

Immigration and Same-Sex Couples: Current Provision

GLEN - Gay and Lesbian Equality Network

December 2010

Major Progress on Recognition of Same-sex Couples in Irish Immigration Law and Regulations

Major progress has been made in providing recognition for same-sex couples in Irish immigration law and in immigration regulations. With the enactment of civil partnership legislation in July 2010, the Minister for Justice and Law Reform further committed to ensuring that same-sex couples who register their civil partnerships would be treated the same as married couples for immigration purposes. The Minister has acted on this commitment by tabling amendments to the Immigration, Residence and Protection Bill 2010 (which at the time of writing this information notes is at Committee Stage in the Dáil), which provide for equal treatment of married couples and civil partners in immigration law.

Recognition of same-sex couples in immigration law builds on the progress made in providing for recognition of de facto couples in immigration regulations since 2006. In particular:

- If you are the same-sex partner of an Irish national and you a citizen of a country from outside the countries of the European Economic Area (EEA) –EEA includes countries of the European Union as well as Norway, Switzerland and Liechtenstein - then see section (1) below.
- If you are the same sex partner of a European Union national (excluding Ireland) and a citizen of a country from outside the countries of the EEA then see section (2) below.
- If you are a citizen of country from outside the EEA – as noted, EEA includes countries of the European Union as well as Norway, Switzerland and Liechtenstein - and your partner is also a citizen of a country outside the EEA then see section (3) below.

1. Non EEA Same-sex partners of Irish nationals are now recognised in provisions for de facto couples

Since 2008, same-sex partners of Irish nationals who come from countries outside of the European Economic Area (EEA) - that is outside all European Union countries as well as Norway, Switzerland and Liechtenstein - are entitled to apply for permission to remain in Ireland if they are in a de facto relationship with their Irish partner for over two years.

This means for example, that the US, Canadian, Brazilian etc. same-sex partner of an Irish national can apply to the Irish Naturalisation and Immigration Service for permission to remain in Ireland if they are in a position to provide evidence of a “durable attested relationship” with their Irish partner of at least two years. The permission, if granted, will exempt the non-EEA partner from work permit requirements. In other words, the non-EEA partner will be able to participate in the Irish labour market on the same basis as a citizen

More information on this is available on the website of INIS, the Irish Naturalisation and Immigration Service (INIS) at: <http://www.inis.gov.ie/en/INIS/Pages/WP07000278>

2. Non EEA Same-Sex partners of European Union (EU) nationals are recognised in regulations arising from the EU Free Movement Directive

In April 2006, the EU Free Movement Directive was signed into Irish law. As a result, non-EEA same-sex partners of EU citizens residing or moving to reside in Ireland are entitled to seek permission to enter and reside in Ireland on the basis of “Treaty Rights” arising from the Free Movement Directive if they are in a “durable attested relationship” with their EU partner of at least two years.

This means for example, that a Brazilian, American, South African etc same-sex partner of an EU national (for example, from France or Lithuania) is entitled to seek permission from the Irish Naturalisation and Immigration Service (INIS) to live in Ireland on the basis of their same-sex partnership with this EU national. If granted, this permission would mean that the Brazilian or US partner will be exempt from work permit conditions and will be able to participate in the Irish labour market on the same basis as an Irish or EU citizen.

The EU Free Movement Directive applies to all EU citizens who move or reside in a Member State, other than that of which they are a national. In other words, an Irish person seeking to have his or her partner enter or remain in Ireland is not covered by the Free Movement Directive but they would be covered if they were moving to another EU country. This anomaly was largely addressed by the Irish immigration service in 2008 with the recognition of de facto partners of Irish nationals set out above.

For more information on provision under the Free Movement Directive see section on Treaty Rights on website of Irish Naturalisation and Immigration Service (INIS) at <http://www.inis.gov.ie/en/INIS/Pages/EU%20Treaty%20Rights>

3. Non EEA same-sex partners of non-EEA nationals recognised in provisions for De Facto Couples

Since 2008, the non EEA same-sex partner of an non EEA citizen living in Ireland is entitled to seek permission to remain in Ireland on the basis of their relationship with the non-EEA national¹. This means for example, that the US partner of a US citizen from Boston moving to or living in Ireland (for example, on an inter-company transfer) will be entitled to seek permission to move or live with this partner in Ireland on the basis of their relationship.

Unlike the partners of Irish or EU nationals, the partner in this case must be in a position to give evidence of a “durable attested relationship” of at least 4 years. Also, 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 order to take up work in the State the non EEA partner must be in possession of a valid work permit/green card.

For more information see section on ‘De Facto Relationship with non EEA National at <http://www.inis.gov.ie/en/INIS/Pages/WP07000278>

¹ Different family reunification rules may apply depending on the immigration status of the non-EEA national already resident.

For Further Information:

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, mental health; physical and sexual health; community safety and community capacity development. GLEN was a winner of a People of the Year award in 2010.

This year saw major civil rights reform for LGB people with the passing of the Civil Partnership Act, which provides most of the substantive rights and obligations of marriage for civil partners.

GLEN – Gay and Lesbian Equality Network
2 Exchange Street Upper
Dublin 8
t: +353 1 6728650
e: info@glen.ie
w: www.glen.ie