership](#).

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<sup>1</sup> While every effort has been made to ensure the accuracy of the information in this note GLEN disclaims any responsibility for any errors or misstatements. Specific advice should be sought where necessary.

- b) Either of the two persons of the same sex who are parties to a same-sex legal relationship outside of Ireland recognised as having the same legal effect in Ireland as civil partnership. The range of relationships so recognised, including same-sex marriage (for example, in Canada and Spain) or civil partnership partnership/unions with extensive legal provisions equivalent to Irish civil partnership (for example UK Civil Partnership) are set out in a [Ministerial order issued in December 2010](#). In a further [Ministerial Order in December 2011](#), a range of other foreign relationships were also recognised, including same-sex marriage in New York and civil union in Illinois.
2. **De facto same-sex partners:** Same-sex couples who are not registered as civil partners in Ireland and who are not in one of the foreign same-sex marriages/civil partnerships which are now legally recognised in Ireland but who are in a committed *de facto* relationship may be recognised by the Government immigration service INIS in provisions for *de facto* couples.

### Immigration implications for same-sex couples:

The implications of these changes in immigration will depend on your citizenship and that of your partner as follows:

1. If you are the same-sex civil partner or same-sex *de facto* partner of an Irish citizen and you are a citizen of a country outside the European Economic Area (EEA)<sup>2</sup> then see section (1) below.
2. If you are the same-sex civil partner or same-sex *de facto* partner of a European Union citizen (who is not an Irish citizen) then regardless of your own citizenship see section (2) below.
3. If you are a non-EEA citizen and your partner is also a non-EEA citizen then see section (3) below.

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<sup>2</sup> EEA includes member states of the European Union as well as Norway, Iceland and Liechtenstein. As Swiss nationals have similar free movement rights they can be regarded for immigration purposes as in the same position as EEA nationals.

## 1. Non-EEA (i) Same-sex civil partner, or (ii) *de facto* partner of an Irish Citizen

### (i) Civil Partners

Non-EEA same-sex partners of Irish citizens are entitled to apply for permission to reside in Ireland if they are in a civil partnership with their Irish partner or if they are in any of the legal relationships for same-sex couples outside of Ireland that are treated as civil partnerships in Ireland. (As stated above these include same-sex marriage and civil partnerships/civil unions where these are similar to Irish civil partnerships). Like marriage for opposite-sex couples, civil partnership does not confer an automatic right of residence in Ireland and the non-EEA civil partner must apply for permission to reside in Ireland.

*This means, for example, that an American (or Brazilian, Russian, South African or Chinese) same-sex civil partner or spouse of an Irish citizen is entitled to apply to live and work in Ireland on the basis of their relationships with their Irish partner.*

The INIS [note](#) that there are two routes in which a non EEA national can apply for permission to reside in the State on the basis of marriage or civil partnership with an Irish national.

**A).** You and your Irish national spouse/civil partner can attend at your local [Garda National Immigration Bureau](#) (GNIB) seeking permission to reside in Ireland on the basis of your civil partnership (or legal relationships recognised as Irish civil partnerships) if you are a **non visa required national** (i.e. a national of countries such as the US who does not need a visa for short term visits) who has entered the State legally within the last 90 days.

You can also present directly to your local GNIB with your Irish civil partner if you are a **visa required national** (from a country where you will need a visa for even a short-term stay) and you are within the period of permission to remain granted to you on arrival in the State:, or if you have current permission to remain the State on an alternative basis.

**If, however,** you are coming to Ireland from a visa required country to **join your Irish partner** and you have a marriage or partnership from another country which is recognised as an Irish civil partnership, you may apply for a

“D” Long-Stay visa stating that you are coming to Ireland to join your spouse/civil partner. Further information is available on the [Visa section of the INIS website](#).

**If, however,** you are coming to Ireland from a visa required country **to enter** a Civil Partnership you will apply for a "C" visa. If a "C" visa is issued to you it will permit you to enter the State - (subject to satisfying the immigration officer at port of entry) - and you may stay in the State up to a maximum of 90 days. Once the Civil Partnership ceremony has taken place you will need to apply to INIS to apply for change of status if you wish to reside in the State as a spouse/civil partner of an Irish. This process is required as you entered the State as a visitor and you are now seeking to reside here as the spouse/civil partner of an Irish national.

For further information see the section on [Spouse of an Irish National or Civil Partnership with an Irish National on the INIS website](#).

This process for a change of status takes approximately 6 months during which time you may remain in the State while your case is being considered. If you need to leave the State during this six month period and you are a visa required national you will need to apply for a visa to re-enter the State from abroad. When making your application abroad you may apply for a "D" long stay join spouse/civil partner visa.

**B).** If you are already in Ireland and do not have current permission to remain in the State, a written application must be made to the Spouse of Irish National Unit, Immigration Services Section, INIS. Further details, including the address of this INIS Section is available [here](#) on INIS website.

Permission to reside in Ireland on the basis of your civil partnership, if granted, will exempt you from work permit requirements. In other words you will be granted a Stamp 4 residence card and be permitted to participate in the Irish labour market without the requirement of a work permit. The permission is usually given for a temporary period of 12 months, which is renewable provided there is no change in circumstances.

More detailed information on permission to reside in Ireland as the spouse or civil partner of an Irish citizen is outlined on the [website of INIS](#).

**(ii) De Facto Partners**

If you are the non-EEA *de facto* partner of an Irish citizen (that is, in a committed relationship but not in a legal relationship recognised as a civil partnership in Ireland) you can apply to INIS for permission to reside in Ireland.

You must provide evidence of a “durable, attested relationship” with your Irish partner. You will be asked to provide evidence of identity and evidence of a two-year cohabiting relationship. When applying, *de facto* applicants are also usually required to submit evidence of private health insurance and the finances available to both partners.

The permission to reside in Ireland, if granted, will exempt the non-EEA partner from work permit requirements. In other words, you will be granted a Stamp 4 residence card and be permitted to participate in the Irish labour market without the requirement of a work permit.

If an applicant cannot satisfy the two-year cohabitation requirement but can show that they are in a genuine, committed, cohabiting relationship, the Minister may exercise discretion and grant a temporary residence permission on Stamp 3 (dependent) conditions (i.e. permission to live in Ireland, but not to work in Ireland), with permission to re-apply for a Stamp 4 when the two year requirement can be met.

More information on this application is available on [the De Facto Relationships section of the INIS website](#).

## 2. Same-Sex partner of a European Union (EU), EEA or Swiss national

The non-EEA partners of EU citizens wishing to move to Ireland with their partner may derive what are called [EU Treaty Rights](#) from the exercise by the EU citizen of their free movement rights. The EU Free Movement of Persons Directive 2004/38/EC governs this area and it was transposed into Irish law in 2006. This provides that the non-EEA same-sex partner of an EU citizen exercising free movement entitlements (for example, the EU citizen is moving within or to the EU for work or study) may be entitled to enter and reside in Ireland with their EU partner if:

**(i) Civil Partners:** they are in a registered partnership, recognised as equivalent to marriage, with the EU citizen. The Irish Immigration authorities recognise Irish civil partnership and a range of foreign legal same-sex relationships (see [list](#)) as equivalent to marriage for immigration purposes, or

**(ii) De Facto partners:** they are in a “durable relationship, duly attested” with the EU citizen.

*This means, for example, that the Brazilian same-sex partner of a French citizen may move to Ireland with their French partner, where their French partner is moving to Ireland to work or study. The Brazilian partner may be able to work in Ireland but only if the documentation furnished by the persons concerned to INIS satisfies the immigration officials as to the genuineness of the partnership. In that situation, Stamp 4 EUFam would be issued to the non-EEA partner who can work in Ireland without obtaining an employment permit.*

Nationals of **Norway, Iceland and Liechtenstein** (the non-EU states of the EEA) and **Swiss nationals** have free movement and work rights in Ireland equivalent to EU citizens. Certain non-EEA family members, including same-sex civil partners or *de facto* partners of those nationals, will be treated in the same way as those of EU citizens insofar as immigration matters are concerned.

The non-EEA partner should submit an [‘EU1 application’](#) to INIS as the family member of the EU/EEA/Swiss citizen. This form includes the category ‘partner’ in the section on your relationship to the EU/EEA/Swiss citizen. If approved for Stamp 4EUFam, the partner is entitled to work in Ireland without restriction *for an initial period of five years*.

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## **EU Treaty Rights and Irish Citizens**

The non-EEA partners of Irish citizens seeking to live in Ireland are not covered by the EU Free Movement of Person Directive 2004/38/EC unless:

1. The non EEA partner is seeking to move to another EU country with their Irish partner;  
or

2. The Irish partner is seeking to return to Ireland with their non EEA partner where they have already been living together in another EU country and their Irish partner has been exercising free movement entitlements.

For more information on the provisions of the Citizenship Directive and EU1 applications, see the EU Treaty Rights [section of the INIS website](#).

### 3. Non-EEA same-sex partner of a non-EEA national

The non-EEA same-sex partner of a non-EEA citizen who is living or coming to live in Ireland is entitled to seek permission to reside in Ireland on the basis of their relationship with the non-EEA national<sup>3</sup>.

*This means that, for example, the American partner of a American citizen from Boston moving to or living in Ireland (for example, on an intra-company transfer or Green Card employment permit) will be entitled to seek permission to move or live with this partner in Ireland on the basis of their relationship.*

The requirements for immigration will depend on whether the couple are legally recognised as civil partners or as a *de facto* couple.

#### **(i) Civil Partners.**

If the partners have registered as civil partners in Ireland or have entered into any legal same-sex relationship abroad that is recognised as a civil partnership in Ireland (see [list](#)), then they will be treated the same as opposite-sex spouses in all immigration schemes. For example, as with married spouses, the non-EEA civil partner of a Green Card holder can apply to live in Ireland with their partner but will have to obtain a spousal/dependant work permit in order to work in Ireland. See INIS [website](#) or the Department of Enterprise and Employment [Information](#) on Spousal or Dependent Work Permits.

#### **(ii) De facto Couple.**

If the couple is a *de facto* couple, then the partner seeking to stay with or join his or her partner in Ireland must be in a position to give evidence of a “durable attested relationship” of at least 4 years.

If permission is granted, the partner seeking to enter or stay in Ireland on the basis of their relationship will not be exempted from work permit conditions. In other words, in

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<sup>3</sup> Different family reunification rules may apply depending on the immigration status of the non-EEA national already resident.

order to take up work in the State the partner seeking to stay with or join their partner in Ireland must be in possession of a valid work permit/green card in their own right.

For more information see section on 'De Facto Relationship with non-EEA National at [the INIS website](#).

## Contacts

### **INIS ~ [Irish Naturalisation and Immigration Service.](#)**

The Irish Naturalisation and Immigration Service is an executive office of the Department of Justice and Equality. It was established in 2005 in order to provide a 'one stop shop' in relation to asylum, immigration, citizenship and visas. The INIS is responsible for administering the functions of the Minister for Justice and Equality in relation to asylum, immigration (including visas) and citizenship matters.

Contact details for the INIS are available on its [website](#)

### **GNIB ~ [Garda National Immigration Bureau.](#)**

The GNIB manages aspects of the immigration and residency system in Ireland including registration certificates (GNIB cards) for non-EEA citizens.

Contact details for the GNIB are available on its [website](#)

### **ICI ~ [Immigrant Council of Ireland](#)**

The Immigrant Council of Ireland (ICI) is an independent advocacy organisation for migrants. It's [Information and Referral Service](#) provides information about the immigration system for people who come to Ireland to visit, work, study or live. ICI is also an Independent Law Centre. The [Information and Referral Service](#) can be contacted by telephone on (01) 674 0200 on Mondays, Tuesdays, Thursdays and Fridays from 10am to 12.30pm and 2pm to 4.30pm.

Further details and information are available on the ICI [website](#).

### **GLEN ~ [Gay and Lesbian Equality Network](#)**

GLEN is a policy and strategy focussed organisation which aims to deliver ambitious and positive change for LGB people across a series of areas: legal recognition and support for [LGB relationships and families](#); [education](#); [immigration](#), [workplace diversity](#), [mental health](#); [physical and sexual health](#); [community safety](#) and [community capacity development](#).

GLEN has advocated strongly for the inclusion of same same-sex couples in Irish immigration law and regulations over the past five years.

Further information on GLEN is available at our [website](#).