An Bille um Cheadanna Fostaíochta (Leasú), 2014

Employment Permits (Amendment) Bill 2014

Mar a tionscnaíodh

As initiated

[No. 36 of 2014]

AN BILLE UM CHEADANNA FOSTAÍOCHTA (LEASÚ), 2014
EMPLOYMENT PERMITS (AMENDMENT) BILL 2014

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AN BILLE UM CHEADANNA FOSTAÍOCHTA (LEASÚ), 2014
EMPLOYMENT PERMITS (AMENDMENT) BILL 2014

Bill

entitled

An Act to amend the Employment Permits Act 2003, to provide a defence to a foreign national in certain proceedings under that Act, to provide for civil proceedings to recompense certain foreign nationals for work done or services rendered in certain circumstances; to amend and extend the Employment Permits Act 2006; to make further provision for the grant of employment permits; to amend the Taxes Consolidation Act 1997; and to provide for related matters.

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL

Short title, collective citation, construction and commencement

1. (1) This Act may be cited as the Employment Permits (Amendment) Act 2014.

(2) The Employment Permits Acts 2003 to 2013 and this Act may be cited together as the Employment Permits Acts 2003 to 2014.

(3) The Employment Permits Acts 2003 to 2013 and this Act shall be construed together as one.

(4) This Act shall come into operation on such day or days as the Minister for Jobs, Enterprise and Innovation may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Interpretation

2. In this Act—

"Act of 2003" means the Employment Permits Act 2003;

"Act of 2006" means the Employment Permits Act 2006.

PART 2

AMENDMENT OF ACT OF 2003

Amendment of section 2 of Act of 2003

3. Section 2 of the Act of 2003 is amended by inserting the following subsection after subsection (3): 5

"(3A) It shall be a defence for a person charged with an offence under subsection (3) consisting of a contravention of subsection (1) to show that he or she took all such steps as were reasonably open to him or her to ensure compliance with subsection (1).".

Insertion into Act of 2003 of new section 2B 10

4. The Act of 2003 is amended by inserting the following section after section 2A:

"**Civil proceedings**

2B. (1) This section applies to a foreign national who, in contravention of section 2(1)—

(a) had entered the service of an employer in the State, or 15

(b) was in employment in the State,

without an employment permit granted by the Minister under section 8 of the Employment Permits Act 2006 that was in force and who is no longer in such service or employment.

(2) Where an employer referred to in section 2(1)(a) or, in the case of employment referred to in section 2(1)(b), a person referred to in section 2(1A)(a) or a contractor referred to in section 2(1A)(b)— 20

(a) has not paid a foreign national to whom this section applies an amount of money in respect of work done or services rendered during the period for which the foreign national was in the employment without an employment permit, or 25

(b) has paid an amount of money that was, having regard to the work done or services rendered during such period, an insufficient amount of money,

the foreign national or, in accordance with subsection (5), the Minister, may institute civil proceedings for an amount of money to recompense the foreign national for such work done or services rendered. 30

(3) Where, in proceedings under subsection (2), a court before which the proceedings are brought is satisfied that the foreign national took all steps as were reasonably open to him or her to comply with section 2(1), it may make an order that in recompense for such work done or services rendered an amount of money shall be paid to the foreign national by the employer who employed the foreign national, or, as the case may be, the person referred to in section 2(1A)(a) or the 35

contractor referred to in section 2(1A)(b).

(4) The amount of money to be paid, pursuant to an order under subsection (3), to a foreign national in recompense for work done or services rendered shall be—

(a) in a case where no amount of money was paid in respect of work done or services rendered during the period for which the foreign national was in the employment without an employment permit, an amount equal to the greater of—

(i) an amount calculated by reference to the national minimum hourly rate of pay, or

(ii) an amount equal to an amount of pay for the work done or services rendered which is fixed under or pursuant to any enactment, or

(b) in a case where an amount of money was paid in respect of work done or services rendered during the period for which the foreign national was in the employment without an employment permit, an amount equal to the difference between—

(i) the amount paid, and

(ii) an amount equal to the greater of—

(I) an amount calculated by reference to the national minimum hourly rate of pay, or

(II) an amount equal to an amount of pay for the work done or services rendered which is fixed under or pursuant to any enactment.

(5) The Minister may, at his or her discretion, institute civil proceedings under subsection (2) in the name, and on behalf, of the foreign national with the consent of that foreign national.

(6) The amount of money paid to a foreign national pursuant to an order under subsection (3) shall not be treated as reckonable emoluments within the meaning of the Social Welfare Consolidation Act 2005 for the purposes of that Act.

(7) In proceedings instituted by the Minister pursuant to subsection (5), the foreign national shall not be liable for costs but the court before which the proceedings are brought may order that any costs that might otherwise have been awarded against the foreign national shall be paid by the Minister.

(8) Subsection (5) shall not be in derogation of any right of a foreign national to institute proceedings under this section on his or her own behalf.”.

PART 3

AMENDMENT OF ACT OF 2006

Amendment of section 1 of Act of 2006

5. Section 1(1) of the Act of 2006 is amended—

(a) by inserting the following definitions: 5

" 'Act of 1963' means the Registration of Business Names Act 1963;

'Act of 1967' means Redundancy Payments Act 1967;

'Act of 1997' means the Taxes Consolidation Act 1997;

'Act of 2010' means the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010; 10

'civil partner' means a civil partner within the meaning of the Act of 2010;

'connected person' means a person carrying on business in the State and with whom a foreign national employed by a foreign employer is, pursuant to the employment with the foreign employer, to carry out duties for that person, or participate in a training programme provided by that person, and that person is— 15

(a) connected to the foreign employer by—

(i) ownership of, or by, the foreign employer, or

(ii) ownership of both the foreign employer and such person carrying on business in the State, by another person established outside the State, 20

or

(b) connected to the foreign employer in any other manner as may be specified in regulations under section 14; 25

'contractor' shall be construed in accordance with section 2(1A)(b) of the Act of 2003;

'contract service agreement' means the agreement referred to in section 2(1A)(b) of the Act of 2003;

'dependant' means a foreign national who— 30

(a) the Minister for Justice and Equality has determined is a dependant of a primary permit holder or a research project researcher,

(b) has, since he or she landed in the State, resided in the State on a continual basis,

(c) is not in full-time education, and 35

(d) resides with the primary permit holder or the research project researcher referred to in paragraph (a);

'Directive 2005/71/EC' means Council Directive 2005/71/EC[1] of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research;

'enterprise development agency' means Enterprise Ireland or the Industrial Development Agency (Ireland);

'exchange agreement' means an agreement, including an international agreement to which the State is a party, that provides for the reciprocal employment—

(a) of citizens, or certain citizens, in the state in which a contracting party is located, and

(b) in the State, of foreign nationals, or certain foreign nationals, of a contracting party;

'foreign employer' means a person carrying on business outside the State who employs a foreign national outside the State and requires the foreign national, pursuant to the employment outside the State, to carry out duties for, or participate in a training programme with, a connected person in the State;

'primary permit holder' means a foreign national to whom an employment permit in respect of the purpose referred to in section 3A(2)(a)—

(a) has been granted and is in force, or

(b) had been granted and has expired and following such expiration the foreign national has been given the permission referred to in section 2(10)(d) of the Act of 2003 to remain in the State and who is in employment in the State pursuant to the condition, referred to in section 2(10)(d) of the Act of 2003, of that permission;

'registered with the Revenue Commissioners' means registered with the Revenue Commissioners in accordance with regulations under section 986 of the Act of 1997;

'relevant person' means the person referred to in section 2(1A)(b) of the Act of 2003 with whom a contractor has made the contract service agreement;

'research project researcher' means a foreign national—

(a) who, pursuant to Directive 2005/71/EC, has been granted permission by the Minister for Justice and Equality to be in the State to carry out research pursuant to the Directive, or

(b) who, having been granted the permission referred to in paragraph (a), has been given the permission referred to in section 2(10)(d) of the Act of 2003 to remain in the State and who is in employment in the State pursuant to the condition, referred to in section 2(10)(d) of the Act of 2003, of that permission.",

1 OJ L 289, 3.11.2005, p.15.

(b) by deleting the definition of "application by a foreign national",

(c) in the definition of "employer", by deleting paragraph (b),

(d) in the definition of "public interest", by substituting the following paragraphs for paragraph (c):

"(c) the need to protect and strengthen the labour market, and 5

(d) supporting the economic growth of the State;",

and

(e) in the definition of "remuneration"—

(i) by substituting the following paragraph for paragraph (a):

"(a) any consideration, whether in cash or in kind, including any benefit-in-kind referred to in sections 118 and 121 of the Act of 1997, which the employee receives, directly or indirectly, from the employer in respect of the employment, and", 10

and

(ii) in paragraph (b), by substituting "or arrangement;" for "or arrangement.". 15

Insertion into Act of 2006 of new sections 3A, 3B, 3C, 3D, 3E and 3F

6. The Act of 2006 is amended by inserting the following sections after section 3:

"Different purposes in respect of which an employment permit may be granted

3A. (1) Subject to any requirement that this Act specifies is to be satisfied in respect of the grant of an employment permit, an employment permit granted under section 8 shall be granted in respect of a purpose specified in subsection (2). 20

(2) The purposes for which an employment permit may, subject to any requirement referred to in subsection (1), be granted are: 25

(a) to ensure that appropriately skilled foreign nationals with skills that are required—

(i) in enterprises in an economic sector that is of importance for the economic and social development of the State, and

(ii) in employments that are essential to the development and growth of those enterprises or economic sector, 30

and for which a high level of remuneration is paid are encouraged to become available for employment in the State, in such enterprises and employments and the Minister is satisfied that where such enterprises are unable to recruit such appropriately skilled persons, or there is a shortage of such persons, the inability to recruit or such shortage is likely to hinder— 35

(I) the development and growth of such enterprises, and

(II) the economic development of, and the development of industry, technology and enterprise in, the State and the services which support such development;

(b) to provide for the employment of a foreign national who is—

(i) the spouse or civil partner, referred to in section 3C(2), of a foreign national who has, or had, been granted an employment permit in respect of the purpose referred to in paragraph (a) and to certain dependants, referred to in section 3C(2), of that foreign national to whom an employment permit for that purpose has, or had, been granted, so as to encourage foreign nationals referred to in paragraph (a) to take up employment in the State, and

(ii) the spouse or civil partner, referred to in section 3C(3), of a research project researcher who, pursuant to Directive 2005/71/EC, has, or had, been granted the permission by the Minister for Justice and Equality to be in the State to carry out research pursuant to the Directive, and to certain dependants, referred to in section 3C(3), of that researcher so as to facilitate the carrying out of research in the State pursuant to that Directive;

(c) where the Minister is satisfied that a person in the State has been unable to recruit an employee for a vacancy for an employment, to provide for the recruitment of a foreign national who has the required knowledge and skills for the employment and, where appropriate, the qualifications and experience as may be required for that employment;

(d) to provide for a foreign national who is employed by a foreign employer outside the State to carry out duties for, or participate in a training programme provided by, a connected person in employments that—

(i) are the same, or substantially the same, employments in which the foreign national is employed, outside the State, by the foreign employer, or

(ii) require the foreign national to participate in such training programme,

where the foreign national is required, pursuant to his or her employment with the foreign employer, to carry out those duties for the connected person or participate in such training programme;

(e) in the case of a contract service agreement, to provide for the employment in the State of certain foreign nationals referred to in section 3E who are employed by a contractor, so that such foreign nationals may perform duties in the State that arise out of such contract service agreement;

(f) to provide for the employment in the State of a foreign national—

(i) to whom an employment permit had been granted and the permit is no longer in force,

(ii) who is not in employment, or in the service of an employer, in the State,

(iii) who has received permission from the Minister for Justice and Equality to be in the State for the purposes of making an application for an employment permit, and

(iv) in respect of whom an offer of employment has been made in respect of an employment for which an employment permit is required;

(g) to provide for the employment in the State of foreign nationals, to whom an exchange agreement, that is specified in regulations under section 14, applies in employments that are referred to in the exchange agreement or to which the exchange agreement applies;

(h) to provide for the employment in the State of foreign nationals who have the required knowledge and skills and, where appropriate, qualifications and experience as may be required, for the development and operation of sporting or cultural activities in the State;

(i) to provide for the employment in the State of a foreign national who is—

(i) a full-time student, including a post-graduate student, enrolled in a course of study in a third-level institution outside the State, and

(ii) accepted onto an internship programme in the State, for the purpose of gaining work experience, in respect of which he or she will be employed in the State,

and the internship programme is directly related to, and relevant to the completion of, the course of study concerned and at the end of the internship programme the foreign national is to return to that institution outside the State to complete that course of study.

Recommendation by enterprise development agency

3B. (1) An enterprise development agency may make a recommendation in writing to the Minister in respect of an application for—

(a) the grant of an employment permit, or

(b) the renewal of an employment permit referred to in section 20(11)(b),

that the employment permit that is the subject of the application be granted, or renewed, in respect of the employment concerned and to the foreign national concerned.

(2) The Minister shall have regard to a recommendation referred to in subsection (1).

(3) Nothing in subsection (2) shall be construed as requiring the Minister to grant or renew an employment permit on foot of a recommendation referred to in subsection (1).

Spouses, civil partners and certain dependants relating to section 3A(2)(b)

3C. (1) An application for an employment permit for the purpose referred to in section 3A(2)(b) may be made, under section 4, in respect of a foreign national referred to in subsection (2) or (3).

(2) An employment permit for the purpose referred to in section 3A(2)(b) may, subject to this Act, be granted, in accordance with section 8, to a foreign national who is—

(a) the spouse, civil partner or dependant of a primary permit holder and at the time the application for the employment permit is made—

(i) the employment permit granted to the primary permit holder is in force, and

(ii) that primary permit holder is in the employment specified in that employment permit,

or

(b) the spouse, civil partner or dependant of a primary permit holder and at the time the application for the employment permit is made the employment permit has expired and the primary permit holder is in employment in the State pursuant to the permission referred to in section 2(10)(d) of the Act of 2003 and the condition, referred to in that section, of that permission,

and such spouse, such civil partner or such dependant—

(i) has obtained permission to land, and reside, in the State by virtue of being the spouse, civil partner or dependant of a primary permit holder referred to in paragraph (a) or (b), and

(ii) is in the State pursuant to, and in compliance with, the permission referred to in paragraph (i) at the time the application for the employment permit is made.

(3) An employment permit for the purpose referred to in section 3A(2)(b) may, subject to this Act, be granted, in accordance with section 8, to a foreign national who is—

(a) the spouse, civil partner or dependant of a research project researcher and at the time the application for the employment permit is made—

(i) the permission granted, pursuant to Directive 2005/71/EC, to him or her by the Minister for Justice and Equality to carry out research in the State has not expired, and

(ii) the research project researcher is carrying out research pursuant to Directive 2005/71/EC, or

(b) the spouse, civil partner or dependant of a research project researcher and at the time the application for the employment permit is made the research project researcher is in employment in the State pursuant to the permission referred to in section 2(10)(d) of the Act of 2003 and the condition, referred to in that section, of that permission,

and such spouse, such civil partner or such dependant—

(i) has obtained permission to land, and reside, in the State by virtue of being the spouse, civil partner or dependant of the research project researcher referred to in paragraph (a) or (b), and

(ii) is in the State pursuant to, and in compliance with, the permission referred to in paragraph (i) at the time the application for the employment permit is made.

Period of employment of foreign nationals by foreign employer

3D. A foreign national referred to in section 3A(2)(d) shall be employed by the foreign employer concerned for a period that is not less than the minimum period of employment specified in regulations made under section 14 before an application for an employment permit may be made in respect of him or her.

Period of employment of foreign nationals by contractor

3E. A foreign national referred to in section 3A(2)(e) shall be employed by the contractor concerned for a period that is not less than the minimum period of employment specified in regulations made under section 14 before an application for an employment permit may be made in respect of him or her.

Consultation by Minister

3F. The Minister may, in the case of an application for an employment permit in respect of the purpose referred to in section 3A(2)(h), consult with any person who, the Minister is satisfied, has knowledge of or expertise in the sport or cultural activity concerned.".

Amendment of section 4 of Act of 2006

7. (1) Section 4 of the Act of 2006 is amended in subsection (1)—

(a) by inserting ", subject to subsection (3)," after "foreign national may", and

(b) in paragraph (b), by deleting "subject to subsection (3),".

(2) Section 4 of the Act of 2006 is amended—

(a) by substituting the following subsection for subsection (2):

"(2) In a case—

(a) where the application is made in respect of the purpose referred to in section 3A(2)(e), the application shall be made by the contractor concerned,

(b) where the application is made in respect of the purpose referred to in section 3A(2)(d), the application shall be made by the connected person concerned, or

(c) falling within section 2(1A)(c) of the Act of 2003, the application shall be made by the person party to the arrangement concerned.”, 5

(b) in subsection (3)—

(i) by substituting “An application under this section shall not be made” for “A foreign national may not make an application under this section in respect of his or her employment in the State”, and

(ii) by substituting “to a foreign national” for “to him or her”, 10

and

(c) by inserting the following subsections after subsection (3):

“(3A) An application—

(a) referred to in subsection (2)(a), shall be made in respect of the employment that is the subject of the contract service agreement, 15

(b) referred to in subsection (2)(b), shall be made in respect of the employment in the connected person, and

(c) in the case of the arrangement referred to in subsection (2)(c), shall be made in respect of the employment that is the subject of the arrangement, 20

and references in this Act to an offer of employment insofar as such references refer to an application referred to in paragraph (a), (b) or (c) shall be construed accordingly.

(3B) When making an application for the grant of an employment permit, the person making the application shall specify the purpose, referred to in section 3A(2), in respect of which the employment permit concerned may be granted. 25

(3C) An application under this section for an employment permit in respect of the purpose referred to in section 3A(2)(a) shall not be made unless the duration of the employment, in respect of which the application is made, is for a period of not less than 2 years.”. 30

(3) Section 4 of the Act of 2006 is amended by inserting the following subsection after subsection (4):

“(5) Where—

(a) an employment permit is in force immediately before the coming into operation of *section 6* of the *Employment Permits (Amendment) Act 2014*, 35

(b) following the coming into operation of *section 6* of the *Employment Permits (Amendment) Act 2014*, the spouse, civil partner or dependant of the foreign national to whom that permit 40

has been granted applies for an employment permit in respect of the purpose referred to in section 3A(2)(b), and

(c) the Minister is satisfied that having regard to the employment in respect of which the employment permit referred to in paragraph (a) has been granted, that permit would, had it been granted after the coming into operation of *section 6* of the *Employment Permits (Amendment) Act 2014*, have been granted in respect of the purpose referred to in section 3A(2)(a),

the foreign national to whom the employment permit referred to in paragraph (a) has been granted may be treated as the primary permit holder concerned—

(i) for the purposes of section 3C,

(ii) for the purposes of the application referred to in paragraph (b), and

(iii) where pursuant to such application an employment permit is granted under section 8, the grant of that employment permit.".

Application for employment permit: information to be provided

8. The Act of 2006 is amended by substituting the following section for section 6:

"**Application for employment permit: information to be provided**

6. An application for an employment permit shall—

(a) provide a full and accurate description of the employment in respect of which the application is made (the 'employment concerned') and the terms and conditions, including the hours of work in each week, and the duration, of the employment concerned,

(b) provide information in respect of the qualifications, skills, knowledge and experience that are required for the employment concerned,

(c) provide information and, where required, any relevant documents in respect of the qualifications, skills, knowledge or experience of the foreign national concerned,

(d) specify the place at or in which the employment concerned is to be carried out and, where the employment concerned is to be carried out in more than one place, specify each such place,

(e) specify the remuneration and any deductions, where agreed, for board and accommodation or either of them in respect of the employment concerned,

(f) in respect of the foreign national concerned—

(i) specify whether or not he or she has sought permission to land in the State on a previous occasion or has been in the State on a previous occasion without permission to land,

(ii) where he or she is in the State at the time of the application,

provide information and documents, where required by the Minister, relating to the permission granted to him or her to be in the State,

(iii) where he or she is in employment in the State at the time of the application, provide information and documents, where required by the Minister, relating to the permission granted to him or her to be in such employment, and

(iv) provide information as to whether he or she was at any time prior to such application in employment in the State and, where requested by the Minister, provide any information and documents relating to the permission granted to him or her to be in such employment, or, as the case may be, an employment permit granted in respect of that employment,

(g) provide such other information or documents—

(i) as may be prescribed, or

(ii) which the Minister may request and which, in the Minister's opinion, might materially assist in the making of a decision on the application,

and

(h) without prejudice to the generality of paragraph (g), provide information and documents, as the Minister may request, concerning the offer of employment referred to in section 4(3).".

Amendment of section 8 of Act of 2006

9. (1) Section 8 of the Act of 2006 is amended in subsection (1) by substituting "sections 3A, 10, 10A," for "sections 10,".

(2) Section 8 of the Act of 2006 is amended by substituting the following subsection for subsection (2):

"(2) The employment permit so granted shall operate to permit the employment in the State of the foreign national—

(a) in the employment specified in the application, and

(b) by—

(i) the person, specified in the application, who made the offer of employment,

(ii) in the case of an application referred to in section 4(2)(a), the contractor concerned,

(iii) in the case of an application referred to in section 4(2)(b), the connected person concerned, or

(iv) in the case of an application referred to in section 4(2)(c), the person party to the arrangement referred to in that section who made the application.".

(3) Section 8 of the Act of 2006 is amended in subsection (5) by—

(a) substituting "shall, subject to subsections (6) and (7)," for "for that purpose shall", and

(b) substituting "or on the date specified in such permit, as the date on which it is to come into force" for "or such longer period as may be specified by regulations under section 14".

(4) Section 8 of the Act of 2006 is amended by inserting the following subsections after subsection (5):

"(6) The period that shall be specified in an employment permit granted for the purpose referred to in section 3A(2)(b) shall be the lesser of—

(a) the period referred to in subsection (5), or

(b) the period beginning on the date of the grant of the permit or on the date specified in such permit as the date on which it is to come into force and ending on the date of the expiry of—

(i) the employment permit granted to the primary permit holder referred to in section 3C(2)(a),

(ii) the permission, referred to in section 3C(2)(b), given to the primary permit holder referred to in section 3C(2)(b) to remain in the State and be in employment in the State,

(iii) the permission referred to in section 3C(3)(a), given to the research project researcher referred to in section 3C(3)(a), or

(iv) the permission referred to in section 3C(3)(b), given to the research project researcher referred to in section 3C(3)(b) to remain in the State and be in employment in the State.

(7) The period that shall be specified in the employment permit granted in respect of the purpose referred to in—

(a) section 3A(2)(d), in respect of an employment referred to in section 3A(2)(d)(ii), or

(b) section 3A(2)(i),

shall not exceed 12 months.

(8) Where, during the period for which an employment permit is in force, there is a change of the employer in respect of the same employment specified in the employment permit, the Minister may, pursuant to a notification made by the holder of such employment permit in accordance with regulations under section 29, deem such employment permit to continue in force.

(9) Nothing in subsection (6) shall be construed as preventing the specification of a period, in accordance with subsection (5), that is less than the period specified in subsection (5) in an employment permit referred to in subsection (6) in circumstances other than those specified in subsection (6).".

Amendment of section 9 of Act of 2006

10. (1) Section 9(1) of the Act of 2006 is amended in paragraph (b) by deleting "(unless granted on foot of an application by a foreign national)".

(2) Section 9(2) of the Act of 2006 is amended—

(a) by substituting "shall specify the following information:" for "shall include the following information:", 5

(b) in paragraph (a), by deleting "if the permit has been granted other than on foot of an application by a foreign national,",

(c) by deleting paragraph (b),

(d) in paragraph (c), by substituting "section 23;" for "section 23; and", 10

(e) in paragraph (d), by substituting "to 2014; and" for "and 2006.", and

(f) by inserting the following paragraph after paragraph (d):

"(e) any other information that, in the opinion of the Minister, is appropriate.".

Amendment of section 10 of Act of 2006 15

11. (1) Section 10 of the Act of 2006 is amended by substituting the following subsections for subsection (2):

"(2) Subject to subsection (2A), an employment permit shall not be granted unless the Minister is satisfied that on the date the application for the employment permit was made 50 per cent or more of the employees of— 20

(a) the person who has made the offer of employment,

(b) in the case of an application referred to in section 4(2)(a), the contractor or the relevant person concerned,

(c) in the case of an application referred to in section 4(2)(b), the connected person concerned, or 25

(d) in the case of an application referred to in section 4(2)(c), the person party to the arrangement referred to in that section who made the offer of employment,

are nationals of any of the following: 30

(i) one or more Member States of the EEA;

(ii) the Swiss Confederation;

(iii) a combination of any of the states referred to in paragraphs (i) and (ii).

(2A) In the case of an application for an employment permit in respect of the purpose referred to in paragraph (a), (c) or (d) of section 3A(2), subsection (2) shall not apply to such application where— 35

(a) the person who has made the offer of employment or, as the case may be, the connected person has been registered with the Revenue Commissioners for a period not exceeding 2 years on the day the application is made,

(b) an enterprise development agency has made a recommendation referred to in section 3B in respect of that application, and

(c) the Minister is satisfied that, having regard to such recommendation, granting the employment permit that is the subject of the application concerned, will contribute to the further development of employment in the State.".

(2) Section 10(3) of the Act of 2006 is amended—

(a) by substituting "This section and section 10A are" for "This section is",

(b) by substituting the following paragraph for paragraph (a):

"(a) in respect of section 10A, supplementary to Regulation (EU) No. 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union[2],",

and

(c) in paragraph (b), by substituting "and are" for "and is".

Insertion into Act of 2006 of new section 10A

12. The Act of 2006 is amended by inserting the following section after section 10:

"**Establishing need for grant of certain employment permits**

10A. (1) This section applies to an application for an employment permit in respect of the purpose specified in section 3A(2)(c) or 3A(2)(e).

(2) Subject to subsections (4) and (5), the Minister shall not grant an employment permit to which this section applies unless the employment that is the subject of the application has been advertised in accordance with this section before it is offered to the foreign national in respect of whom the application is made.

(3) Before making an application for an employment permit to which this section applies—

(a) the person who makes the offer of employment concerned, or

(b) in the case of an application under section 4(2)(a), the contractor,

shall offer the employment in respect of which the application is made to—

(i) a citizen, or

(ii) a foreign national referred to in any of paragraphs (a) to (d) of section 2(10) of the Act of 2003 or a person entitled to be in employment in the State pursuant to the European Union

2 O.J.L141, 27.5.2011, p. 1.

(Accession of the Republic of Croatia) (Access to the Labour Market) Act 2013,

by advertising the employment concerned in accordance with regulations made under this section.

(4) Subsection (2) shall not apply to an application referred to in subsection (1) where— 5

(a) an enterprise development agency has made a recommendation referred to in section 3B in respect of the application, and

(b) the Minister is satisfied that, having had regard to such recommendation, granting the employment permit that is the subject of the application concerned, will contribute to the further development of employment in the State. 10

(5) Subsection (2) shall not apply to an application referred to in subsection (1) where—

(a) the Minister is satisfied that, having regard to section 15(1)(d), there is a shortage of the skills referred to in section 15(1)(d) required for that employment and the Minister has, in regulations made under section 14(7), specified the employment as an employment to which subsection (2) shall not apply, 15

(b) the application is made in respect of a foreign national to whom section 20B applies and is an application referred to in section 20B(4), or 20

(c) the application is made in respect of an employment—

(i) for a carer of a person with exceptional medical needs and—

(I) the foreign national, in respect of whom that application is made, has been providing care to the person before the application was made, and 25

(II) that person has developed a high level of dependence on that foreign national,

and 30

(ii) that is not specified in regulations under section 14 as an employment for which, or a category of employment in respect of which, an employment permit shall not be granted,

and the Minister is satisfied that having regard to the circumstances of that person and that foreign national, that it is not appropriate to advertise that employment. 35

(6) The Minister may make regulations under this section for the advertising of the employment that is the subject of an application referred to in subsection (1) and such regulations may provide for—

(a) the persons with whom an advertisement of such employment shall be placed, 40

(b) the duration of the period for the advertisement that the Minister considers is sufficient for affording an opportunity to citizens and the foreign nationals referred to in subsection (3)(ii) to respond to it,

(c) the publication of the advertisement, and different provision may be made for different classes of publication for any such advertisement including an advertisement made by electronic means and different provision may be made for advertising in the State and in any state referred to in section 10(2), and

(d) the procedure for and the manner in which the employment referred to in subsection (2) is to be advertised in the State or in any state referred to in section 10(2).

(7) Before advertising an employment for a purpose referred to in subsection (1) the person who makes the offer of employment, or, as the case may be, the contractor, shall ensure that the employment is specified in regulations under this Act as being an employment for which an employment permit may be granted.

(8) The Minister may make enquiries to satisfy himself or herself that the person referred to in subsection (3)(a) or the contractor referred to in subsection (3)(b) has complied with subsection (3).

(9) Section 10(3) applies to this section.".

Amendment of section 11 of Act of 2006

13. Section 11 of the Act of 2006 is amended in subsection (1)—

(a) by substituting the following paragraph for paragraph (b):

"(b) whether the knowledge and skills and, where appropriate, the qualifications and experience referred to in section 6(b) are required for, or relevant to, the employment concerned,",

(b) in paragraph (c)—

(i) by deleting "or, as the case may be, section 7", and

(ii) by substituting "the application," for "the application, and",

(c) in paragraph (d), by substituting "or paragraphs, and" for "or paragraphs.", and

(d) by inserting the following paragraph after paragraph (d):

"(e) the different purposes, specified in section 3A(2) for which an employment permit may be granted.".

Amendment of section 12 of Act of 2006

14. (1) Section 12 of the Act of 2006 is amended in subsection (1)—

(a) in paragraph (a) by inserting "or has failed to provide any information, documents or evidence required by or under this Act in respect of the application

within the period specified in regulations under section 29" after "(the 'application')",

(b) by substituting the following paragraph for paragraph (c):

"(c) the foreign national or the person who made the offer of employment, or in the case of an application referred to— 5

(i) in section 4(2)(a), the contractor or the relevant person,

(ii) in section 4(2)(b), the connected person, or

(iii) in section 4(2)(c), the person party to the arrangement referred to in that section who made the application,

has been convicted of an offence under this Act, the Act of 2003, 10 the Immigration Act 2004 or an enactment specified in Schedule 1, during the period of 5 years ending on the date of the application,",

(c) by inserting the following paragraphs after paragraph (i):

"(ia) the foreign national in respect of whom the application is made—

(i) has landed in the State with the permission of the Minister for 15 Justice and Equality but has not been given the permission referred to in section 2(10)(d) of the Act of 2003 by the Minister for Justice and Equality, and

(ii) was, on the date the application was made—

(I) employed by the person who made the offer of employment 20 that is the subject of the application, or

(II) employed by another person on that date,

without an employment permit or the permission referred to in section 2(10)(d) of the Act of 2003,

(ib) the foreign national in respect of whom the application is made had 25 been in employment in the State prior to the making of the application without an employment permit or permission of the Minister for Justice and Equality referred to in section 2(10)(d) of the Act of 2003,

(ic) the foreign national in respect of whom the application is made has 30 landed in the State with the permission of the Minister for Justice and Equality and that permission is granted on the condition that the foreign national concerned shall not be in employment in the State,",

(d) in paragraph (j), by substituting "standard working week remuneration," for 35 "standard working week remuneration, or",

(e) by substituting the following paragraph for paragraph (k):

"(k) the skills, knowledge, and where appropriate, qualifications and experience, referred to in section 6(b), are not required for, or relevant to, the employment concerned, or", 40

and

(f) by inserting the following paragraph after paragraph (k):

"(l) if he or she is satisfied that the foreign national concerned does not possess the qualifications, knowledge or skills for the employment concerned or the foreign national concerned does not have the appropriate level of experience required for the employment.". 5

(2) Section 12 of the Act of 2006 is amended by inserting the following subsections after subsection (1):

"(1A) The Minister may refuse to grant an employment permit where the application in respect of an employment that, having regard to the different purposes referred to in section 3A(2), does not fall within the purpose in respect of which the application was made or is an employment that is specified in regulations under section 14 in respect of a different purpose. 10

(1B) In the case of an application in respect of the purpose referred to in section 3A(2)(d)— 15

(a) the Minister shall, subject to subsection (1C), refuse to grant an employment permit if the Minister is satisfied that—

(i) without prejudice to subsection (1G)(a)(ii), the connected person is not engaged in substantive business operations in the State, 20

(ii) the foreign employer is not engaged in substantive business operations in the place, outside the State, in which it is established, or

(iii) the connected person is not connected with the foreign employer, 25

(b) the Minister may refuse to grant an employment permit if, in the opinion of the Minister, the connected person has not made appropriate arrangements—

(i) to provide appropriate accommodation and board (or either of them) for the foreign national during the period in which he or she is in the State to carry out duties for, or participate in a training programme provided by the connected person, or 30

(ii) to insure the foreign national in respect of illness or injury in order to provide for the foreign national should he or she become ill or is injured during the period in which he or she is in the State to carry out duties for, or participate in a training programme provided by the connected person, 35

or

(c) the Minister may refuse to grant the employment permit if he or she is satisfied that the carrying out of the duties, or the participation in the training programme, by the foreign national is not appropriate 40

to the requirements of the connected person.

(1C) Subsection (1B)(a)(i) shall not apply to the connected person where the connected person carrying on those business operations has been registered with the Revenue Commissioners for a period not exceeding 2 years on the date the application is made. 5

(1D) The Minister shall refuse to grant an employment permit in respect of the purpose referred to in section 3A(2)(e) where the Minister has reasonable grounds to believe that the foreign national concerned may not be employed by the contractor concerned during the period for which the employment permit is to be granted. 10

(1E) The Minister may refuse to grant an employment permit in respect of the purpose referred to in section 3A(2)(e) if, in the opinion of the Minister, the contractor has not made appropriate arrangements—

(a) to provide appropriate accommodation and board (or either of them) for the foreign national while he or she is in the State to perform the duties arising from the contract service agreement, or 15

(b) to insure the foreign national in respect of illness or injury in order to provide for the foreign national should he or she become ill or is injured during the period in which he or she is in the State to perform the duties arising from the contract service agreement. 20

(1F) In the case of an application for an employment permit for the purpose referred to in section 3A(2)(i), the Minister may refuse to grant an employment permit where—

(a) the Minister is satisfied that—

(i) the foreign national concerned is not a full-time student enrolled in a third-level institution outside the State, or 25

(ii) the internship programme on which the foreign national is accepted is not directly related to the subject matter of such course or the completion by the foreign national of such course,

or 30

(b) the Minister is satisfied there are reasonable grounds for believing that on completion of the internship programme, the foreign national may not return to the institution outside the State in which he or she is enrolled to complete the course of study concerned.

(1G) The Minister shall refuse to grant an employment permit where— 35

(a) the person who has made the offer of employment—

(i) is not registered with the Revenue Commissioners, and

(ii) where such person is carrying on a business, the Minister is satisfied that such person is not engaged in substantive business operations in the State, 40

or

(b) in the case of an application referred to in—

(i) section 4(2)(a), the contractor concerned is not registered with the Revenue Commissioners,

(ii) section 4(2)(b), the connected person is not registered with the Revenue Commissioners, or

(iii) section 4(2)(c), the person referred to in that section who made the application referred to in that section, is not registered with the Revenue Commissioners.

(1H) The Minister may refuse to grant an employment permit if he or she is satisfied that the person who made the offer of employment concerned—

(a) where such person is a company within the meaning of the Companies Acts, does not comply with any requirement relating to the registration of the company pursuant to those Acts,

(b) does not comply with any requirement relating to the registration of the business name of that person pursuant to the Act of 1963,

(c) where such person is a limited partnership referred to in the Limited Partnerships Act 1907, does not comply with any requirement relating to the registration of the limited partnership under that Act,

(d) where such person is an industrial and provident society within the meaning of the Industrial and Provident Societies Acts 1893 to 1978, does not comply with any requirement relating to the registration of the society pursuant to those Acts,

(e) where such person is a friendly society within the meaning of the Friendly Societies Acts 1896 to 1977, does not comply with any requirement relating to the registration of the society pursuant to those Acts, or

(f) where such person is a trade union within the meaning of the Trade Union Acts 1871 to 1990, does not comply with any requirement relating to the registration of that trade union under those Acts.

(1I) In the case of an application for the purpose referred to in—

(a) section 3A(2)(f), the Minister may refuse to grant an employment permit where—

(i) an employment permit in respect of that purpose had been granted and had expired before the application was made and no application for renewal was made in respect of that employment permit, and

(ii) the Minister is satisfied that it is in the public interest to refuse to grant the employment permit,

(b) section 3A(2)(h), the Minister may refuse to grant an employment

permit where, in accordance with section 3F, having consulted with a person referred to in section 3F, the Minister is satisfied that the employment that is the subject of the application concerned is not appropriate for the development and operation of sporting, or, as the case may be, cultural activities in the State,

(c) section 3A(2)(g), the Minister may refuse to grant an employment permit where the Minister is satisfied that—

(i) the exchange agreement concerned does not apply to the foreign national in respect of whom the application is made, or, without prejudice to subsection (3), the employment in respect of which the application is made, or

(ii) without prejudice to subsection (3), the employment in respect of which the application is made does not come within the exchange agreement,

and

(d) section 3A(2)(b), the Minister may refuse to grant an employment permit where, in the opinion of the Minister, the requirements of section 3C(2) or, as the case may be, section 3C(3) have not been met.".

(3) Section 12(2) of the Act of 2006 is amended by—

(a) substituting "Subsections (1) to (1I) are" for "Subsection (1) is", and

(b) substituting "sections 10 and 10A" for "section 10(2)".

(4) Section 12 of the Act of 2006 is amended by inserting the following subsection after subsection (2):

"(2A) Subsections (1A) to (1I) are without prejudice to subsection (1).".

(5) Section 12(3) of the Act of 2006 is amended by substituting "Subject to sections 20A(5) and 20B(5), the Minister shall" for "The Minister shall".

(6) Section 12(5) of the Act of 2006 is amended by—

(a) inserting "or withdrawn" after "refused", and

(b) inserting "or a person referred to in subsection (5A)" after "to the applicant".

(7) Section 12 of the Act of 2006 is amended by inserting the following subsection after subsection (5):

"(5A) An applicant referred to in subsection (5) may in the application made by him or her nominate a person to whom the portion of the fee is to be returned.".

Amendment of section 13 of Act of 2006

15. Section 13 of the Act of 2006 is amended—

(a) in subsection (2), by substituting "28 days" for "21 days",

(b) by inserting the following subsection after subsection (2):

"(2A) Where—

(a) following a decision to refuse to grant an employment permit—

(i) the Minister receives information or evidence relating to the application for the employment permit concerned, 5

(ii) the information or evidence is received within 28 days from the date the decision is notified under section 12 to the applicant, and

(iii) the applicant has not submitted the decision for a review, in accordance with subsections (1) and (2), 10

and

(b) the Minister, having considered such information or evidence, is satisfied that having regard to all the circumstances that it is appropriate to review that decision and to take such information or evidence into account in such review, the Minister— 15

(i) may direct that the decision to refuse to grant the employment permit concerned be reviewed under this section, and

(ii) where he or she so directs, shall notify the applicant of the review.",

(c) in subsection (3), by inserting "referred to in subsections (1) and (2A)" after "A review under this section of a decision", 20

(d) in subsection (4), by substituting "In the case of a review of a decision referred to in subsection (1), the person so appointed" for "The person so appointed", and

(e) by inserting the following subsection after subsection (4):

"(5) In the case of a review of a decision referred to in subsection (2A), the person so appointed, having taken into account the information or evidence referred to in that subsection and afforded the applicant for the employment permit concerned an opportunity to make representations in writing in relation to the matter, may— 25

(a) confirm the decision (and, if the person does so, shall notify such applicant in writing of the reasons for the confirmation), or 30

(b) cancel the decision and grant to the foreign national concerned the employment permit the subject of the application to which the review relates.".

Amendment of section 14 of Act of 2006 35

16. (1) Section 14 of the Act of 2006 is amended by substituting the following subsection for subsection (1):

"(1) The Minister may, having regard to sections 3A and 14A(1) and the matters specified in section 15, make regulations providing for a class

of employment permit for each purpose specified in paragraphs (a) to (i) of section 3A(2) and may, for each class of employment permit, provide for one or more of the matters specified in subsection (1A) and may, in such regulations, make different provision for such classes of employment permit and such matters in relation to different cases and different classes of cases and different circumstances or different classes of circumstances.”.

(2) Section 14 of the Act of 2006 is amended by inserting the following subsections after subsection (1):

“(1A) The matters referred to in subsection (1) are:

(a) the maximum number of employment permits that may be granted in respect of the purpose concerned or specified employments or categories of such employments and such employments or such categories may be provided for on the basis of one or more economic sectors into which they fall;

(b) the employments for which an employment permit may be granted and such employments may be provided for by reference to categories of employments for which an employment permit may be granted and by reference to one or more economic sectors into which they fall;

(c) the employments for which an employment permit shall not be granted and such employments may be provided for by reference to categories of employments for which an employment permit shall not be granted and to one or more economic sectors into which they fall;

(d) economic sectors in respect of which employment permits for any employment that falls into such sector shall not be granted;

(e) the minimum amount of remuneration that shall be payable in respect of an employment as a condition for the grant of an employment permit in respect of it, and the hourly rate for such minimum amount of remuneration shall be not less than the national minimum hourly rate of pay;

(f) the qualifications or skills that a foreign national, in respect of whom an application for an employment permit is made, is required to possess in order for a grant of the permit to be made;

(g) the minimum number of hours of work that are required to be worked in each week for an employment as a condition for the grant of an employment permit in respect of it;

(h) the minimum period of experience required for an employment, or a category of employment, as a condition for the grant of an employment permit in respect of it including different periods of experience by reference to different levels of remuneration;

(i) the minimum period for which an employment permit may be

granted.

(1B) Without prejudice to the generality of subsection (1A)(e), when specifying the minimum amount of remuneration, pursuant to that subsection, that shall be payable in respect of an employment as a condition for the grant of an employment permit in respect of it, the Minister may specify—

(a) a minimum annual remuneration which shall be the minimum amount of remuneration to be paid to a foreign national for 39 hours of work in each week for 52 weeks,

(b) the minimum hourly rate for the minimum annual remuneration referred to in paragraph (a) that shall be payable where the hours of work for an employment or category of employment exceed 39 hours, and

(c) a minimum hourly rate for remuneration other than that referred to in paragraph (a) or (b),

in respect of any class of employment permit, employment or category of employment, and may, without prejudice to the generality of subsection (1), make different provision for any such class, employment or category in relation to different cases and different classes of cases and different circumstances or different classes of circumstances.

(1C) The Minister may in regulations under subsection (1), when providing for the class of employment permit for—

(a) the purpose referred to in section 3A(2)(a), make different provision for a foreign national to whom section 20A applies, and

(b) the purpose referred to in section 3A(2)(c), make different provision for a foreign national to whom section 20B applies,

and may make different provision for such foreign nationals in respect of any matter to be provided for under subsection (1A) and without prejudice to subsections (1) and (1B), when providing for remuneration under subsection (1A)(e), such provision may include different amounts of remuneration in respect of such class or any employment or category of employment and different provision may be made for different cases in relation to different classes of cases and different circumstances or different classes of circumstances.

(1D) When making regulations under subsection (1) in respect of the class of employment permit provided under that subsection for the purpose referred to in section 3A(2)(g), the Minister, in addition to providing for any of the matters specified in subsection (1A) for that class of employment permit—

(a) shall specify in those regulations each exchange agreement in respect of which an employment permit may be granted, and

(b) may, without prejudice to subsections (1) and (1A), specify the

employments referred to in that exchange agreement, or to which that exchange agreement applies, in respect of which an employment permit may be granted for that class of employment permit,

and when specifying the exchange agreement may, without prejudice to subsection (1), make different provision for such different exchange agreements in relation to different cases and different classes of cases and different circumstances or different classes of circumstances.

(1E) In regulations under subsection (1) in relation to any class of employment permit or any matter specified under subsection (1A), the Minister may, when providing for any such class or matter, make provision in respect of a recommendation referred to in section 3B, and may, in respect of such recommendation, make different provision for such classes or such matter in relation to different cases and different classes of cases and different circumstances and different classes of circumstances.

(1F) When specifying in regulations under subsection (1) the qualifications, referred to in subsection (1A)(f), of a foreign national, the Minister may provide, in respect of such qualifications, for one or both of the following:

(a) a requirement that the foreign national be registered with—

(i) a regulatory body, or

(ii) any Minister of the Government regulating the entry to or carrying on of any profession or employment in the State;

(b) a requirement that the qualifications of a foreign national be recognised by—

(i) a regulatory body, or

(ii) any Minister of the Government regulating the entry to or carrying on of any profession or employment in the State.

(1G) The Minister may, in regulations under subsection (1), provide for the names of the different classes of employment permits provided for under that subsection.".

(3) Section 14(2) of the Act of 2006 is amended—

(a) by substituting "having regard to section 3A, each of the purposes referred to in paragraphs (a) to (i) of section 3A(2), section 14A and" for "having regard to, and only to,",

(b) by substituting "may also, for each class of permit provided for under subsection (1), include" for "may also include either or both of the following",

(c) in paragraph (a)—

(i) by substituting "subsections (1) to (1G) and (5) to (7)" for "subsection (1)(a), (b), (c), (d) or (e)", and

(ii) by deleting "in the period concerned",

and

(d) by deleting paragraph (b).

(4) Section 14 of the Act of 2006 is amended by substituting the following subsection for subsection (3): 5

"(3) Where regulations under subsection (1) are in force, the relevant powers of the Minister under this Act in relation to employment permits shall, subject to this Act, be exercised subject to, and in accordance with, those regulations.".

(5) Section 14(4) of the Act of 2006 is amended by deleting ", during a period such as is referred to in subsection (3),". 10

(6) Section 14 of the Act of 2006 is amended by inserting the following subsections after subsection (4):

"(5) The Minister may, having regard to paragraphs (d) and (e) of section 3A(2), section 14A and the matters specified in section 15, make regulations specifying— 15

(a) the minimum period of employment for which a foreign national referred to in section 3D is employed with the foreign employer before an application for an employment permit may be made in respect of him or her, which period shall be not less than 1 month, and 20

(b) the minimum period of employment for which a foreign national referred to in section 3E is employed by the contractor before an application for an employment permit may be made in respect of him or her, which period shall be not less than 1 month. 25

(6) The Minister may, having regard to the purpose referred to in section 3A(2)(d), make regulations specifying the manner in which a connected person is connected to a foreign employer and may make different provision for different connected persons and different foreign employers in relation to different cases and different classes of cases and different circumstances or different classes of circumstances. 30

(7) Where—

(a) the Minister is satisfied that, having regard to section 15(1)(d), there is a shortage of the skills referred to in section 15(1)(d), and 35

(b) those skills are required for an employment, or a category of employment, specified in regulations under this section as an employment or a category of employment for which an employment permit may be granted in respect of the purpose referred to in paragraphs (c) or (e) of section 3A(2), 40

the Minister may specify in regulations under this section the employments or categories of employments to which section 10A(2)

shall not apply—

(i) in respect of—

(I) an employment, and

(II) a category of employment or an employment falling into a category of employment, 5

specified in regulations under this section as employments or categories of employment for which an employment permit may be granted for the purpose referred to in section 3(2A)(c), and

(ii) in respect of—

(I) an employment, and 10

(II) a category of employment or an employment falling into a category of employment,

specified in regulations under this section as employments or categories of employment for which an employment permit may be granted for the purpose referred to in section 3(2A)(e). 15

(8) In this Act, 'regulatory body' means a body which is concerned with regulating the entry to or the carrying on of, a profession or an employment in the State and includes a body established by or under any enactment.".

Insertion into Act of 2006 of new section 14A 20

17. The Act of 2006 is amended by inserting the following section after section 14:

"**Remuneration relating to employments**

14A. (1) When specifying, in regulations made under section 14, an amount of remuneration for an employment or a category of employment, the Minister may have regard to the amounts of remuneration paid in 25 respect of different employments and categories of employment and may take into account any other benefits provided by employers to employees in those employments or categories.

(2) Where—

(a) regulations under section 14 specify a minimum annual 30 remuneration referred to in section 14(1B)(a) that shall be payable in respect of an employment as a condition for the grant of an employment permit, and

(b) the number of hours of work in each week for an employment in respect of which an employment permit may be granted as a 35 condition for the grant of an employment permit in respect of it is—

(i) less than 39 hours in each week, the minimum annual remuneration specified in regulations under section 14 in respect of an employment as a condition for the grant of an 40

employment permit for that employment shall not be reduced in accordance with the lesser number of hours to be worked in each week, or

(ii) greater than 39 hours in each week, the minimum annual remuneration specified in regulations under section 14 in respect of an employment as a condition for the grant of an employment permit for that employment shall be increased in proportion to the minimum hourly rate specified for the employment concerned in accordance with the number of hours, or any portion of an hour, that exceed, or exceeds, 39 hours.”.

Amendment of section 15 of Act of 2006

18. (1) Section 15(1) of the Act of 2006 is amended—

(a) in paragraph (a) by—

(i) inserting “, experience” after “qualifications”, and

(ii) deleting “in the period to which the regulations concerned under section 14 will relate (the ‘relevant period’)”,

(b) in paragraph (c) by—

(i) inserting “, experience” after “qualifications”, and

(ii) deleting “in the relevant period”,

and

(c) in paragraph (d) by—

(i) deleting “during the relevant period,”, and

(ii) inserting “, experience” after “qualifications”.

(2) Section 15 of the Act of 2006 is amended by substituting the following subsection for subsection (2):

“(2) References in subsection (1) to qualifications, experience or skills are references to qualifications, experience or skills of employees.”.

Amendment of section 16 of Act of 2006

19. Section 16 of the Act of 2006 is amended in subsection (1)—

(a) in paragraph (b), by inserting “the Act of 2003, the Immigration Act 2004 or an enactment specified in Schedule 1,” after “this Act,”, and

(b) by inserting the following paragraphs after paragraph (d):

“(da) in the case of an employment permit granted for the purpose specified in section 3A(2)(b)—

(i) the primary permit holder referred to in section 3C(2)(a) has been redundant within the meaning of section 7(2) of the Act of 1967 for a period exceeding 6 months,

(ii) the employment permit granted to the primary permit holder referred to in section 3C(2)(a) has been revoked, or

(iii) the primary permit holder referred to in section 3C(2)(b) or the research project researcher referred to in section 3C(3)(b) no longer has the permission referred to in section 2(10)(d) of the Act of 2003,

(db) in the case of an employment permit granted in respect of the purpose specified in section 3A(2)(d), in the opinion of the Minister the connected person has failed to—

(i) provide appropriate accommodation and board (or either of them) for the foreign national while he or she is in the State to perform duties for, or participate in a training programme provided by, the connected person, or

(ii) insure the foreign national in respect of illness or injury in order to provide for the foreign national should he or she become ill or is injured during the period in which he or she is in the State to perform duties for, or participate in a training programme provided by, the connected person,

(dc) in the case of an employment permit granted in respect of the purpose specified in section 3A(2)(e), in the opinion of the Minister the contractor has failed to—

(i) provide appropriate accommodation and board (or either of them) for the foreign national while he or she is in the State to perform the duties arising from the contract service agreement concerned, or

(ii) insure the foreign national in respect of illness or injury in order to provide for the foreign national should he or she become ill or is injured during the period in which he or she is in the State to perform the duties arising from the contract service agreement concerned,

(dd) the foreign national is not, in the opinion of the Minister—

(i) employed in the employment specified, in accordance with section 9(2), in the employment permit, or

(ii) employed by the person referred to in section 8(2)(b)(i), or, as the case may be, the contractor referred to in section 8(2)(b)(ii), the connected person referred to in section 8(2)(b)(iii) or the person referred to in section 8(2)(b)(iv),

(de) in the opinion of the Minister, the remuneration paid to the foreign national is less than the national minimum hourly rate of pay,

(df) without prejudice to paragraph (de), in the opinion of the Minister, the remuneration paid to the foreign national, during the period for which the employment permit has been in force, is less than the remuneration stated, pursuant to section 9(2), in the employment

permit, or the deductions referred to in section 9(2), stated pursuant to that section in the employment permit, were different to the deductions made by the employer,".

Amendment of section 19 of Act of 2006

20. Section 19 of the Act of 2006 is amended— 5

(a) in subsection (1) by deleting "(other than on foot of an application by a foreign national)", and

(b) in subsection (2) by substituting the following paragraph for paragraph (c):

"(c) use the employment permit to enter into a contract of employment in respect of an employment other than the employment in respect of which it has been granted.". 10

Amendment of section 20 of Act of 2006

21. (1) Section 20 of the Act of 2006 is amended—

(a) in subsection (1) by—

(i) substituting "Subject to subsection (1A), the Minister" for "The Minister", and 15

(ii) deleting "on application of the employer or, if the permit was granted on foot of an application by a foreign national, the holder of it,",

(b) by inserting the following subsection after subsection (1):

"(1A) An employment permit granted in respect of the purpose referred to in— 20

(a) section 3A(2)(d) in respect of an employment referred to in section 3A(2)(d)(ii), and

(b) section 3A(2)(i),

shall not be renewed.", 25

and

(c) by inserting the following subsection after subsection (2):

"(2A) An application for the renewal of an employment permit—

(a) may be made by the holder of the employment permit concerned or the employer, or 30

(b) where the application for the grant of the employment permit was made—

(i) in accordance with section 4(2)(a), in respect of an employment referred to in subsection (3B) shall be made by the contractor concerned, 35

(ii) in accordance with section 4(2)(b), in respect of an employment

referred to in subsection (3A) shall be made by the connected person concerned, or

(iii) in accordance with section 4(2)(c), shall be made by the person referred to in section 4(2)(c).".

(2) Section 20(3) of the Act of 2006 is amended by— 5

(a) substituting "subsections (3A), (3B), (4), (11)(b), (12) and (13)" for "subsection (4)", and

(b) deleting "or such longer period as may be specified in regulations under section 14".

(3) Section 20 of the Act of 2006 is amended by inserting the following subsections after subsection (3): 10

"(3A) In the case of the renewal of an employment permit granted in respect of an employment referred to in section 3A(2)(d)(i), where the Minister is satisfied that the duties to be carried out for the connected person will not be completed on the date of the expiration of the permit that is the subject of the application for renewal, such permit may, in accordance with this section, be renewed for the period referred to in subsection (3) or where the remaining period in which those duties are to be completed is less than the period referred to in subsection (3), it shall be renewed for the lesser period. 15 20

(3B) In the case of the renewal of an employment permit granted in respect of the purpose referred to in section 3A(2)(e), where the duties to be performed in the State, pursuant to the contract service agreement will not be completed on the date of the expiration of the permit that is the subject of the application for renewal, such permit may, in accordance with this section, be renewed for the period referred to in subsection (3) or where the remaining period in which those duties are to be completed is less than the period referred to in subsection (3), it shall be renewed for the lesser period.". 25

(4) Section 20(4) of the Act of 2006 is amended by substituting "Subject to subsection (4B), if, at the date" for "If, at the date". 30

(5) Section 20 of the Act of 2006 is amended by inserting the following subsections after subsection (4):

"(4A) The person making the application for the renewal of an employment permit shall provide information, documents and evidence as may be prescribed in respect of the renewal of an employment permit. 35

(4B) Subsection (4) shall not apply to the renewal of an employment permit referred to in subsections (3A), (3B) and (13).".

(6) Section 20 of the Act of 2006 is amended—

(a) in subsection (6)(a) by deleting "or 7, as appropriate", and 40

(b) in subsection (8) by substituting "Sections 10, 11, 12 and 13" for "Sections 11 to 13".

(7) Section 20 of the Act of 2006 is amended by inserting the following subsection after subsection (8):

"(8A) In addition to, pursuant to subsection (8), the grounds specified in section 12 for refusing an application for renewal, the Minister may refuse to renew an employment permit if— 5

(a) the foreign national is not, in the opinion of the Minister—

(i) employed in the employment specified, in accordance with section 9(2), in the employment permit, or

(ii) employed by the person referred to in section 8(2)(b)(i), or, as the case may be, the contractor referred to in section 8(2)(b)(ii), 10 the connected person referred to in section 8(2)(b)(iii) or the person referred to in section 8(2)(b)(iv),

(b) in the opinion of the Minister, the remuneration paid to the foreign national, during the period for which the employment permit has been in force, is less than the remuneration stated, pursuant to 15 section 9(2), in the employment permit or the deductions referred to in section 9(2), and stated, pursuant to that section, in the employment permit, were different to the deductions made by the employer, or

(c) the foreign national has spent a continuous period of not less than 3 20 months outside the State during the period for which the employment permit has been in force that was not connected to his or her employment.".

(8) Section 20(9) of the Act of 2006 is amended by inserting the following paragraph after paragraph (a): 25

"(aa) in respect of section 10, construing references to—

(i) the date of the application for an employment permit as references to the date of the application for the renewal of an employment permit, and

(ii) the person who made the offer of employment as references to 30 the employer of the foreign national in respect of whom the application for the renewal of an employment permit is made.".

(9) Section 20 of the Act of 2006 is amended by inserting the following subsections after subsection (9):

"(10) Notwithstanding the application, under subsection (8), of section 12 to 35 the renewal of an employment permit, the Minister may, notwithstanding section 12(3), renew an employment permit in respect of an employment that—

(a) at the date of the grant of such permit was an employment, specified in regulations under section 14, in respect of which an 40 employment permit may have been granted or fell within a category of employment specified in regulations made under section 14 for

which an employment permit may have been granted, and

(b) at the date of the application for the renewal, is an employment, or falls within a category of employment, specified in regulations made under section 14 as an employment or category of employment for which an employment permit shall not be granted. 5

(11) Where an application is made for the renewal of an employment permit granted in respect of the purpose specified in paragraph (c) or (d) of section 3A(2) and section 10(2A) applied in respect of such grant and, on the date the application for such renewal was made, 50 per cent or more of the employees of the employer or, as the case may 10 be, the connected person, are not nationals referred to in section 10(2), the Minister shall not grant the renewal of the permit concerned unless—

(a) an enterprise development agency has made a recommendation referred to in section 3B in respect of that application, and 15

(b) the Minister is satisfied that, having regard to such recommendation, renewing the employment permit concerned will contribute to the further development of employment in the State,

and where the employment permit concerned is renewed, the period 20 for which the employment permit is renewed shall not exceed 1 year.

(12) Where a subsequent application is made for the renewal of an employment permit that was last renewed in accordance with subsection (11)(b), the Minister shall not renew the employment permit unless 50 per cent or more of the employees of the employer, 25 or, as the case may be, the connected person, are nationals referred to in section 10(2) and where, pursuant to that subsequent application, the employment permit concerned is renewed, the period for which it is renewed shall not exceed 2 years.

(13) The period for which an employment permit granted for the purpose 30 referred to in section 3A(2)(b) may, under subsection (3), be renewed shall be the lesser of—

(a) the period referred to in subsection (3), or

(b) the period beginning on the date on which the employment permit is to be renewed and ending on the date of the expiry of— 35

(i) the employment permit granted to the primary permit holder referred to in section 3C(2)(a),

(ii) the permission, referred to in section 3C(2)(b), given to the primary permit holder referred to in section 3C(2)(b) to remain in the State and be in employment in the State, 40

(iii) the permission referred to in section 3C(3)(a), given to the research project researcher referred to in section 3C(3)(a), or

(iv) the permission, referred to in section 3C(3)(b), given to the research project researcher referred to in section 3C(3)(b) to remain in the State and be in employment in the State.

(14) Nothing in subsection (13) shall be construed as preventing an employment permit referred to in that subsection being renewed for a period that is less than the period specified in subsection (3) in circumstances other than those specified in subsection (13).

(15) Where, on or after the coming into operation of *sections 6* and *21* of the *Employment Permits (Amendment) Act 2014*, an application is made to renew an employment permit that was in force immediately before those provisions came into operation, and—

(a) where that employment permit is renewed, it shall be renewed in respect of a purpose referred to in section 3A(2) and the Minister shall determine the purpose for which that employment permit is to be renewed having had regard to the employment in respect of which the employment permit that is the subject of the renewal had been granted and where appropriate, the foreign national concerned, and

(b) in the case of an employment permit that the Minister has determined shall be renewed for the purpose referred to in section 3A(2)(c), but the remuneration to be paid in respect of the employment that is the subject of the application for renewal is less than the remuneration specified in regulations under section 14 for that employment or the category of employment into which the employment falls, such lesser remuneration shall not, notwithstanding section 12(3), operate to prevent the Minister from—

(i) renewing that employment permit in respect of such purpose, or

(ii) renewing that employment permit pursuant to any subsequent application for renewal.

(16) Where, on or after the coming into operation of *section 21* of the *Employment Permits (Amendment) Act 2014*, an application is made to renew an employment permit that was in force immediately before that section came into operation, notwithstanding subsection (8), section 10 shall not apply in respect of that application to renew that employment permit or to any subsequent application to renew that permit.".

Insertion into Act of 2006 of new sections 20A, 20B and 20C

22. The Act of 2006 is amended by inserting the following sections after section 20:

"**Redundancy of foreign national to whom employment permit granted for purpose referred to in section 3A(2)(a)**

20A. (1) This section applies to a foreign national to whom an employment permit in respect of the purpose referred to in section 3A(2)(a) has

been granted and he or she is dismissed by reason of redundancy within the meaning of section 7(2) of the Act of 1967 during the period for which the employment permit is in force.

(2) Without prejudice to section 24, where a foreign national to whom this section applies is informed that he or she is to be dismissed by reason of redundancy within the meaning of section 7(2) of the Act of 1967 in respect of the employment for which the employment permit referred to in subsection (1) has been granted, the foreign national shall, as soon as practicable, notify the Minister of the dismissal by reason of redundancy and the date on which it is to take effect.

(3) An application for an employment permit may be made under section 4 in respect of a foreign national to whom this section applies, within 6 months of the dismissal by reason of redundancy taking effect, and such application shall be in respect of the purpose referred to in section 3A(2)(a) for—

(a) an employment that is the same type of employment for which the employment permit referred to in subsection (1) was granted, or

(b) an employment for a different employment to that for which the employment permit referred to in subsection (1) was granted that is specified in regulations under section 14, in respect of the purpose referred to in subsection (1), as an employment for which an employment permit may be granted.

(4) Where on the date an application referred to in subsection (3) is made, the type of employment referred to in subsection (3)(a)—

(a) is no longer specified in regulations under section 14 as an employment, or no longer falls within a category of employment specified in those regulations, for which an employment permit may be granted in respect of the purpose referred to in subsection (1), or

(b) is specified in regulations under section 14 as an employment, or falls within a category of employment, in respect of which an employment permit shall not be granted,

the application may be made for that employment by a foreign national to whom this section applies notwithstanding that the employment is no longer an employment, or falls within a category of employment, for which an employment permit may be granted or is an employment, or falls within a category of employment specified in regulations under section 14 for which an employment permit shall not be granted.

(5) Notwithstanding section 12(3), the Minister may grant, under section 8, an employment permit for the employment referred to in subsection (4) pursuant to an application referred to in subsection (4) that is made within the period referred to in subsection (3) and for the avoidance of doubt—

(a) section 12(3) shall apply in respect of any other provision or

requirement, specified in regulations under section 14 that is required to be satisfied, and

(b) section 14 shall, in respect of such grant under section 8, apply in respect of any other provision or requirement specified in regulations under section 14 that is required to be satisfied. 5

(6) Having regard to the consideration, under section 11, of an application referred to in subsection (4)—

(a) the provisions of any regulations referred to in section 11(3), other than the provisions of such regulations referred to in subsection (4), shall continue to apply in relation to the application concerned, and 10

(b) section 11(4) shall apply in respect of a provision or requirement of regulations under section 14, other than the provision referred to in subsection (4).

(7) Nothing in this section shall be construed as providing a permission to be in the State for the period of 6 months referred to in subsection (3). 15

Redundancy of foreign national to whom employment permit granted for purpose referred to in section 3A(2)(c)

20B. (1) This section applies to a foreign national to whom an employment permit in respect of the purpose referred to in section 3A(2)(c) has been granted and he or she is dismissed by reason of redundancy 20 within the meaning of section 7(2) of the Act of 1967 during the period for which the employment permit is in force.

(2) Without prejudice to section 24, where a foreign national to whom this section applies is informed that he or she is to be dismissed by reason of redundancy within the meaning of section 7(2) of the Act of 1967 in 25 respect of the employment for which the employment permit referred to in subsection (1) has been granted, the foreign national shall, as soon as practicable, notify the Minister of the dismissal by reason of redundancy and the date on which it is to take effect.

(3) An application for an employment permit may be made under section 30 4 in respect of a foreign national to whom this section applies within 6 months of the dismissal by reason of redundancy taking effect and such application shall be for an employment permit in respect of the purpose referred to in section 3A(2)(c) for—

(a) an employment that is the same type of employment for which the 35 employment permit referred to in subsection (1) was granted, or

(b) a different employment to the one for which the employment permit referred to in subsection (1) was granted that—

(i) is specified in regulations under section 14, in respect of the purpose referred to in subsection (1), as an employment for 40 which an employment permit may be granted, or

(ii) is not an employment that is specified in such regulations as an employment for which an employment permit shall not be

granted or falls within a category of employment for which an employment permit shall not be granted.

(4) Where at the time an application referred to in subsection (3) is made the type of employment referred to in subsection (3)(a) is specified in regulations under section 14 as an employment, or falls within a category of employment, in respect of which an employment permit shall not be granted, the application may be made in respect of that employment by a foreign national to whom this section applies notwithstanding that the employment is an employment, or falls within a category of employment, that is specified in regulations under section 14 as an employment, or category of employment, for which an employment permit shall not be granted.

(5) Notwithstanding section 12(3), the Minister may grant, under section 8, an employment permit for an employment referred to in subsection (4) pursuant to an application referred to in subsection (4) that is made within the period referred to in subsection (3) and for the avoidance of doubt—

(a) section 12(3) shall apply to any other provision or requirement specified in regulations under section 14, that is required to be satisfied, and

(b) section 14 shall, in respect of such grant under section 8, apply in respect of any other provision or requirement specified in regulations under section 14 that is required to be satisfied.

(6) Having regard to the consideration, under section 11, of an application referred to in subsection (4)—

(a) the provisions of any regulations referred to in section 11(3), other than the provisions of such regulations referred to in subsection (4), shall continue to apply in relation to the application concerned, and

(b) section 11(4) shall apply in respect of a provision or requirement of regulations under section 14, other than the provision referred to in subsection (4).

(7) Nothing in this section shall be construed as providing a permission to be in the State for the period of 6 months referred to in subsection (3).

Sections 20A and 20B: supplemental provisions

20C. Where—

(a) an employment permit is in force immediately before the coming into operation of *section 6* and *section 22* of the *Employment Permits (Amendment) Act 2014*,

(b) following the coming into operation of those sections, a foreign national to whom such permit was granted is dismissed by reason of redundancy within the meaning of section 7(2) of the Act of 1967, and

(c) the Minister is satisfied that, having regard to the employment in

respect of which the employment permit referred to in paragraph (a) has been granted, that employment permit would, had it been granted after the coming into operation of *section 6* and *section 22* of the *Employment Permits (Amendment) Act 2014*, have been granted in respect of the purpose referred to in section 3A(2)(a) or 3A(2)(c), 5

the foreign national to whom the employment permit referred to in paragraph (a) was granted may be treated, for the purposes of section 20A or as the case may be section 20B, as a foreign national to whom section 20A or, as the case may be, section 20B applies.". 10

Amendment of section 23 of Act of 2006

23. Section 23 of the Act of 2006 is amended—

(a) by deleting subsection (2),

(b) in subsection (3), by deleting "or (2)", and

(c) in subsection (4), by deleting ", (2)". 15

Amendment of section 24 of Act of 2006

24. Section 24 of the Act of 2006 is amended in subsection (1) by deleting "(other than a permit granted on foot of an application by a foreign national)".

Amendment of section 27 of Act of 2006

25. Section 27 of the Act of 2006 is amended— 20

(a) in subsection (1) by deleting "(other than a permit granted on foot of an application by the foreign national)",

(b) by deleting subsection (2),

(c) in subsection (3) by deleting "or, in the case of a permit falling within subsection (2), the second-mentioned person in that subsection (in subsection (5)(b) referred to as the 'second-mentioned person')", 25

(d) in subsection (5)—

(i) by deleting "or (2)", and

(ii) in paragraph (b), by deleting "or, as the case may be, the second-mentioned person", 30

and

(e) in subsection (6) by deleting ", (2)".

Amendment of section 28 of Act of 2006

26. Section 28 of the Act of 2006 is amended—

(a) by substituting the following paragraph for paragraph (a): 35

"(a) the name of—

(i) the foreign national in respect of whom the employment permit has been granted, and

(ii) the employer or—

(I) in the case of an employment permit granted in respect of the purpose referred to in section 3A(2)(d), the connected person and the foreign employer, or

(II) in the case of an employment permit granted in respect of the purpose referred to in section 3A(2)(e), the contractor and the relevant person,",

and

(b) by substituting the following paragraph for paragraph (c):

"(c) the address of—

(i) the foreign national, as specified in the application for the employment permit, in respect of whom the employment permit has been granted,

(ii) the employer or—

(I) in the case of an employment permit granted in respect of the purpose referred to in section 3A(2)(d), the connected person and the foreign employer, or

(II) in the case of an employment permit granted in respect of the purpose referred to in section 3A(2)(e), the contractor and the relevant person,

and

(iii) the place at which the employment is to be carried out and where such employment is to be carried out at more than one place, the address of each such place,".

Amendment of section 29 of Act of 2006

27. (1) Section 29 of the Act of 2006 is amended in subsection (1) by inserting "and may, when making the regulations, make provision for the purposes specified in paragraphs (a) to (i) of section 3A(2) for which employment permits may be granted and the different classes of employment permit provided for in regulations under section 14(1) in respect of those purposes" after "on foot of such application".

(2) Section 29(2) of the Act of 2006 is amended by inserting the following paragraphs after paragraph (b):

"(ba) the production to the Minister with an application under section 4 of documents and evidence relating to any matter specified in paragraphs (a) to (h) of section 6 within a specified period;

(bb) without prejudice to paragraph (c), the production to the Minister

with an application for a renewal of an employment permit under section 20 of documents and evidence required in respect of the renewal of an employment permit;

(bc) the production to the Minister, within a specified period, with an application under section 4 of documents and evidence— 5

(i) demonstrating that the person who makes the offer of employment or as the case may be the contractor, connected person or the person referred to in section 4(2)(c), is registered with the Revenue Commissioners,

(ii) where the person who makes the offer of employment is a company within the meaning of the Companies Acts, relating to the registration of the company pursuant to the Companies Acts, 10

(iii) relating to the registration of the business name, pursuant to the Act of 1963, of the person who makes the offer of employment where that person has a registered business name, and 15

(iv) where the person who makes the offer of employment is—

(I) a limited partnership under the Limited Partnerships Act 1907, documents and evidence relating to the registration of the limited partnership under that Act,

(II) an industrial and provident society, documents and evidence relating to the registration of the society under the Industrial and Provident Societies Acts 1893 to 1978, 20

(III) a friendly society, documents and evidence relating to the registration of the society under the Friendly Societies Acts 1896 to 1977, and 25

(IV) a trade union, documents and evidence relating to the registration of the trade union under the Trade Union Acts 1871 to 1990;

(bd) the production to the Minister with an application for a renewal of an employment permit under section 20 of documents and evidence referred to in paragraph (bc);". 30

(3) Section 29 of the Act of 2006 is amended by inserting the following subsections after subsection (2):

"(2A) Without prejudice to the generality of subsection (2), when providing in regulations under this section for the information and documents referred to in subsection (2)(c) and the evidence referred to in subsection (2)(d), the regulations may provide— 35

(a) that where a copy of a passport is required to be provided in respect of such application, that the passport so provided has an expiry date of a period not less than 12 months from the date the application is made, and 40

(b) for information and documents relating to—

(i) the business carried on by a connected person and a foreign employer and the connection between the connected person and the foreign employer, and

(ii) the arrangements made by a connected person and a contractor for accommodation, board and insurance provided for the foreign nationals.

(2B) Without prejudice to the generality of subsection (2)(c), in regulations under this section the Minister may, in the case of the purpose referred to in section 3A(2)(b), provide for documents, information and other evidence to accompany—

(a) an application under section 4 for the grant of an employment permit, or

(b) an application under section 20 for the grant of a renewal of an employment permit,

that the Minister may reasonably require in order to satisfy himself or herself that the foreign national in respect of whom the application is made is the spouse or the civil partner, or a dependant, of a primary permit holder and satisfies the requirements of section 3C(2) or is the spouse or the civil partner, or a dependant, of a research project researcher and satisfies the requirements of section 3C(3) and in so providing may include information, documents and evidence referred to in paragraphs (a) to (j) of subsection (2C).

(2C) The information, documents and evidence referred to in subsection (2B) are information, documents and evidence in respect of—

(a) the marital status of a foreign national in respect of whom an application for an employment permit for the purpose referred to in section 3A(2)(b) is made and the primary permit holder or, as the case may be, the research project researcher concerned, which may include copies of marriage certificates and other documents providing evidence of such marital status,

(b) the civil partnership status of a foreign national in respect of whom an application for an employment permit referred to in section 3A(2)(b) is made and the primary permit holder or, as the case may be, the research project researcher concerned, which may include copies of the civil partnership registration referred to in the Act of 2010,

(c) the legal relationship, in the case of a civil partner who is a party to a legal relationship referred to in section 3(b) of the Act of 2010, of a foreign national in respect of whom an application for an employment permit referred to in section 3A(2)(b) is made and the primary permit holder or, as the case may be, the research project researcher concerned, which may include copies of documents relating to such legal relationship,

(d) the nature of the dependence of a foreign national, in respect of

whom an application for an employment permit referred to in section 3A(2)(b) is made, on the primary permit holder or, as the case may be, the research project researcher concerned, which may include copies of birth certificates or other documents providing evidence of the nature of such dependence, 5

(e) the identity of the primary permit holder and the grant to him or her of the employment permit for the purpose referred to in section 3A(2)(a),

(f) the identity of the research project researcher,

(g) the permission— 10

(i) given to a primary permit holder referred to in section 3C(2)(a) to be in the State and be in employment in the State,

(ii) referred to in section 2(10)(d) of the Act of 2003 given to a primary permit holder referred to in section 3C(2)(b), and

(iii) given to the foreign national in respect of whom the application for an employment permit for the purpose referred to in section 3A(2)(b) is made, to land in the State and reside in the State, 15

(h) in the case of a research project researcher referred to in section 3C(3)(b), the permission referred to in section 2(10)(d) of the Act of 2003 given to him or her and the permission given to the foreign national in respect of whom the application for an employment permit for the purpose referred to in section 3A(2)(b) is made, to land in the State and reside in the State, 20

(i) the verification, by the employer of the primary permit holder, that the primary permit holder is in employment with the employer, and 25

(j) the verification—

(i) that the research project researcher is carrying out research in the State pursuant to Directive 2005/71/EC by the person in the State with whom that research is being carried out, and

(ii) by the employer of a research project researcher referred to in section 3C(3)(b), of the employment of the research project researcher. 30

(2D) Without prejudice to the generality of subsection (2), when providing in regulations under this section for the information and documents referred to in subsection (2)(c) and evidence referred to in subsection (2)(d), the Minister may provide for any information, documents and evidence that the Minister may require to satisfy himself or herself that the exchange agreement applies to the foreign national in respect of an application for the grant of an employment permit for the purpose referred to in section 3A(2)(g). 35 40

(2E) The Minister may make regulations to provide for the manner in which the notification referred to in section 8(8) is to be made to the Minister

of the change of employer.

(2F) Without prejudice to the generality of subsection (2), the Minister may in regulations under this section provide for documents and evidence relating to the remuneration paid to the foreign national, in respect of whom the application for renewal of an employment permit under section 20 is made, for all or part of the period commencing on the date on which the employment permit was granted and ending on the date on which the application for renewal was made.”.

Amendment of section 30 of Act of 2006

28. Section 30 of the Act of 2006 is amended—

(a) by substituting the following subsection for subsection (2):

“(2) Different regulations under subsection (1) may be made in respect of different classes of matter the subject of the prescribing concerned and for different circumstances or classes of circumstances in relation to such different matters or different classes of matters.”,

(b) in subsection (4) by deleting “(other than a regulation made under section 14)”, and

(c) by deleting subsection (5).

Amendment of section 31 of Act of 2006

29. Section 31 of the Act of 2006 is amended in subsection (1)(c) by substituting “ordinary prepaid post” for “post in a prepaid registered letter”.

Amendment of section 37 of Act of 2006

30. Section 37 of the Act of 2006 is amended—

(a) in subsection (1)—

(i) by inserting the following paragraph after paragraph (a):

“(aa) the Garda Síochána;”,

and

(ii) by inserting “or the Garda Síochána” after “or, as the case may be, the Revenue Commissioners”, and

(b) in subsection (2)—

(i) by inserting the following paragraph after paragraph (a):

“(aa) the Garda Síochána,”,

and

(ii) by inserting “or the Garda Síochána” after “or, as the case may be, the Revenue Commissioners”.

PART 4

MISCELLANEOUS

Amendment of Taxes Consolidation Act 1997

31. The Taxes Consolidation Act 1997 is amended—

(a) by inserting the following section after section 124: 5

"**Tax treatment of payments made pursuant to an order under section 2B of Employment Permits Act 2003**

124A (1) Payments made pursuant to an order under section 2B of the Employment Permits Act 2003 shall be regarded as—

(a) profits or gains accruing from an office or employment (and accordingly tax under Schedule E shall be charged on those payments, and tax so chargeable shall be computed under section 112(1)), and 10

(b) emoluments to which Chapter 4 of Part 42 applies.",

and 15

(b) in section 192A, by inserting the following after subsection (5):

"(5A) This section shall not apply to payments made pursuant to an order under section 2B of the Employment Permits Act 2003.".

Repeals

32. The following provisions of the Act of 2006 are repealed: 20

(a) section 4(4);

(b) section 7;

(c) section 8(3);

(d) section 10(1);

(e) section 35(2). 25

Savings and transitional provisions

33. (1) An employment permit that is in force immediately before the coming into operation of this section shall, after such coming into operation, continue in force, for the period for which it was granted or last renewed and the Act of 2006 as amended by this Act shall apply to such permits. 30

(2) In the case of an employment permit continued in force under *subsection (1)* that was granted under section 8 of the Act of 2006 and permits the employment in the State of the foreign national in an economic sector specified in the employment permit, references to the employer of a foreign national to whom such employment permit was granted shall, until such permit expires or is revoked or renewed, be to the 35 employer for the time being employing that foreign national pursuant to that

employment permit.

(3) An employment permit continued in force under *subsection (1)* may be revoked and renewed under the Act of 2006 as amended by this Act.

(4) Regulations made under section 14, 29 or 30 of the Act of 2006 that are in force immediately before the coming into operation of *section 16*, *27* or *28* as the case may be, shall continue in force after such coming into operation as if made under section 14, 29 or 30 as amended by *section 16*, *27* or *28* as appropriate and such regulations may be amended or revoked accordingly.

An Bille um Cheadanna Fostaíochta (Leasú), 2014

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do leasú an Achta um Cheadanna Fostaíochta, 2003, do thabhairt cosaint do náisiúnach eachtrach in imeachtaí áirithe faoin Acht sin, do dhéanamh socrú maidir le himeachtaí sibhialta chun náisiúnaigh eachtracha áirithe a chúiteamh as obair a rinneadh nó seirbhísí a tugadh in imthosca áirithe; do leasú agus do leathnú an Achta um Cheadanna Fostaíochta, 2006; do dhéanamh socrú breise maidir le ceadanna fostaíochta a dheonú; do leasú an Achta Comhdhlúite Cánacha, 1997; agus do dhéanamh socrú i dtaobh nithe gaolmhara.

An tAire Post, Fiontar agus Nuálaíochta a thíolaic,

17 *Aibreán,* 2014

Employment Permits (Amendment) Bill 2014

BILL

(as initiated)

entitled

An Act to amend the Employment Permits Act 2003, to provide a defence to a foreign national in certain proceedings under that Act, to provide for civil proceedings to recompense certain foreign nationals for work done or services rendered in certain circumstances; to amend and extend the Employment Permits Act 2006; to make further provision for the grant of employment permits; to amend the Taxes Consolidation Act 1997; and to provide for related matters.

Presented by the Minister for Jobs, Enterprise and Innovation,

17*th April,* 2014

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