

# Employment Permits Bill 2022

Bill No. 91 of 2022

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## Abstract

The main purpose of the Bill is to consolidate the legislative framework concerning employment permits, repeal the Employment Permits Acts of 2003 and 2006, and make certain changes intended to modernise the employment permits system and increase its responsiveness. In addition, the Bill will introduce a Seasonal Employment Permit and provide for additional conditions for the granting of an employment permit. The proposed legislation is largely based on recommendations made in the 2018 [Review of Economic Migration Policy](#). These included the introduction of a Seasonal Employment Permit to fill certain labour shortages and a more responsive system which is easier to modify.



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## Summary

- The [Employment Permits Bill 2022](#) was published on Tuesday 4 October 2022, with a second stage debate in the Dáil scheduled for Tuesday, 11 October 2022.
- The Bill comprises of 7 Parts, which in turn include 71 Heads, (and two Schedules):
  - Part 1 (Head 1-6) - Preliminary And General
  - Part 2 (Head 7-39) - Employment In State Of Foreign Nationals
  - Part 3 (Head 40-43) - Regulations Relating To Employment Permits
  - Part 4 (Head 44-56) - Enforcement, Offences And Penalties
  - Part 5 (Head 57-61) - Miscellaneous
  - Part 6 (Head 62-68) - Transitional Provisions
  - Part 7 (69-71) -Consequential Amendments
- The primary purpose of the legislation is to consolidate and update the current legislative framework concerning employment permits as set out in the Employment Permits Acts of 2003 and 2006 (as amended), which will be repealed. The updates are intended to improve clarity and to retain the core focus of a vacancy led employment permits system oriented toward meeting the skills and labour needs of the State.
- The Bill will also introduce a Seasonal Employment Permit and provide for additional conditions for the granting of an employment permit.
- The Bill (and the General Scheme of the Employment Permits (Consolidation and Amendment) Bill 2019, which preceded it) are largely based on recommendations made in the [Review of Economic Migration Policy](#) published in 2018.

## Introduction

The [Employment Permits Bill 2022](#) (the Bill) was published on the Oireachtas website on Tuesday, 4 October 2022 and a second stage debate in Dáil Éireann is scheduled for Tuesday, 11 October 2022. The Bill was previously referred to as the Employment Permits (Consolidation and Amendment) Bill 2019. The main purpose of the Bill is to consolidate the legislative framework concerning employment permits as currently set out in the Employment Permits Acts 2003 and 2006 (as amended), which will be repealed.<sup>1</sup> It also introduces certain changes, which are intended to modernise the employment permits system and increase its responsiveness. In addition, the Bill will introduce a Seasonal Employment Permit and provide for additional conditions for the granting of an employment permit.

The legislative changes are intended to increase the agility and responsiveness of Ireland's economic migration system in order to meet skills and labour needs, while continuing to safeguard the labour market and support the employment rights of permit holders.<sup>2</sup> The [Explanatory Memorandum](#) describes the provisions of the Bill as follows:

“The Employment Permits Bill 2022 aims to consolidate the current legislative framework, to improve its clarity and to retain the core focus of a vacancy led employment permits system oriented to meeting the skills and labour needs of the State. Additional improvements have been made such as

- the introduction of a seasonal employment permit,
- revision of the labour market needs test to make it more relevant and efficient,
- improved efficiency through moving operational criteria to regulations,
- providing for additional conditions for grant of an employment permit, such as training or accommodation support for migrant workers in some circumstances, or making innovation or upskilling a condition of grant, where this may decrease future reliance on economic migration,
- facilitating third party contracts (subcontractors),
- automatic indexation of salary threshold”.

The Bill, and the General Scheme of the Employment Permits (Consolidation and Amendment) Bill 2019 (the “General Scheme”)<sup>3</sup> which preceded it, are largely based on recommendations made in the [Review of Economic Migration Policy](#) published by the Department of Business, Enterprise and

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<sup>1</sup> In addition, the Employment Permits Regulations 2017 (S.I. No. 95 of 2017) are revoked. See section 6 of the Bill.

<sup>2</sup> Department of Business, Enterprise and Innovation press release, [Minister Humphreys publishes the General Scheme of the Employment Permits \(Consolidation and Amendment\) Bill 2019](#). 1<sup>st</sup> November 2019.

<sup>3</sup> The Employment Permits (Consolidation and Amendment) Bill 2019 Draft Heads of Bill is available [here](#) together with [Regulatory Impact Assessment Draft Employment Permits Bill \(Heads\)](#) and [Information note on the General Scheme of an Employment Permits \(Consolidation and Amendment\) Bill](#).

Innovation (DBEI)<sup>4</sup> in 2018. That Inter-Departmental Review, conducted at the then Minister's request, recommended, *inter alia*, the introduction of a Seasonal Employment Permit<sup>5</sup> to fill certain labour shortages, and a more responsive system.

At present, there are nine specific types of employment permit created by the [Employment Permits \(Amendment\) Act 2014](#), including a General Employment Permit and a Critical Skills Employment Permit. In addition to introducing a Seasonal Employment Permit and providing for additional conditions for the granting of an employment permit, the Bill proposes other changes to the existing legislation, which are aimed at improving the operational efficiency of the employment permits system. Modifications to the existing legislation and system "will allow the economic migration system to implement the recommendations set out in the Review of Economic Migration Policy 2018, which set out a number of principles to frame the system's management".<sup>6</sup>

Ireland is currently an outlier among developed countries in not already having a seasonal employment permit. Under the current employment permits system, the Department of Enterprise, Trade and Employment (the "DETE") conducts twice-yearly reviews of the Highly Skilled and Ineligible Occupations Lists.<sup>7</sup> These reviews are described as ensuring that "the regime has become more responsive to changes in economic circumstances and labour market conditions".<sup>8</sup> The system is also managed through the 50:50 Rule and the Labour Market Needs Test (LMNT)<sup>9</sup>, two restrictions on the granting of employment permits in place to safeguard the employment opportunities of Irish/European Economic Area (EEA)<sup>10</sup> nationals.

This Digest provides background, policy context and a summary of the provisions of the Bill. A Bill Briefing page is available [here](#) [internal access only].

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<sup>4</sup> The Department was [renamed](#) the Department of Enterprise, Trade and Employment in 2020. In this Bill Digest, the Department of Enterprise, Trade and Employment is abbreviated to DETE and DBEI is used to denote the former name of the department, i.e. the Department of Business, Enterprise and Innovation.

<sup>5</sup> Essentially to provide for non-EEA nationals to work in the State temporarily, for the purposes of employment in a sector of seasonal activity.

<sup>6</sup> Department of Business, Enterprise and Innovation, *Regulatory Impact Assessment, Draft Employment Permits Bill (Heads)*. Available at <https://assets.gov.ie/124469/532c06c0-262f-4ac1-985e-cb9dcd64a57a.pdf>

<sup>7</sup> Defined in the [Review of Economic Migration Policy](#) as follows:

**Highly Skilled Eligible Occupations List** is a list of occupations which are experiencing labour or skill shortages in respect of qualifications, experience or skills and which are required for the proper functioning of the Irish economy.

**Ineligible Categories of Employment for Employment Permits** is a list of occupations in respect of which an employment permit shall not be granted in Ireland.

<sup>8</sup> Government of Ireland (2018) [Review of Economic Migration Policy](#)

<sup>9</sup> Defined in the [Review of Economic Migration Policy](#) as follows:

**50:50 Rule** requires that employers seeking to hire foreign nationals on an employment permit have at least 50% of their workforce from Ireland or the EEA.

**Labour Market Needs Test** seeks to ensure that an offer of employment is first made to people already in the EEA before an application is made for an employment permit to employ a non-EEA national.

<sup>10</sup> The EEA is an area of free trade and free movement of peoples comprising of the Member States of the EU plus Norway, Iceland and Liechtenstein.

## Cost implications

The [Regulatory Impact Assessment in respect of the Draft Employment Permits Bill \(Heads\)](#) (April 2019) (the “RIA”) states that the principle of cost neutrality that underpins the operation of the employment permits system will not be altered by the Bill. In addition, one off implementation costs are considered balanced against other considerations such as “an inefficient and costly labour market test process”.<sup>11</sup> It is not expected that the proposed legislative amendments will give rise to any significant additional costs, but there may be some costs associated with familiarising users with changes to the system.<sup>12</sup> The [Explanatory Memorandum](#) notes that the provisions of the Bill are not expected to give rise to any significant additional expenditure for the Exchequer. In addition, it states that “the employment permits fee structure is, in principle, operated on a cost neutral basis i.e., administration costs are balanced by fee income”.<sup>13</sup>

## Pre-legislative scrutiny (PLS)

The Bill has been subject to the pre-legislative scrutiny (PLS) process.<sup>14</sup> The General Scheme was first referred for PLS to the Joint Committee on Business, Enterprise and Innovation, which commenced its scrutiny in October 2019. As the Committee’s report was not finalised before the dissolution of the Dáil in January 2020, PLS was later revisited.

In this context, the General Scheme was submitted to the Joint Committee on Enterprise, Trade and Employment for PLS by the Minister for Enterprise, Trade and Employment in 2021. The Joint Committee held the first session of PLS on the General Scheme with officials from the DETE on 16 February 2021.<sup>15</sup> A second meeting with the Irish Business and Employers Confederation (Ibec) and the Irish Congress of Trade Unions (ICTU) took place on 9 March 2021.<sup>16</sup> The Joint Committee’s third and final PLS meeting took place on 13 April 2021 with Meat Industry Ireland and Migrants Rights Centre of Ireland.<sup>17</sup> In addition, it sought written submissions from a range of

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<sup>11</sup> [Regulatory Impact Assessment Draft Employment Permits Bill \(Heads\)](#) (April 2019).

<sup>12</sup> [Regulatory Impact Assessment Draft Employment Permits Bill \(Heads\)](#) (April 2019).

<sup>13</sup> [Explanatory Memorandum](#) to the [Employment Permits Bill 2022](#).

<sup>14</sup> See Library & Research Service (2017) *The legislative review loop of Government legislation [infographic]* for more information on the legislative process – available at [https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2017/2017-04-10\\_the-legislative-review-loop-of-government-legislation\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2017/2017-04-10_the-legislative-review-loop-of-government-legislation_en.pdf).

<sup>15</sup> Joint Committee on Enterprise, Trade and Employment debate - Tuesday, 16 February 2021. Available at [https://www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_enterprise\\_trade\\_and\\_employment/2021-02-16/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_enterprise_trade_and_employment/2021-02-16/).

<sup>16</sup> Joint Committee on Enterprise, Trade and Employment debate - Tuesday, 9 March 2021. Available at [https://www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_enterprise\\_trade\\_and\\_employment/2021-03-09/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_enterprise_trade_and_employment/2021-03-09/).

<sup>17</sup> Joint Committee on Enterprise, Trade and Employment debate - Tuesday, 13 April 2021. Available at [https://www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_enterprise\\_trade\\_and\\_employment/2021-04-13/2/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_enterprise_trade_and_employment/2021-04-13/2/).

different stakeholders. The Joint Committee published its PLS report in November 2021, which is available [here](#).<sup>18</sup>

## Table of provisions

The Bill contains 7 Parts, 71 Heads, and two Schedules, as summarised below in table 1.

**Table 1: Table of provisions of the Employment Permits Bill 2022**

Section	Title	Effect
1	Short Title and Commencements	Section 1 provides that this Act may be cited as the <i>Employment Permits Act 2022</i> , and shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions and for the repeal of different enactments or provisions of enactments effected by section 6.
2	Interpretation	Section 2 contains definitions and terms used in the Bill. These definitions are set out in full in section 2 of the Principal Provisions section of this Digest.
3	Definition of “remuneration”	Section 3 provides for the definition of “remuneration”. This is to be <ul style="list-style-type: none"> <li>• the salary that is paid to a foreign national, at minimum wage level or at a level that is appropriate to the relevant employment that is undertaken; and</li> <li>• any payment for health insurance</li> </ul> Separate provisions are included for intra-company transfer employment permits or contract service agreement employment permits.
4	Regulations	Section 4 provides that the Minister may make regulations in relation to any matter referred to in the Bill as prescribed or to be prescribed.
5	Expenses	Section 5 provides that expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure

<sup>18</sup> The L&RS prepared a post-hearing briefing paper synthesising the policy context and highlighting some key issues around the General Scheme.



Section	Title	Effect
		and Reform, be paid out of moneys provided by the Oireachtas.
6	Repeals and revocations	Section 6 provides that the <a href="#">Employment Permits Act 2003</a> and <a href="#">Employment Permits Act 2006</a> are repealed by the Bill, and the <a href="#">Employment Permits Regulations 2017</a> (S.I. No. 95 of 2017) are revoked.
<b>Part 2 – Employment in State of Foreign Nationals</b>		
7	Employment in State of foreign nationals	<p>Section 7 provides that a foreign national shall not</p> <ul style="list-style-type: none"> <li>(a) enter the service of an employer in the State, or</li> <li>(b) be in employment in the State,</li> </ul> <p>except in accordance with an employment permit that is in force in respect of that foreign national.</p> <p>Further, a person shall not employ a foreign national in the State except in accordance with an employment permit that is in force in respect of that foreign national (subsection (3)) and, in respect of a contract service agreement, all such steps as are reasonable must be taken by the relevant person (i.e. the person for whom, or on whose behalf, services are rendered under the contract service agreement) to ensure that a foreign national is employed in accordance with an employment permit that is in force in respect of that foreign national (subsection (4)).</p> <p>A person shall not permit a foreign national who is employed outside the State by a foreign employer to carry out duties for, or participate in a training programme provided by, that person where that person is connected to the foreign employer, except in accordance with an employment permit that is in force in respect of that foreign national (subsection (5))</p> <p>Subsection (6) provides that a person who contravenes subsection (1), (3), or (5), or fails to take the steps specified in subsection (4), shall be guilty of an offence.</p> <p>Subsections (7) and (8) provide defences to this offence, namely to show that the accused took “all such steps as were reasonably open” to them to ensure compliance with the relevant subsections.</p>
8	Non-application of section 7 to certain foreign nationals	Section 8 provides that section 7, on the employment of foreign nationals, <b>shall not apply</b> to a foreign national:



Section	Title	Effect
		<p>a) in respect of whom a declaration under <a href="#">section 47</a> of the International Protection Act Act (the “Act of 2015”) is in force. This provision of the Act of 2015 provides for declarations of protection given by the Minister to people who have refugee status or to beneficiaries of subsidiary protection. Thus, section 7 does not apply to these groups of people.</p> <p>b) who is permitted to enter and reside in the State, or reside in the State, pursuant to <a href="#">section 56</a> or <a href="#">57</a> of the Act of 2015. Sections 56 and 57 provide for permission for a qualified person’s<sup>19</sup> family members to enter and reside in the state. These family members are the subject of the section 8 exemption.</p> <p>c) who is a programme refugee within the meaning of section 59 of the Act of 2015. These are people who have been given permission to enter and remain in the State for resettlement, whether or not they meet the standard required for refugee status.</p> <p>d) who is entitled to enter the State and to be in employment in the State pursuant to the treaties governing the European Union.</p> <p>e) who has been given permission by the Minister to remain and work in the state without an employment permit.</p> <p>f) who is in the State pursuant to the <i>Diplomatic Relations and Immunities Act 1967</i>.</p>
9	Purposes for which employment permit may be granted	<p>Section 9 sets out the purposes for which an employment permit may be granted. These include to provide for the employment of a foreign national:</p> <p>a) whose skills are required in the State, where those skills are in “critical short supply”, and that</p>

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<sup>19</sup> A qualified person in this context means a person who is either:

(a) [a refugee](#) and in relation to whom a refugee declaration is in force, or

(b) [a person eligible for subsidiary protection](#) and in relation to whom a subsidiary protection declaration is in force.

Section	Title	Effect
		<p>shortage is likely to hinder growth and economic development;</p> <p>b) who is a dependant of a foreign national who has been granted a critical skills permit or is a dependant of a research project researcher, pursuant to Directive 2005/71/E;</p> <p>c) where a person in the State has been unable to recruit an employee for a vacancy in the State;</p> <p>d) who is employed outside the State by a foreign employer to carry out duties in the State for, or participate in a training programme provided in the State by, a connected person;</p> <p>e) who is employed outside the State by a contractor or a subcontractor to perform duties in the State that arise out of a contract service agreement, where the person is contractually obliged to perform those duties;</p> <p>f) who has a reactivation employment permit;</p> <p>g) to whom an exchange agreement applies (as specified in regulations under section 40);</p> <p>h) who has the knowledge and skill required for the development and operation of a sporting or cultural activity in the State;</p> <p>i) who is a full-time student, including a post-graduate student, enrolled in a course of study in a third-level institution outside the State; or</p> <p>j) who has a seasonal employment permit.</p> <p>The Minister may make regulations specifying the seasonally recurrent employments for which a seasonal employment permit may be granted.</p>
10	Application for employment permit	<p>Section 10 provides at subsection (1) that an application for an employment permit may be made by the foreign national or their proposed employer. It is set out below which type of permit may be applied for and by whom:</p> <ul style="list-style-type: none"> <li>• <u>Intra-company transfer</u>: the application shall be made by the connected person concerned (where “connected person” is defined under Section 2 of the Bill as “a person carrying on business in the State who is connected to a foreign employer”).</li> </ul>

Section	Title	Effect
		<ul style="list-style-type: none"> <li>• <u>Contract for service employment permit</u>: the application shall be made by the contractor or subcontractor.</li> <li>• <u>A contract of employment referred to in paragraph (b) of the definition of “contract of employment” under Section 2 of the Bill<sup>20</sup></u>: the application shall be made by the relevant employment agency.</li> </ul> <p>Subsection (4) provides that, subject to Section 21, an application under this section, other than an application referred to in subsection (5), shall not be made unless an offer of employment in the State has been made in writing to a foreign national within such period preceding the application as may be prescribed.</p> <p>Subsection (5) states that the application must include a confirmation in writing that the foreign national concerned:</p> <ul style="list-style-type: none"> <li>• is required to carry out duties, or participate in training, in the State (in respect of an <u>Intra-company transfer employment permit</u>); or</li> <li>• is required to perform duties in the State that arise out of a contract service agreement (in respect of a <u>contract for service employment permit</u>).</li> </ul> <p>Subsections (6) and (7) provide that the application will identify:</p> <ul style="list-style-type: none"> <li>• the relevant employer of the foreign national; and</li> <li>• the purpose for which the application is made.</li> </ul> <p>The application shall be made in writing and will include any prescribed fee (subsection (11)).</p> <p>Subsection (8) provides that an application for a <u>critical skills employment permit</u> shall not be made unless the duration of the employment in respect of which the application is made is for a period not less than the period prescribed in respect of that employment for the purposes of this subsection.</p>

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<sup>20</sup> Namely “any other contract whereby an individual agrees with another person, who is carrying on the business of an employment agency within the meaning of the Employment Agency Act 1971 and is acting in the course of that business, to do or perform personally any work or service for a third person (whether or not the third person is a party to the contract”.

Section	Title	Effect
		<p>Subsection (10) An application shall not be made for the grant of an employment permit in respect of an employment where, in the 6 months preceding the day on which the application is made:</p> <p>(a) a person was employed in the employment that is the subject of the application;</p> <p>and</p> <p>(b) that person was dismissed by reason of redundancy from that employment within that period of 6 months.</p>
11	Application – information to be provided	<p>Section 11 sets out the information that shall be included in an application for an employment permit. This includes:</p> <ul style="list-style-type: none"> <li>a) a full and accurate description of the employment in respect of which the application is made and the terms and conditions etc.;</li> <li>b) the qualifications, skills, knowledge and experience that are required for the employment concerned;</li> <li>c) the qualifications, skills, knowledge and experience that are required for the foreign national concerned, and associated information and documents;</li> <li>d) the place at or in which the employment concerned is to be carried out;</li> <li>e) the remuneration and any deductions, where agreed, for board and accommodation;</li> <li>f) in respect of the foreign national concerned specify: <ul style="list-style-type: none"> <li>(i) whether or not he or she has sought permission to land or be in the State on a previous occasion or has been in the State on a previous occasion without permission to land or be in the State,</li> <li>(ii) where he or she is in the State at the time of the application, provide information and documents, where required by regulations made under section 43(2)(c), relating to the permission granted to him or her to be in the State,</li> <li>(iii) where he or she is in employment in the State at the time of the application, provide information and documents, where required by regulations made</li> </ul> </li> </ul>

Section	Title	Effect
		<p>under section 43(2)(c), relating to the permission granted to him or her to be in such employment, and</p> <p>(iv) provide information as to whether he or she was, at any time prior to the application, in employment in the State and, where required by regulations made under section 43(2)(c), 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;</p> <p>g) provide such other information, documents and evidence to verify such information and documents—</p> <p>(i) as may be prescribed, or</p> <p>(ii) that the Minister may request and that, in the Minister's opinion, might materially assist in the making of a decision on the application;</p> <p>h) without prejudice to the generality of paragraph (g), provide information, documents and evidence concerning the offer of employment referred to in section 10(4) or the requirement referred to in section 10(5)(a) or (b);</p> <p>i) provide information, documents and evidence in respect of the requirement under section 10(10) in relation to—</p> <p>(i) the employment, in the period referred to in section 10(10), of any person in the employment that is the subject of the application, and</p> <p>(ii) confirmation that such person was not, within such period, dismissed by reason of redundancy from that employment;</p> <p>j) where, pursuant to regulations made under section 40(10)(a), accommodation, training or expenses are required to be provided to the foreign national concerned in the event that an employment permit is granted, provide information, documents and evidence in relation to</p>

Section	Title	Effect
		<p>arrangements made in respect of the provision of such accommodation or training to the foreign national concerned;</p> <p>k) where the person identified in the application in accordance with section 10(6) is to be required, in the event that an employment permit is granted to the foreign national concerned, to take measures specified in regulations made under section 40(10)(b), provide information, documents and evidence in relation to the arrangements that will be made by that person in respect of the taking of such measures;</p> <p>l) in respect of the person identified in the application in accordance with section 10(6) or a connected person—</p> <p>(i) specify whether or not the person is, or was previously, the employer of a foreign national to whom an employment permit has been granted on a previous occasion, or is, or was previously, a connected person in relation to such a foreign national, and</p> <p>(ii) where the person is, or was previously, the employer of a foreign national to whom an employment permit has been granted on a previous occasion, or is, or was previously, a connected person in relation to such a foreign national, provide information, documents and evidence in relation to compliance by that person with any conditions attaching to that employment permit;</p> <p>and</p> <p>m) in respect of the foreign national concerned—</p> <p>(i) specify whether or not he or she has been granted an employment permit on a previous occasion,</p> <p>(ii) where he or she has been granted an employment permit on a previous occasion, provide information and documents relating to that employment permit and the employment in respect of which it was granted, and</p> <p>(iii) where such an employment permit is still in</p>

Section	Title	Effect
		force, provide confirmation in writing from the foreign national concerned that the employment in respect of which that permit was granted will be terminated upon the grant of an employment permit in respect of the application concerned.
12	Foreign nationals who may apply for dependant employment permit	<p>Section 12 provides for applications for dependant<sup>21</sup> employment permits.</p> <p>A dependant employment permit may be granted to a foreign national if:</p> <p>(a) he or she is the dependent of a Critical Skills Employment Permit holder (the primary permit holder) and that primary permit is in force and the primary holder is in employment in the role for which the primary permit was granted; or</p> <p>(b) the primary permit is expired but the primary permit holder now holds a permission granted by the Department of Justice to reside and work in the State pursuant to Section 8(1)(e), and the dependant has obtained permission to land and reside in the State<sup>22</sup></p>
13	Amendment by Minister of application	<p>Section 13 provides that the Minister may, at the request of an applicant, amend an application. Further, the Minister may make regulations:</p> <p>(a) prescribing the matters specified in an application that may be amended under subsection (1), and</p> <p>(b) the procedure relating to the making of any such amendment to an application.</p>
14	Recommendation by enterprise development agency	Section 14 allows for the Enterprise Development Agencies ( <a href="#">IDA</a> and <a href="#">Enterprise Ireland</a> ) to make a recommendation to the Minister in writing in support of the grant or renewal of an employment permit. The Minister

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<sup>21</sup> Under Section 2 of the Bill, a “dependant” means a foreign national who—

(a) has been determined by the Minister for Justice to be a dependant, other than the spouse or civil partner, 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

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

<sup>22</sup> A [Stamp 4 immigration permission](#), which indicates permission to stay in Ireland for a specified period, subject to conditions.



Section	Title	Effect
		must have regard to the recommendation but is not bound by it (subsections (2) and (3)).
15	Consultation by Minister in respect of certain applications	The Minister may, in respect of an application for a <u>sports and cultural employment permit</u> , consult with any suitably knowledgeable person.
16	Consideration by Minister of application	<p>Section 16 provides that when making a decision on the grant of an Employment Permit, the Minister shall consider consistency with broader economic policy; relevance of the knowledge, skills, qualifications and experience referred to in section 11(b) of the Bill to the role; the relevance of matters outlined in sections 10 or 11 of the Bill to the application; the different purposes for which an employment permit may be granted; and whether any of the mandatory grounds for refusal set out under Sections 25 and 26 apply.</p> <p>Subsection (2) provides that the Minister may take necessary steps to establish the accuracy or authenticity of the information provided.</p> <p>Subsection (3) provides that the Minister may return incomplete applications without further consideration, with a written notification to the applicant of the matters that are incomplete, a prescribed portion of the fee, and any documentation received. The prescribed portion of the fee may also be returned to a person nominated by the person who paid the fee (subsection (4)).</p> <p>Subsection (5) provides that the Minister may give priority to the consideration of applications for certain employment permit types as he or she considers appropriate in light of the economic context.</p>
17	Grant of employment permit by Minister	<p>Section 17 provides that an employment permit may be granted by the Minister to the foreign national, subject to the provisions of the Bill. The permit shall permit employment in the State in the employment specified in the application and by the person identified in the application.</p> <p>For an Intra Company Transfer Employment Permit the permit is granted to permit the employment of the foreign national concerned to carry out duties or participate in training provided by the connected person.</p> <p>Subsection (4) provides that the permit shall specify the duration for which the permit remains in force, subject to any maximum set out in regulations. A dependent permit shall remain in force for a maximum period prescribed in</p>

Section	Title	Effect
		<p>regulations or for the duration of the primary permit, whichever is the lesser (subsection (7)).</p> <p>The foreign national must commence the employment within a certain period from which the permit is granted or comes into force, that period will be prescribed in regulations (subsection (9)).</p>
18	Cancellation of previous employment permit still in force	<p>Section 18 provides that where the Minister decides to grant an employment permit in respect of a foreign national, the Minister shall cancel any employment permit previously granted in respect of the foreign national concerned that is still in force. The foreign national and the employer specified in the cancelled employment permit shall be notified in writing of the cancellation.</p>
19	Issue of employment permit, information to be specified in permit etc.	<p>Section 19 provides that the Minister must issue a permit to both the foreign national and the employer identified in the application (or in the case of an Intra Company Transfer Permit, the connected person). The information that will be provided on the permit is listed in section 19(2). This includes:</p> <ul style="list-style-type: none"> <li>(a) the <b>purpose</b> for which the permit is granted;</li> <li>(b) a <b>description of the employment</b> in respect of which the permit has been granted and a statement of the remuneration and any deductions, where agreed, for board and accommodation or either of them in respect of the employment;</li> <li>(c) the <b>name of the employer</b> of the foreign national concerned in relation to the employment in respect of which the permit has been granted;</li> <li>(d) a statement that the foreign national concerned be paid the <b>national minimum hourly rate of pay</b>;</li> <li>(e) a statement that <b>a new application</b> for the grant of an employment permit may be made in respect of the foreign national concerned subject to the provisions of the Bill;</li> <li>(f) a statement of any <b>conditions</b> attaching to the grant of the employment; and</li> <li>(g) <b>any other information</b> that, in the opinion of the Minister, is appropriate.</li> </ul> <p>An employment permit shall include or be accompanied by a summary of the principal employment rights of an employee (subsection (3)).</p>

Section	Title	Effect
20	Restriction on grant of employment permit	<p>Section 20 provides for the “50-50” rule, whereby an employment permit will not issue unless at the time of application at least 50% of the employees in a firm are EEA nationals.<sup>23</sup> UK citizens and nationals of the Swiss Confederation are included when calculating the number of EEA employees.</p> <p>Subsection (2) states that in the case of an application for a critical skills employment permit, a general employment permit or an intra-company transfer employment permit, <u>subsection (1) shall not apply</u> to such application where:</p> <ul style="list-style-type: none"> <li>a) the person who has made the offer of employment, or the connected person, has been registered with the Revenue Commissioners for a prescribed period;</li> <li>b) an enterprise development agency has made a recommendation referred to in section 14 in respect of that application (i.e. that an employment permit be granted or renewed); and</li> <li>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.</li> </ul> <p>Applications for the Dependent Employment Permit, the General Employment Permit, the Reactivation Employment Permit and the Sports and Cultural Employment Permit also have access to a waiver to the 50:50 rule if on the day of application, the employer has no employees and the foreign national will be the sole employee on the date the employment in the application begins. The waiver no longer applies only to employers who intend to limit themselves to one employee. It now applies even if the employer intends to expand in the future. The 50:50 rule will be triggered when a second application is made for an employment permit for the same employer.</p>

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<sup>23</sup> [General Employment Permit](#), Enterprise.gov

Section	Title	Effect
21	Establishing need for grant of certain employment permits	<p>Section 21(1) provides that this section applies to the</p> <ul style="list-style-type: none"> <li>• General Employment Permit,</li> <li>• Contract for Services Employment Permit; and</li> <li>• Seasonal Employment Permit.</li> </ul> <p>This section provides that the Minister shall not grant an employment permit unless he or she is satisfied that the employer (or the contractor or subcontractor, as appropriate) has published a notice of the employment as prescribed and has, before making the application, offered the employment to an Irish citizen (or a person in the State under Section 8 of this Act) or a citizen of the EEA or Swiss confederation. The Bill's Explanatory Memo indicates that this provision fulfils the State's obligation with regard to community preference and helps to protect the domestic and EEA labour market. It is commonly referred to as the <a href="#">Labour Market needs Test (LMNT)</a>.<sup>24</sup></p> <p>The employer must advertise the vacancy in a prescribed manner for a prescribed duration. It is required that the role be advertised on the EU-based jobs website EURES, and one or more additional online employment platforms in a manner and for a period to be prescribed in regulations. These platforms will be listed in regulations.<sup>25</sup></p> <p>The minimum period for which the role must be advertised has been moved to regulations to allow for increased flexibility. An exemption is provided subject to a recommendation from an enterprise development agency, which the Minister may take into account. Further exemptions are provided where the Minister is satisfied that the role is in an area where there is a shortage of skills as set out in regulations (occupations listed on the Critical Skills Occupations List), the application is in respect of a foreign national to whom a general employment permit has been granted who was dismissed by reason of redundancy, or the application is in respect of the care of a person with exceptional medical needs. The terms of the LMNT will be set out in regulations and the Minister may make enquiries to satisfy himself/herself that the LMNT has been conducted as prescribed.</p>

<sup>24</sup> [Labour Market Needs Test](#), Enterprise.gov.

<sup>25</sup> Explanatory Memorandum, p. 5

Section	Title	Effect
22	Conditions of grant of intra-company transfer employment permit	<p>Section 22 provides that where an intra-company transfer employment permit is granted to a foreign national the hourly rate of that salary shall be <u>not less than the national minimum hourly rate of pay</u> or, where appropriate to the employment in respect of which the application is made, the hourly rate referred to in paragraph (b) of the definition of “standard working week remuneration”<sup>26</sup> (subsection (1)).</p> <p>Subsections (2) and (3) provide that where the hourly rate of the salary paid outside the State by the foreign employer is less than the national minimum wage or, where appropriate, the hourly rate referred to in paragraph (b) of the definition of “standard working week remuneration”, the foreign employer shall make an additional payment to the foreign national so that their hourly wage is not less than the national minimum hourly rate of pay or the hourly rate referred to in paragraph (b) of the definition of “standard working week remuneration”, as applicable.</p> <p>Section 22 requires a statement of earnings which breaks down the elements of the foreign national’s pay and provides detail on the remuneration information required for an application. The foreign national concerned must be employed by the foreign employer for a minimum period before an application for an employment permit may be made, that period will be prescribed in regulations (subsection (5)).</p>
23	Conditions of grant of contract for service employment permit	<p>Section 23 provides that, like section 22, the hourly rate of remuneration paid by the contractor (or if there is a subcontractor, the subcontractor), shall be not less than the national minimum hourly rate of pay or, where appropriate to the employment in respect of which the application is made, the hourly rate referred to in paragraph (b) of the definition of “standard working week remuneration” (subsection (1)).</p> <p>Where the hourly rate of pay that the foreign national usually receives falls below this amount, an additional</p>

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<sup>26</sup> (b) if the hourly rate of pay fixed under or pursuant to any enactment that applies to the employment concerned is greater than the national minimum hourly rate of pay, the hourly rate of pay that is fixed under or pursuant to that enactment;

Section	Title	Effect
		<p>payment will be required to be paid for the duration of the employment permit, to meet the national minimum hourly rate of pay. This section requires the provision of a statement of earnings by the contractor or subcontractor, which breaks down the elements of the foreign national's pay, and provides detail on the remuneration information required for an application.</p>
24	Change to name of employer, connected person or relevant person	<p>Section 24 provides that the Minister may amend a permit in the event of a transfer to which the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) applies.</p>
25	Mandatory grounds for refusal of employment permit	<p>Section 25 provides for <u>mandatory grounds</u> for refusal of employment permits. The Minister must refuse an employment permit:</p> <ul style="list-style-type: none"> <li>• If the foreign national concerned was made redundant from the same role within the six months preceding the date of the application (subsection (1));</li> <li>• Where the employer is either not registered with the Revenue Commissioners or is not engaged in substantive business in the State (subsection (2));</li> <li>• In the case of a Contract for Services Employment Permit, where the contractor or subcontractor is not registered with the Revenue Commissioners (subsection (2));</li> <li>• In the case of a Contract for Services Employment Permit, where there are reasonable grounds to believe the foreign national will not be employed by the contractor or subcontractor (subsection (3));</li> <li>• In the case of an application for an intra-company transfer employment permit, the connected person is not engaged in substantive business operations in the State, the connect person is not registered with the Revenue Commissioners, the foreign employer is not engaged in substantive business operations in the place, outside the State, in which it is established, or the connected person is not connected with the foreign employer (subsection (5)); and</li> <li>• In the case of an Intra Company Transfer Employment Permit and Contract for Services Employment Permit, where the remuneration falls short of the requirements specified specifically for those permit types in the Act (subsection (6)).</li> </ul>

Section	Title	Effect
26	Discretionary grounds for refusal of employment permit	<p>Section 26 provides <u>discretionary grounds</u> on which the Minister may refuse to grant an employment permit. These include:</p> <ul style="list-style-type: none"> <li>• where the applicant fails to provide information required under the Act or the prescribed fee;</li> <li>• where the foreign national, or the employer (or in certain cases the contractor, subcontractor, relevant person, the connected person or the employment agency) has, in the preceding five years, been convicted of an offence under this Act or an enactment set out in Schedule 1;</li> <li>• where to grant the permit would be manifestly inconsistent with the Government's economic policy.</li> <li>• where the employee has been working for less than 12 months in their first employment in the State and an application for another employment permit was made within that time;</li> <li>• where the Minister considers it to be in the public interest; <ul style="list-style-type: none"> <li>an irregularity with the permission of the foreign national to land or be in the State;</li> </ul> </li> <li>• issues related to fraudulent documents, remuneration levels and/or the relevance of skills, qualifications knowledge or experience required for the employment;</li> <li>• where there was a failure by the employer or connected person to comply with conditions attaching to a previously issued employment permit, not necessarily for the same foreign national; or</li> <li>• where the foreign national is not registered with a regulatory body or a Minister of Government where this is required for the occupation to be undertaken in the State.</li> </ul> <p>The Minister may also refuse to grant an Intra Company Transfer Employment Permit or a Contract for Service Employment Permit if the foreign employer, connected person, contractor or subcontractor, where applicable, has not made adequate provision for board and accommodation (or either of them) or health insurance. The Minister may refuse to grant an employment permit if the employer does not comply with relevant company law.</p>



Section	Title	Effect
27	Notification of refusal and return of fee	Section 27 provides that the Minister must notify the applicant in writing of a refusal to grant an employment permit. This notification must include the decision, the reasons for the refusal and the fact that the applicant may submit the decision for review. The Minister shall also return the prescribed portion of the fee to the person who paid the fee or a person nominated by them.
28	Review of decision to refuse grant of employment permit	<p>Section 28 provides that a decision by the Minister to refuse to grant an employment permit may be submitted by the applicant for review. This application for review shall be made within a prescribed period from the date the decision is notified to the applicant under section 27. A review may be directed by the Minister when all relevant material has been submitted and the procedures for review have been followed by the applicant (subsection (3)). The review shall not be carried out by the same person who made the decision being appealed (subsection (4)).</p> <p>The decision may be confirmed or cancelled by the reviewer (subsection (5)). In the latter case the reviewer may grant the applicant the employment permit sought. Before the reviewer makes their decisions, the applicant shall have the right to make representations in writing (subsection (6)), including where the reviewer is of the view that there are reasons to confirm the decision that differ to the reasons notified to the applicant (subsection (7)). Where new information is provided during the review process, the application will be referred back to the decision-maker for reconsideration and the making of a new decision in relation to it (subsection (8)).</p>
29	Renewal of employment permit	<p>Section 29 provides that the Minister may, on application, renew an employment permit.</p> <p>Subsection (2) provides that the following employments shall <u>not</u> be renewable:</p> <ul style="list-style-type: none"> <li>• an intra-company transfer employment permit granted in respect of an employment referred to in section 9(2)(d)(ii);<sup>27</sup></li> <li>• an internship employment permit.</li> </ul>

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<sup>27</sup> “in an employment that requires the foreign national to participate in such training programme”

Section	Title	Effect
		<p>An application for renewal shall be made within a prescribed time (subsection (3)) and may be made by the holder of the employment permit concerned or the employer, or, in prescribed circumstances and where relevant, by the contractor or subcontractor, connected person or relevant employment agency (subsection (4)). The Bill's Explanatory Memorandum notes that this section exempts renewals from the Labour Market Needs Test and the Ineligible Occupations List.<sup>28</sup></p>
30	Period for which employment permit may be renewed	<p>Section 30 provides that the period for which an employment permit may be renewed under the Bill shall not exceed such period as may be prescribed by the Minister.</p> <p>In the case of the renewal of an <u>intra-company transfer employment permit</u>, the Minister may renew the permit where he or she 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 (subsection (2)).</p> <p>In the case of the renewal of a <u>contract for service employment permit</u>, the Minister may renew the permit where he or she is satisfied that 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 (subsection (3)).</p> <p>The Bill also sets out the period for which a dependant employment permit may be renewed (subsection (7)).</p>
31	Application of sections 16, 19, 20, 25, 26, 27 and 28 to renewal of employment permit	<p>Section 31 provides for the refusal of a renewal application. The Bill proposes to separate the refusal of initial applications for employment permits and the refusal of renewal applications.</p>
32	Additional grounds for refusing renewal of employment permit	<p>Section 32 provides for further discretionary grounds on which the Minister may refuse to renew an employment permit. These include where:</p> <ul style="list-style-type: none"> <li>• there are changes in the foreign national's employment as specified in the original permit;</li> </ul>

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<sup>28</sup> Explanatory Memorandum, p. 8.

Section	Title	Effect
		<ul style="list-style-type: none"> <li>• the remuneration paid to the foreign national is less than the national minimum wage, or the minimum required by the Bill;</li> <li>• the foreign national has spent a continuous period of not less than 3 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;</li> <li>• renewal of the permit would to contravene regulations under section 40 of the Bill; and/or</li> <li>• information, documents and evidence required were not provided.</li> </ul> <p>This section operates in addition to the grounds for refusal under sections 25 and 26 (subsection (5)).</p>
33	Revocation of employment permit	<p>Section 33 provides that the Minister may revoke an employment permit if:</p> <p>(a) in the opinion of the Minister, the holder of the permit or the employer or connected person has not complied with section 47(1) or (2) (i.e. transfers an employment permit to another)</p> <p>(b) the holder of the permit or the employer, connected person or relevant person has been convicted of an offence under this Act or an enactment specified in Schedule 1,</p> <p>(c) in the opinion of the Minister, it was obtained by fraud or misrepresentation,</p> <p>(d) in the opinion of the Minister, any information provided in respect of the application for it was false or misleading in a material respect,</p> <p>(e) in the case of a dependant employment permit</p> <p>(i) the primary permit holder has been redundant for a period exceeding 6 months,</p> <p>(ii) the employment permit granted to the primary permit holder has been revoked, or</p> <p>(iii) the primary permit holder or the research project researcher referred to in section 12(3)(b) no longer has the permission referred to in section 8(1)(e),</p> <p>(f) the foreign national has not commenced employment in accordance with the employment permit within a prescribed period beginning on the date of issue of the employment permit,</p>

Section	Title	Effect
		<p>(g) in the case of an intra-company transfer employment permit, in the opinion of the Minister the connected person or the foreign employer has failed to:</p> <p>(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</p> <p>(ii) provide appropriate health insurance in respect of the foreign national during some or all of the period for which the employment permit has been in force should he or she require medical treatment for illness or injury during such period,</p> <p>(h) in the case of a contract for service employment permit, in the opinion of the Minister, the contractor or subcontractor, as the case may be, has failed to</p> <p>(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</p> <p>(ii) provide appropriate health insurance in respect of the foreign national during some or all of the period for which the employment permit has been in force should he or she require medical treatment for illness or injury during such period,</p> <p>(i) the foreign national is not, in the opinion of the Minister—</p> <p>(i) employed in the employment specified, in accordance with section 19(2), in the employment permit,</p> <p>(ii) employed by the person referred to in section 17(2)(b), or</p> <p>(iii) employed by the foreign employer or is not carrying out the duties for, or participating in a training programme provided by, the connected person referred to in section 17(3),</p> <p>(j) in the opinion of the Minister, the remuneration paid, insofar as it relates to the salary referred to in paragraph (a)(i) and (b)(i) of section 3(1), to the foreign national is less than the national minimum hourly rate of pay or the hourly rate referred to in paragraph (b) of the definition of “standard working week remuneration”,</p>

Section	Title	Effect
		<p>(k) without prejudice to paragraph (j), in the opinion of the Minister</p> <p>(i) 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 19(2) in the employment permit, or</p> <p>(ii) the deductions referred to in section 19(2), stated pursuant to that section in the employment permit, were different to the deductions made by the employer,</p> <p>(l) the statement of earnings, referred to in section 22 or 23, does not comply with the requirements of section 22(1)(c), or section 23(1)(b), as the case may be,</p> <p>(m) the employment permit was granted by virtue of an administrative error, or</p> <p>(n) in the opinion of the Minister, it is in the public interest to do so.</p> <p>Subsection (2) provides that where the Minister decides to revoke an employment permit, the holder of the permit and the employer or connected person shall be notified of this in writing.</p>
34	Review of decision to revoke employment permit	<p>Section 34 provides for the process of reviewing a decision to revoke an employment permit. This section is similar to section 17 of the <i>Employment Permits Act 2006</i>, which is repealed by the Bill. The decision may be submitted to the Minister for review by the holder of the permit, the employer or the connected person. The person who conducts the review shall be of a more senior grade than the person who made the decision to revoke the permit (subsection (3)). Following the review, the decision may be cancelled or confirmed (subsection (4)).</p> <p>Before a decision is <u>confirmed</u>, the applicant shall be notified in writing and given the opportunity to make representations (subsection (5)). If new material is made available during the course of the review, the decision shall be referred back to the decision-maker for reconsideration. (subsection (6)).</p>
35	Order under section 3 or 4 of Immigration Act 1999	<p>Section 35 provides that if a foreign national who has been granted an employment permit has been made the subject of a deportation or exclusion order under the <a href="#">Immigration Act 1999</a>, the permit shall be revoked. If the order under the 1999 Act is revoked or otherwise ceases to be in force, the permit may be revived.</p>

Section	Title	Effect
36	Termination of employment	<p>Section 36 provides that if the employment of a foreign national pursuant to an employment permit is terminated by the employer or holder of the permit or otherwise, the Minister shall be notified in writing within a prescribed period of the date of termination (subsection (1)). The Minister shall also be notified in the same manner if the employment of a foreign national employed pursuant to an intra-company transfer employment permit is terminated (subsection (2)).</p> <p>The Minister shall, on receipt of the notification, cancel the employment permit concerned (subsection (3)).</p> <p>Subsection (4) provides that a person who fails to notify the Minister (per subsections (1) and (2) of section 36) shall be <u>guilty of an offence</u>. It shall be a defence for a person charged with an offence under subsection (4) to show that he or she took all reasonable steps to notify the Minister within the period referred to in subsection (1) or subsection (2), as the case may be.</p>
37	Redundancy of critical skills employment permit holder	<p>Section 37 provides that where a critical skills employment permit holder has been made redundant, they shall notify the Minister in writing of the date of dismissal and provide any documents specified (subsection (1)).</p> <p>The permit holder may apply for an employment permit within 6 months of the date of dismissal, and such application shall be for a critical skills employment permit for:</p> <ul style="list-style-type: none"> <li>(a) an employment that is the <u>same type of employment</u> for which the employment permit referred to in subsection (1) was granted, or</li> <li>(b) <u>a different employment</u> to the one for which the employment permit referred to in subsection (1) was granted, that is specified in regulations under section 40 as an employment for which a critical skills employment permit may be granted.</li> </ul> <p>An application may still be made notwithstanding that the employment is no longer an employment, or falls within a category of employment, for which a critical skills employment permit may be granted; or is an employment, or falls within a category of employment, specified in regulations under section 40 for which an employment permit shall not be granted (subsection (4)).</p>

Section	Title	Effect
		<p>The Minister shall not grant the employment permit concerned unless the Minister is satisfied that the foreign national was dismissed by reason of redundancy (subsection (6)). The applicant shall supply any information required by the Minister (subsection (9)).</p>
38	Redundancy of general employment permit holder	<p>Section 38 provides that, in an instance where the foreign national permit holder has been made redundant, they may make an application for an employment permit within 6 months of the date of dismissal (subsection (3)). They shall also notify the Minister of the date of their dismissal within a prescribed period (subsection (2)).</p> <p>The section also waives the application of the ineligible list if the status of the occupation from which the permit holder was made redundant has changed to ineligible since the permit was first granted.</p>
39	Information, documents, supplementary provisions relating to redundancy	<p>Section 39 sets out the material to be supplied to the Minister in the notification that the foreign worker has been made redundant. These include:</p> <p>(a) the <u>date of dismissal</u>,</p> <p>(b) the <u>reason for the dismissal</u> by reason of redundancy as specified in paragraph (a), (b), (c), (d) or (e) of section 7(2) of the Act of 1967 or in section 21 of that Act,</p> <p>(c) such information and documents as may be specified in regulations under section 43 that the Minister may require to be satisfied that the dismissal of the foreign national <u>was a dismissal by reason of redundancy</u>, and</p> <p>(d) a statement specifying whether the foreign national <u>has notified the Minister</u> in accordance with section 36</p>
<b>Part 3 - Regulations Relating to Employment Permits</b>		
40	Regulations governing grant of employment permit, etc.	<p>Section 40 provides for the regulation-making powers of the Minister for each class of employment permit.</p> <p>Subsection (2) provides that the matters in respect of which the Minister may regulate include</p> <p>(a) the <b>maximum number of employment permits</b> that may be granted in respect of a particular class of employment permit 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;</p>



Section	Title	Effect
		<p>(b) the employments for which an employment permit <b>may be granted</b>;</p> <p>(c) the employments for which an employment permit <b>shall not be granted</b>;</p> <p>(d) economic sectors in respect of which employment permits for any employment that falls into such sector shall not be granted;</p> <p>(e) the <b>minimum amount of remuneration</b> that shall be payable in respect of an employment <b>as a condition for the grant</b> of an employment permit in respect of it, and without prejudice to the generality of the foregoing, in respect of such minimum amount of remuneration—</p> <p style="padding-left: 40px;">(i) in so far as it relates to the salary referred to in paragraphs (a)(i) and (b)(i) of section 3(1),<sup>29</sup> the hourly rate for the salary shall be not less than the national minimum hourly rate of pay, or where appropriate to the employment or the category of employment, the hourly rate of pay referred to in paragraph (b) of the definition of “standard working week remuneration”, and</p> <p style="padding-left: 40px;">(ii) in so far as it relates to the payments for board and accommodation, referred to in section 3(1)(b)(ii)<sup>30</sup> and the payments for health insurance referred to in paragraphs (a)(ii) and (b)(iii) of section 3(1), a maximum amount that may be paid in respect of those payments or the maximum</p>

<sup>29</sup> (i) the salary that is paid to a foreign national, the hourly rate of which shall not be less than the national minimum hourly rate of pay or, where appropriate to the employment in respect of which the application is made, the hourly rate referred to in paragraph (b) of the definition of “standard working week remuneration”, and

(ii) any payment for health insurance in respect of a foreign national should he or she require medical treatment for illness or injury during the period for which the employment permit is in force

<sup>30</sup> The salary that is paid to a foreign national, the hourly rate of which shall be not less than the national minimum hourly rate of pay or, where appropriate to the employment in respect of which the application is made, the hourly rate referred to in paragraph (b) of the definition of “standard working week remuneration”

Section	Title	Effect
		<p>amount of the value of such board and accommodation that are directly provided;</p> <p>(f) the <b>qualifications or skills</b> that a foreign national, in respect of whom an application for an employment permit is made, is <b>required to possess</b> in order for a grant of the permit to be made in respect of a specified employment or category of employment;</p> <p>(g) the <b>minimum number of hours of work</b> 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;</p> <p>(h) the <b>minimum period of experience</b> 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;</p> <p>(i) the <b>minimum and maximum periods</b> for which an employment permit may be <b>granted</b>; and</p> <p>(j) the <b>minimum and maximum periods</b> for which an employment permit may be <b>renewed</b>.</p> <p>Subsection (5) provides that when making regulations providing for critical skills employment permits and general employment permits, the Minister may make different provisions for foreign nationals to whom sections 37 or 38 apply (redundancy provisions for individuals with these permits).</p> <p>Subsection (6) provides for regulations relating to exchange agreement employment permits. The Minister:</p> <ul style="list-style-type: none"> <li>• shall specify in those regulations each exchange agreement in respect of which an employment permit may be granted, and</li> <li>• may specify the employments referred to in that exchange agreement in respect of which an employment permit may be granted for that class of employment permit.</li> </ul> <p>Subsection (7) provides that the Minister may, when providing for any class of employment permit or any matter specified under subsection (2) in regulations, make provision in respect of a recommendation referred to in section 14 (a recommendation by an enterprise development agency), and may, in respect of such</p>

Section	Title	Effect
		<p>recommendation, make different provision for different relevant classes and cases.</p> <p>Subsection (8) provides that, in respect of the qualifications held by the foreign worker, the Minister may provide for certain requirements that the foreign national be registered with a regulatory body or that their qualifications be recognised by a regulatory body.</p> <p>Subsection (9) provides that when specifying the employments for which an employment permit may be granted, the Minister may specify such employments by reference to employments that require qualifications, experience or skills, referred to in section 42(1)(c), that are required for the proper functioning of one or more economic sectors and the Minister is satisfied that there is a shortage those skills.</p> <p>Subsection (10) provides that the Minister, when making regulations, may specify as a condition for the grant of an employment permit:</p> <ul style="list-style-type: none"> <li>(a) any accommodation, training or expenses that shall be provided to a foreign national to whom such an employment permit is granted, and</li> <li>(b) any measures that shall be taken by the employer of the foreign national to whom such an employment permit is granted to increase the skills, knowledge, qualifications or experience of employees, or to otherwise reduce the employer's reliance on the employment of foreign nationals in respect of the employment concerned, including by way of the introduction of technical changes to work processes.</li> </ul> <p>Subsection (11) provides that where the Minister specifies the maximum number of employment permits that may be granted in respect of a class of employment permit, the Minister shall specify a period during which that maximum number of employment permits shall be granted.</p> <p>Subsections (12) and (13) stipulate that the Minister may make regulations providing for restrictions on the issuing of permits of a particular class for a particular period of time specified in the regulations.</p> <p>Subsection (14) provides that the Minister shall carry out a review of the regulations made in accordance with Section 40 periodically.</p>

Section	Title	Effect
41	Remuneration relating to employments	Section 41 provides that, when making regulations related to remuneration, the Minister may make a distinction between different employments. The Minister may have regard to the amounts of remuneration paid in respect of different employments and categories of employment, and the minimum number of hours of work required for an employment as a condition for the grant of an employment in respect of it.
42	Criteria for making regulations under section 40	<p>Section 42 sets out the criteria for the making of regulations by the Minister under section 40 of the Bill, which states that the Minister may make regulations having regard to the matters specified in section 42. These matters include:</p> <p>(a) the qualifications, experience or skills that, in the opinion of the Minister, are required for economic and social development and competitiveness,</p> <p>(b) the economic sector or sectors that, in the opinion of the Minister, will be involved in the achievement of such economic and social development and competitiveness,</p> <p>(c) the qualifications, experience or skills that, in the opinion of the Minister, are required for the proper functioning of such economic sector or sectors, and</p> <p>(d) in a case where, in the opinion of the Minister, there is likely to be a shortage or surplus in respect of qualifications, experience or skills falling within paragraph (c), an estimate as best the Minister may make (and which estimate the Minister is, by virtue of this section, required to make) of what the extent of that shortage or surplus will be.</p>
43	Regulations governing procedure in relation to applications for employment permits etc.	<p>Section 43 sets out the Minister's regulation making powers with regard to the procedures around the making of applications for employment permits (under section 10) and applications for permit renewals (under section 29). These focus primarily on the documents, evidence and other materials to be produced as part of these applications.</p> <p>Subsection (2) provides that these regulations may make provision for all or any of the following:</p> <p>(a) the form that an application for a permit or permit renewal shall take;</p> <p>(b) the production to the Minister, with an application for an employment permit, of such information and documents as the Minister may</p>

Section	Title	Effect
		<p>specify and request (these are set out in detail in subsection (2)(c)(i)-(ix); and</p> <p>(c) the production to the Minister, with an application to renew an employment permit, of information and documents as the Minister may specify and request (these are set out in detail in subsection (2)(d)(i)-(viii))</p>
<b>Part 4 – Enforcement, Offences and Penalties</b>		
44	Authorised officers	<p>Section 44 provides for the power of the Minister to appoint authorised officers under the Bill. Those who were authorised officers under the <i>Employment Permits Act 2006</i> before the commencement of the Bill shall remain so. Subsection (4) outlines the circumstances in which an authorised officer shall cease to be such an officer. Subsection (5) sets out actions that an authorised officer may perform (these are set out in subsection (5)(a)-(k).</p> <p>Subsection (11) provides that a person who</p> <ul style="list-style-type: none"> <li>(a) obstructs or impedes an authorised officer in the exercise of a power under this section,</li> <li>(b) without reasonable excuse, does not comply with a requirement under this section, or</li> <li>(c) in purported compliance with such a requirement, gives information that is false or misleading in a material respect,</li> </ul> <p>shall be guilty of an offence.</p>
45	Warrant relating to offences under section 7(6)	<p>Section 45 provides for the issuing of search warrants relating to offences committed under section 7 of the Bill (regarding engaging in employment as a foreign national and employing foreign nationals in the State). Section 45 provides that where there are reasonable grounds for suspecting that evidence relating to an offence under section 7(6) is to be found at a specified place, a judge of the District Court may issue a warrant for the search of that place. The section sets out the powers of the authorised officer in this instance and subsection (4) creates an offence for obstruction, failure to comply with requirements under this section and failure to provide name and address.</p>
46	Prohibition on forgery, fraudulent alteration or fraudulent use of employment permit	<p>Section 46 provides that a person shall not</p> <ul style="list-style-type: none"> <li>(a) forge a document purporting to be an employment permit,</li> <li>(b) alter an employment permit with intent to deceive,</li> </ul>

Section	Title	Effect
		<p>(c) use an employment permit with intent to deceive,</p> <p>(d) permit the alteration of an employment permit with intent to deceive,</p> <p>(e) permit the use of an employment permit with intent to deceive, or</p> <p>(f) use, with intent to deceive, a forged document purporting to be an employment permit.</p> <p>A person who contravenes these provisions shall be guilty of an offence.</p>
47	Prohibition on certain use of employment permit	<p>Section 47 prohibits the transfer of an employment permit, its use by a different foreign national or a different employment, whether by employer or permit holder. It establishes such use as an offence.</p>
48	Prohibition on deduction from remuneration and retention of personal documents	<p>Section 48 prohibits deductions made by an employer relating to the grant of a permit, and the holding of personal documents of the foreign national and establishes an offence for such cases.</p> <p>The Explanatory Memo indicates that this is intended to prevent the imposition of coercive or extortionate deductions by employers or agents and mirrors the provisions of section 23 of the <i>Employment Permits Act 2006</i>.</p>
49	Provision of false or misleading information	<p>Section 49 creates an offence relating to the provision of misleading information in an application for grant or renewal of an employment permit. The Explanatory Memo indicates that this section reinstates section 25 of the <i>Employment Permits Act 2006</i>, as amended, with no changes.</p>
50	Penalties and proceedings	<p>Section 50 provides for penalties for specified offences under the Bill. These include:</p> <p>(1) A person guilty of an offence under section 7(6) ((regarding engaging in employment as a foreign national and employing foreign nationals in the State) is liable—</p> <p>(a) on summary conviction, to a class B fine or imprisonment for a term not exceeding 12 months or both, or</p> <p>(b) where the offence is an offence consisting of a contravention of section 7(3) or (5), or a failure to take the steps specified in section 7(4), on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 10 years or both.</p>

Section	Title	Effect
		<p>(2) A person guilty of an offence under section 36(4), 46(2), 47(3), 48(4), or 49 is liable—</p> <p>(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or</p> <p>(b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both.</p> <p>(3) A person guilty of an offence under section 44(11) (impeding an authorised officer) or 56(8) (record keeping) is liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both.</p> <p>(4) A person guilty of an offence under section 45(4) (obstruction or failure to comply with search under warrant) is liable on summary conviction to a class B fine or imprisonment for a term not exceeding 12 months or both.</p>
51	Offences by body corporate	<p>Section 51 provides that where an offence under the Bill has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any wilful neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.</p>
52	Civil proceedings	<p>Section 52 provides that if a foreign national was, in contravention of this Bill, in employment without an employment permit, and if they were not paid or not paid sufficiently for their work, the Minister may institute civil proceedings against the employer to recompense the foreign national (subsection (2)).</p> <p>This section applies to a foreign national who, in contravention of section 7(1)</p> <p>(a) entered the service of an employer in the State, or</p> <p>(b) was in employment in the State, without an employment permit and who is no longer in such service or employment.</p> <p>This section requires that the foreign national can demonstrate that they took reasonable steps to regularise</p>



Section	Title	Effect
		<p>their position. The section sets guidance on the sums to be paid, and a two-year limit under which civil proceedings may be taken (subsection (3)). Proceedings cannot be taken for work done more than six years prior to the cessation of the employment (subsection (6)). Costs, if awarded, will be awarded to the Minister (subsection (9)). Compensation for the foreign national is not considered a reckonable emolument under the <i>Social Welfare Consolidation Act 2005</i>, as having worked without an employment permit the foreign national is not entitled to build up payments to Social Welfare.</p> <p>The section sets out the jurisdiction of the District Court (awards up to €15,000) and Circuit Court (awards up to €75,000) (subsections (13)-(16)), as well as the right of the foreign national to institute proceedings under this section on his/ her own behalf but so doing would preclude the Minister from taking proceedings (subsection (12)).</p>
53	Prohibition on penalisation	<p>Section 53 prohibits the penalisation of an employee by a set of clearly defined actions including dismissal, demotion or intimidation.</p> <p>In this section, “penalisation” means any act or omission by an employer or a person acting on behalf of an employer that affects an employee to his or her detriment with respect to any term or condition of his or her employment.</p> <p>An employer shall not penalise or threaten penalisation against an employee for—</p> <p>(a) <b>making a complaint</b> to a member of the Garda Síochána or the Minister that a provision of this Act is not being complied with,</p> <p>(b) <b>giving evidence</b> in any proceedings under this Act, or</p> <p>(c) giving notice of his or her <b>intention to do any of the things</b> referred to in paragraphs (a) or (b).</p>
54	Presumption of employment in certain proceedings	<p>Section 54 provides that, in relation to proceedings under Section 7(6), where evidence is given by a member of an Garda Síochána, immigration officer or authorised officer, it shall be presumed that if a person was witnessed carrying out a job in a premises, that they have been employed to carry out that job.</p>
55	Presumptions in proceedings under Act	<p>Section 55 provides for the following presumptions under the Bill:</p>

Section	Title	Effect
		<ul style="list-style-type: none"> <li>• A document was created by a person purported to be the document's creator</li> <li>• Documents created and sent by the first person to a second person, were so created and received by the first and second person respectively</li> <li>• A notice or document has been served and received by the intended recipient</li> <li>• a document or record retrieved from an electronic storage was authored by the person who ordinarily uses that device</li> <li>• Material removed from a place is the property of a person, if evidence is given to this effect by an authorised officer</li> </ul>
56	Retention of records	<p>Section 56 provides for record keeping for a period of five years by employers to be made available to authorised officers of the Minister, if requested. Subsection (3) sets out the records to be held, which include the relevant employment, its duration, the remuneration paid, the nature of the business and the nationality of the permit holder, and records of any board, accommodation and health insurance in the case of Intra-Company Transfer/Contract for Service Employment Permit types.</p> <p>The Bill's Explanatory Memo indicates that the purpose of this section is to reinstate Section 27 of the <i>Employment Permits Act 2006</i> as amended, and the section is amended to include UK nationals for the purposes of record keeping, to address their changed status following Brexit.</p>
<b>Part 5 - Miscellaneous</b>		
57	Register of employment permits	Section 57 provides for a register of permits to be held by the Minister and sets out the information that shall be recorded. The section has been amended to include a savings clause in respect of records held under the existing Acts.
58	Service of notices	Section 58 provides for the delivery of notices and has been amended to allow the use of any type of post rather than specifying 'ordinary prepaid post.'
59	Notification of change of address	Section 59 places the obligation on the parties to an employment permit (the permit holder, employer,

Section	Title	Effect
		connected person, foreign employer, relevant person, contractor and the subcontractor) to notify the Minister in the case of a change of address
60	Delegation of functions	Section 60 provides for delegation of functions to an officer of another Minister.
61	Data exchange	Section 61 provides for data exchange with specified bodies – the Department of Social Protection, an Garda Síochána, the Department of Justice, the Department of Foreign Affairs and the Revenue Commissioners.
<b>Part 6 - Transition Provisions</b>		
62	Definition (Part 6)	Section 62 confirms the commencement date for this part.
63	Continuation in force of employment permits granted under Act of 2006	Section 63 secures the continuation in force under this Act of an employment permit granted under the <i>Employment Permits Act 2006</i> .
64	Applications for grant or renewal of employment permits under Act of 2006	Section 64 establishes the consideration under this Act of an application received under the <i>Employment Permits Act 2006</i> where a decision has not yet been made.
65	Renewal of employment permits granted under Act of 2006	Section 65 provides that an application for the renewal of an employment permit granted under the <i>Employment Permits Act 2006</i> shall be renewed in respect of the purposes under this Act.
66	Review of refusal under section 12 of Act of 2006	Section 66 establishes the consideration of a review under this Act, of a decision to refuse to grant or renew an employment permit made under the <i>Employment Permits Act 2006</i> , where such decision has not yet been made.
67	Review of revocation under section 16 of Act of 2006	Section 67 establishes the consideration of a review under this Act of a decision to revoke an employment permit made under the <i>Employment Permits Act 2006</i> where such decision has not yet been made
68	Additional transitional provisions	Section 68 sets out the transitional arrangements to be observed in respect of the Employment Permits Acts and associated regulations, the repeal and revocation of which are set out in Section 6.
<b>Part 7 – Consequential amendments</b>		
69	Amendment of section 17(2) of <i>Employment Equality Act 1998</i>	Section 69 provides for the amendment of Section 17(2) of the Employment Equality Act 1998 by the substitution of “Employment Permits Act 2022” for “Employment Permits Act 2003”.

Section	Title	Effect
70	Amendment of Immigration Act 2004	<p>Section 70 provides for the amendment the <i>Immigration Act 2004</i></p> <p>(a) by the substitution, in section 4(3)(b), of “Employment Permits Act 2022” for “Employment Permits Act 2003”, and</p> <p>(b) by the substitution, in section 13(2), of “an offence under section 7(6) of the Employment Permits Act 2022 consisting of a contravention of section 7(1) of that Act” for “section 2(1) of the Employment Permits Act 2003”.</p>
71	Amendment of <i>Workplace Relations Act 2015</i>	<p>Section 71 provides for the amendment of <i>Workplace Relations Act 2015</i></p> <p>(a) by the substitution, in paragraph 5 of Part 2 of Schedule 1, of “Section 53(3) of the Employment Permits Act 2022” for “Section 26(3) of the Employment Permits Act 2006”,</p> <p>(b) by the substitution, in paragraph 16 of Part 1 of Schedule 5, of “Section 53(3) of the Employment Permits Act 2022” for “Section 26(3) of the Employment Permits Act 2006”, and</p> <p>(c) in Schedule 6—</p> <p>(i) by the substitution, in paragraph 23 of Part 1, of “Paragraph 1 of Schedule 2 to the Employment Permits Act 2022” for “Paragraph 1 of Schedule 2 to the Employment Permits Act 2006”, and</p> <p>(ii) by the substitution, in paragraph 23 of Part 2, of “Paragraph 2 of Schedule 2 to the Employment Permits Act 2022” for “Paragraph 2 of Schedule 2 to the Employment Permits Act 2006”.</p>

**Source:** L&RS analysis of the Bill

## Background and policy context

This section provides an overview of the current system of employment permits in Ireland, outlining current policy and types of employment permits in operation at present. It also presents some key features and data in relation to the Irish system.

### Current policy on employment permits

Economic or labour migration policy essentially provides the framework within which the State's employment permit system functions. The State's general economic migration policy promotes the sourcing of labour and skills needs from within the workforce of Ireland, other [EEA](#) states and Switzerland. Employers may seek employment permits for non-EEA nationals to fill certain skills shortages in certain circumstances.

In this context, Ireland operates what has been described as a "managed employment permits system which maximises the benefits of economic migration while minimising the risk of disrupting Ireland's labour market".<sup>31</sup> Current Government policy is designed to supplement Ireland's skills and labour supply over the short to medium term by issuing employment permits for the employment of non-EEA nationals for specific vacancies. This happens in response to employer demand for strategic skills/labour shortages in designated occupations in key economic sectors such as healthcare, information technology and financial services.<sup>32</sup>

The DETE explains that in order to implement the general policy of promoting the sourcing of labour and skills needs from within the workforce of Ireland, the European Union (EU) and other EEA states, Ireland currently operates an employment permits regime that:

- focuses on key sectors and skills shortages, especially in economically strategic enterprises with potential for jobs growth;
- adheres to the principle of community preference and avoids disrupting the labour market or reducing the employment opportunities for the resident population;
- ensures that employment permit holders are making a positive net contribution to the Irish economy;
- minimises the potential for abusing the employment rights of migrants, is clear and consistent and therefore attractive to migrants and employers; and
- is administratively effective and efficient, has a clear legislative basis, and is sufficiently flexible to react quickly to changes in the labour market.<sup>33</sup>

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<sup>31</sup> Government of Ireland (2018) [Review of Economic Migration Policy](#)

<sup>32</sup> [Regulatory Impact Assessment Draft Employment Permits Bill \(Heads\)](#) (April 2019).

<sup>33</sup> Department of Enterprise, Trade and Employment (2021) *Consultation Submission Form - Review of the Occupations Lists for Employment Permits July 2021*. Available at <https://enterprise.gov.ie/en/Consultations/Consultations-files/Consultation-Submission-Form-Review-of-the-Occupations-Lists-for-Employment-Permits-July-2021.docx>.

The employment permit system is managed through the operation of the [Critical Skills](#) and [Ineligible Occupations](#) Lists. These, respectively, prioritise specified in-demand highly skilled roles and identify occupations for which a labour supply should be available in the EEA.<sup>34</sup> The DETE conducts a twice-yearly review of the Critical Skills and Ineligible Occupations Lists to assess skills availability as set out in the Employment Permits Act 2006, as amended.<sup>35</sup> This review process is said to have “ensured that the regime has become more responsive to changes in economic circumstances and labour market conditions” and is described as being “predicated on a formalised and evidence-based process”.<sup>36</sup>

Reviews involve consideration of the research and labour market intelligence undertaken by the Expert Group of Future Skills Needs (EGFSN)<sup>37</sup> and the Skills and Labour Market Research Unit in SOLAS.<sup>38</sup> The review process also takes account of education outputs, sectoral upskilling and training initiatives and any known contextual factors (e.g., planned expansions in sectors, if known; Brexit; and the impact of Covid-19).<sup>39</sup>

An occupation may be considered for inclusion on the Critical Skills Occupations List or removal from the Ineligible Occupations List provided that:

- There are no suitable Irish/EEA nationals available to undertake the work;
- Development opportunities for Irish/EEA nationals are not undermined;
- A genuine skills shortage exists and that it is not a recruitment or retention problem;
- The Government’s education, training, employment, and economic development policies are supported; and

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<sup>34</sup> “Written answers - Work Permits”. Tánaiste and Minister for Enterprise, Trade and Employment. Dáil Éireann Debate, 22 September 2022. Available at [https://www.oireachtas.ie/en/debates/question/2022-09-22/164/#pq\\_164](https://www.oireachtas.ie/en/debates/question/2022-09-22/164/#pq_164).

<sup>35</sup> For example, information regarding the review of the eligibility of occupations appearing on the Critical Skills Occupations List and the Ineligible Occupations List for employment permits, which began on 1 July 2021 is available at <https://enterprise.gov.ie/en/consultations/public-consultation-on-the-review-of-the-occupations-lists-for-employment-permits-july-2021.html>. That consultation is now closed, with a response to a [parliamentary question in September 2022](#) explaining that “the timing of the next review is under consideration in light of changing labour market circumstances”.

<sup>36</sup> Government of Ireland (2018) [Review of Economic Migration Policy](#).

<sup>37</sup> The [Expert Group on Future Skills Needs \(EGFSN\)](#) advises the Government on future skills needs of the economy and on associated labour market issues that impact on Ireland’s potential for enterprise and employment growth.

<sup>38</sup> The [Skills and Labour Market Research Unit \(SLMRU\)](#) publishes research and reports on the further and higher education sectors as well as other related sectors. The SLMRU also manages the National Skills Database and provides research, data and analysis for the Expert Group on Future Skills Needs. [SOLAS](#) is the State agency “tasked with building a world class Further Education and Training (FET) sector to fuel Ireland’s future”.

<sup>39</sup> Department of Enterprise, Trade and Employment (2021) [Consultation Submission Form - Review of the Occupations Lists for Employment Permits July 2021](#).

- The skill shortage exists across the occupation, despite attempts by industry to train and attract Irish/EEA nationals to available jobs.<sup>40</sup>

An [information note](#) published by the Department at the start of a public consultation on the General Scheme explains that the changes proposed in the General Scheme do not remove the obligation on the Minister, set out in Section 15 of the 2006 Act as amended, to assess the skills needs of the economy. In this context, the twice-yearly review process will be retained as it is, with the broad range of inputs and supporting research and under the guidance of the Inter-Departmental Group on Economic Migration Policy (IDG).<sup>41</sup>

According to a press release accompanying publication of the General Scheme, the changes to the Irish employment permits system proposed by the General Scheme should not alter its underlying principles:

“The policy underlying the economic migration system is one where the system should synchronise to the greatest extent possible with the skills and labour needs in the economy, while prioritising the Irish and EEA labour pool. The proposed changes are intended to improve the system’s flexibility without changing this variable”.<sup>42</sup>

## Policy framework

The 2018 [Review of Economic Migration Policy](#) provides a useful description of the policy framework for economic migration in Ireland, including the seven guiding principles that inform the State’s economic migration policy (outlined below in table 2). Explaining that “economic migration policy is primarily aimed at ensuring a labour and skills supply while mitigating against potential adverse effects”, the Review goes on to highlight that a key undertaking for the IDG, which had oversight over the Review, was to “develop a clear economic migration policy framework which would reconcile short term and longer-term policy objectives over the coming years”. In building that “necessarily dynamic and flexible economic migration policy”, the IDG has set out the following overarching objective for the State’s employment permit system, reproduced in text box 1:

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<sup>40</sup> Department of Enterprise, Trade and Employment (2021) [Consultation Submission Form - Review of the Occupations Lists for Employment Permits July 2021](#).

<sup>41</sup> Department of Business, Enterprise and Innovation information note on the General Scheme of an Employment Permits (Consolidation and Amendment) Bill. Available at <https://enterprise.gov.ie/en/consultations/consultations-files/information-note-general-scheme-of-an-employment-permits-consolidation-and-amendment-bill.pdf>.

<sup>42</sup> Department of Business, Enterprise and Innovation press release, [Minister Humphreys publishes the General Scheme of the Employment Permits \(Consolidation and Amendment\) Bill 2019](#). 1<sup>st</sup> November 2019.



**Text box 1: Overarching objective for the State’s employment permit system**

“The State’s employment permit system should help meet, in the short to medium term, the demand for skills and labour in the Irish economy without disrupting the Irish labour market”.

**Source:** Government of Ireland (2018) [Review of Economic Migration Policy](#)

According to the Review, “to provide the context and framework within which decisions can be made and to provide a rationale for actions taken, this high-level objective will be implemented through the following seven guiding principles”. These are reproduced in table 2 below.

**Table 2: Guiding principles identified in the 2018 Review**

Principle	Description
<b>Principle 1: EEA preference</b>	Irish labour market policy should aim to ensure that general labour and skills needs are met from within the workforce of the EEA. This policy continues to reflect the need for a responsive educational system, a focus on lifelong learning, addressing retention issues, and the need to maximise the potential of EEA nationals to fill skills and labour deficits.
<b>Principle 2: Labour market responsiveness</b>	At all stages of an economic cycle the State’s economic migration policy should be sufficiently agile to respond to the demands of the labour market.
<b>Principle 3: Skills shortage</b>	Ireland continues to experience skills shortages in certain key areas as evidenced, inter-alia, in research conducted by the Expert Group on Future Skills Needs and the National Skills Council. The employment permits regime is part of the response to addressing those skills deficits which exist and are likely to continue into the medium term, but is not a substitute or pretext for avoiding the challenge of up-skilling our resident workforce. Nevertheless, it is recognised that Ireland has to compete with other countries for economic migrants, particularly at the high end of the skills continuum. Certain skills, such as those required in the high-tech sectors are in demand globally. Therefore, there continues to be a need to supplement Ireland’s skills stock through employment permits and to ensure that Ireland’s employment permits system is geared towards attracting such skills.
<b>Principle 4: Balanced approach to innovation and labour market</b>	Economic migrants bring new ideas and different perspectives, helping organisations to innovate, for example through developing and adapting technology, and encouraging the adoption of more efficient processes and strategies. However, where access to a low-skilled immigrant workforce is not managed, employers may be slower to invest in skills and technology to innovate and improve productivity. It is important that a balance is achieved between the need for industry to innovate and invest in new processes to reduce dependence on low skilled labour, and ensure that labour shortages do not result in lost commercial opportunities or value-added to the economy.
<b>Principle 5: Net contributor</b>	Employment permit holders should be net contributors to the Irish economy and as such should have the financial capacity to support themselves and, where appropriate, their immediate families without recourse to State resources. The minimum annual threshold for an employment permit should also remain as neutral as possible in terms of wage effect.

<b>Principle 6: Employment rights</b>	Migrant workers are often a more vulnerable class of people, particularly in the lower skilled end of the labour market. Language difficulties, cultural differences, and lack of social networks can disadvantage migrants and increase the potential for abuse by unscrupulous employers. Ireland has a very thorough employment rights legal framework. Careful consideration is given to the potential for abuse and many of the criteria in evaluating employment permit applications focus on the bona-fides of the employer and the protection of the permit holder.
<b>Principle 7: Legislative framework and process</b>	The employment permits regime should be administratively effective and efficient, have a clear legislative basis, and be sufficiently flexible to react quickly to changes in the labour market.

**Source:** Government of Ireland (2018) [Review of Economic Migration Policy](#)

### Existing regulatory framework<sup>43</sup>

There are currently three core pieces of primary legislation relating to employment permits on the Irish Statute Book (two Employment Permit Acts and one Amendment Act):

1. the [Employment Permits Act 2003](#);
2. the [Employment Permits Act 2006](#); and
3. the [Employment Permits \(Amendment\) Act 2014](#).<sup>44</sup>

Both of the *Employment Permits Acts* were enacted to meet deadlines for accession to the EU by ten central and eastern European countries and Bulgaria/Romania, respectively. Under the *Employment Permits Acts, as amended*, an employment permit must be obtained in advance from the DETE in respect of a non-EEA national who is to be employed in the State, with the exception of Swiss nationals.<sup>45</sup>

The *Employment Permits Act 2006, as amended*, sets out in legislation the criteria in relation to application for, granting of and refusal of an employment permit. Some limitations of the permits system, imposed under the 2014 Act, are explained in the [RIA](#):

<sup>43</sup> This section draws heavily on the description provided in the [RIA](#).

<sup>44</sup> The Law Reform Commission currently uses the collective citation, the Employment Permits Acts 2003-2020 to refer to the following related acts:

- *Employment Permits Act 2003* (7/2003)
- *Employment Permits Act 2006* (16/2006)
- *Industrial Relations (Amendment) Act 2012* (32/2012), s. 16(1)
- *European Union (Accession of the Republic of Croatia) (Access to the Labour Market) Act 2013* (21/2013), s. 4(2)
- *Employment Permits (Amendment) Act 2014* (26/2014), other than Parts 4 and 5
- *Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020* (23/2020), Part 5 (s. 13).

<sup>45</sup> [Regulatory Impact Assessment Draft Employment Permits Bill \(Heads\)](#) (April 2019). See Section 2 of the Employment Permits Act 2003 and see also the terms of the [EC and Swiss Confederation Act, 2001](#).

“The 2014 Amendment Act was developed in order to ground the operation of the employment permits system more securely in statute, and to provide more transparency and greater protections for the system’s users. However, the Amendment Act as drafted contained a degree of detail (with precautionary intent) that reduced its flexibility at an operational level”.<sup>46</sup>

## Types of employment permits

Current legislation provides for nine types of employment permits in Ireland. These include a General Employment Permit and a Critical Skills Employment Permit, which replaced the work permit and Green Card permit respectively.<sup>47</sup> The 2018 Review highlights the fact that Ireland is an outlier in not having a seasonal employment permit.

The 2018 Review describes the two core permit types as being the Critical Skills Employment Permit (CSEP) and the General Employment Permit (GEP).<sup>48</sup> A more recent [report](#) states that the three most common employment permits issued in Ireland include:

- Critical skills: designed to attract highly skilled people into the labour market and take up residence in the State;
- General: designed to attract non-EEA nationals for occupations which are experiencing a labour or skills shortage in roles that pay at least €30,000\* per year; and
- Intra-company transfer: designed to facilitate the transfer of key personnel, senior management and trainees who are non-EEA nationals from an overseas branch of a multinational corporation to its Irish branch. The annual salary of the applicant must be at least €40,000 and the person must have been with the parent company for at least 12 months prior to the application.<sup>49</sup>

The DETE has summarised the different types of permits as follows:<sup>50</sup>

1. **[Critical Skills Employment Permit \(formerly Green Card permits\)](#)**: this permit is targeted at highly skilled people with the aim of encouraging them to take up permanent residence in Ireland. Occupations which are included on the [Critical Skills Occupations List](#), such as ICT professionals, professional engineers and technologists are catered for under this type of employment permit.
2. **[Dependant/Partner/Spouse Employment Permit](#)**: this permit allows the dependants, recognised partners (where recognised as such by the Department of Justice and Equality), civil partners and spouses of [Critical Skills Employment Permit](#) holders and of Researchers

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<sup>46</sup> [Regulatory Impact Assessment Draft Employment Permits Bill \(Heads\)](#) (April 2019).

<sup>47</sup> As described on the DETE’s webpage, *Types of employment permits*. Available at <https://enterprise.gov.ie/en/What-We-Do/Workplace-and-Skills/Employment-Permits/Permit-Types/>

<sup>48</sup> Government of Ireland (2018) [Review of Economic Migration Policy](#).

<sup>49</sup> Skills and Labour Market Research Unit (SLMRU) in SOLAS on behalf of the National Skills Council (2021) *National Skills Bulletin 2021*. Available at [https://www.solas.ie/f/70398/x/fcee571661/solas\\_nsb\\_report.pdf](https://www.solas.ie/f/70398/x/fcee571661/solas_nsb_report.pdf).

<sup>50</sup> DETE webpage, *Types of Employment Permits*. Available at <https://enterprise.gov.ie/en/what-we-do/workplace-and-skills/employment-permits/permit-types/>.

on Hosting Agreements to apply for an employment permit to work in the State. Generally, it is illegal for spouses and dependants of employment permit holders to be employed in Ireland without a valid employment permit.

3. **[Intra-Company Transfer Employment Permit](#)**: this permit is designed to facilitate the transfer of senior management, key personnel or trainees who are foreign nationals from an overseas branch of a multinational corporation to its Irish branch. The Intra-Company Transfer Employment Permit can be invaluable in the initial establishment of a foreign direct investment company. This employment permit facilitates the temporary placement of corporate or HQ personnel in the Irish affiliate while providing for such employees to stay on the foreign payroll.
4. **[General Employment Permit \(formerly work permits\)](#)**: this is an employment permit which permits the holder to be employed in the State in a broad range of occupations. Unlike Critical Skills Employment Permits, where eligible occupations are specified, General Employment Permits assume all occupations are eligible unless otherwise specified. Therefore, all occupations are eligible unless excluded under the [Ineligible List of Occupations for Employment Permits](#). All occupations on the [Critical Skills Occupations List](#) are deemed eligible.
5. **[Contract for Services Employment Permit](#)**: this permit replaces the Contract Service Provider type of Work Permit Employment Permit. It is designed for situations where a foreign undertaking (Contractor) has won a contract to provide services to an Irish company (Relevant Person) on a contract for services basis and to facilitate the transfer of their non-EEA employees to work on the Irish contract in Ireland.
6. **[Reactivation Employment Permit](#)**: this permit replaces the old type of Work Permit which were routed through the Migrant Rights Centre Ireland. This permit is designed to permit a non-EEA national who entered the State on a valid Employment Permit but who fell out of the system through no fault of their own or who has been badly treated or exploited in the workplace, to work legally again.
7. **[Internship Employment Permit](#)**: this replaces the old Internship type of Work Permit Employment Permit. It is designed to facilitate the employment in the State of non-EEA nationals who are full-time students, studying in a discipline relevant to the occupations included on the [Critical Skills Occupations List](#) and enrolled at a third level institution outside the State, for the purposes of gaining work experience.
8. **[Sport & Cultural Employment Permit](#)**: this permit replaces the old sports professional type of Work Permit and will also cater for employment permits for the entertainment sector. This permit is designed to facilitate the employment in the State of non-EEA nationals with the relevant qualifications, skills, experience or knowledge for the development, operation and capacity of sporting and cultural activities.
9. **[Exchange Agreement Employment Permit](#)**: this permit replaces the old Exchange Agreement type of Work Permit Employment Permit and will also cater for employment permits for international reciprocal agreements. It is designed to facilitate the employment in the State of non-EEA nationals pursuant to prescribed agreements or other international agreements to which the State is a party.

Further information on employment permits is set out in table 3 overleaf, relating to the 50:50 Rule and the Labour Market Needs Test (LMNT) (Section 10 and 10A of the *Employment Permits Act*

2006). These are two restrictions on the granting of employment permits in place to safeguard the employment opportunities of Irish/EEA nationals.

### 50:50 Rule and Labour Market Needs Test (LMNT)

The 50:50 Rule applies in all situations with the exception of certain start-up companies and certain situations where employers do not have any employees on the date of application (see table 3 for a summary of how the rule is applied to each permit type). The 2018 Review describes it (on pages 26-27) as follows:

“The 50:50 Rule requires that employers seeking to hire non-EEA nationals on an employment permit have sourced at least 50% of their workforce from Ireland or the EEA. This policy underpins the Government’s employment creation objectives by requiring employers in the State to hire in a balanced manner from the local labour market. Non-EEA employees will therefore have a comparator within the workplace which may help to safeguard their rights”.<sup>51</sup>

**Table 3: Application of LMNT and 50:50 Rule to different types of work permits**

Permit type	LMNT*	50:50 Rule	50:50 Waiver for Sole Employee	50:50 Waiver for Start Up Companies
Critical Skills		√		√
Dependant/Partner/Spouse		√	√	
General	√	√	√	√
Intra-Company Transfer		√		√
Contract for Services	√	√		
Reactivation		√	√	
Sports and Cultural		√	√	
Exchange Agreement		√		
Internship		√		

\*The LMNT is waived where the employment is on the highly skilled occupations list or the application is supported by an enterprise development agency.

**Source:** Government of Ireland (2018) [Review of Economic Migration Policy](#)

<sup>51</sup> Government of Ireland (2018) [Review of Economic Migration Policy](#)

The LMNT is another means by which the Irish/EEA labour pool is offered a degree of protection in relation to the employment permits system, by ensuring that Irish/EEA nationals have first offer of employment opportunities. The Review explains the LMNT in the following terms (on page 27):

“the Labour Market Needs Test (LMNT) seeks to ensure that an offer of employment is first made to people already in the local and EEA labour markets before an application is made for an employment permit to employ a non-EEA national. This supports Government policy that those currently in the labour market, be they employed or unemployed, are the first cohort of people from whom employers should seek to recruit.

EU Regulations on the freedom of movement of workers provide for priority for workers who are citizens of the EU. Accordingly, the Employment Permits Act 2006 as amended (hereafter the “Act of 2006”) requires that the employer must advertise the vacancy:

- with DEASP/Employment Services/EURES<sup>52</sup> employment network for at least 2 weeks (as per EU Regulations),
- in a national newspaper for at least 3 days, and
- in either a local newspaper or jobs website (separate to DEASP/EURES websites) for 3 days”.<sup>53</sup>

From 1 January 2020, subject to some limited exceptions, applications for General Employment Permits and Contract for Services Employment Permits were subject to the LMNT.<sup>54</sup> Further information on the LMNT is also available on the DETE website at:

<https://www.enterprise.gov.ie/en/what-we-do/workplace-and-skills/employment-permits/employment-permit-eligibility/labour-market-needs-test/>.

## Nationals who require permits

Typically, all non-EEA nationals will require an employment permit to work in Ireland. Nationals of any country which is a member of the EEA do not require an employment permit in order to work in the State (see text box 2 overleaf). In addition, Swiss nationals are exempt from the employment permit procedure when seeking job opportunities in Ireland in accordance with the terms of the [\*European Communities and Swiss Confederation Act, 2001\*](#). This Act came into operation on 1 June 2002 and enables the free movement of workers between Switzerland and Ireland without the need for employment permits.<sup>55</sup> Unless they are exempted, a non-EEA national must hold a valid employment permit in order to work in Ireland. There are certain exemptions for some non-EEA nationals as detailed on the DETE’s website and reproduced in the text box overleaf.

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<sup>52</sup> EURES is the European Commission’s job mobility portal available at <https://ec.europa.eu/eures/public/en/homepage>.

<sup>53</sup> Government of Ireland (2018) [\*Review of Economic Migration Policy\*](#).

<sup>54</sup> Skills and Labour Market Research Unit (SLMRU) in SOLAS on behalf of the National Skills Council (2021) *National Skills Bulletin 2021*. Available at [https://www.solas.ie/f/70398/x/fcee571661/solas\\_nsb\\_report.pdf](https://www.solas.ie/f/70398/x/fcee571661/solas_nsb_report.pdf).

<sup>55</sup> DETE, *Employment Permits Frequently Asked Questions*. Available at <https://www.enterprise.gov.ie/en/publications/publication-files/employment-permits-faqs-2020.pdf>.



The EEA consists of the Member States of the EU and three countries of the [European Free Trade Association \(EFTA\)](#) (Iceland, Liechtenstein and Norway; excluding Switzerland).<sup>56</sup> The UK is now a third country in terms of the EEA Agreement, following the end of the Brexit transition period on 31 December 2020, but had enjoyed no change in its status during the transition period:

“Article 126 of the Withdrawal Agreement between the EU and the UK provides for a transition period until 31 December 2020. It follows from Article 129 of the Withdrawal Agreement that, during the transition period, the UK shall be bound by the obligations stemming from the international agreements concluded by the EU, including the EEA Agreement. The EEA EFTA States have agreed to treat the UK as an EU Member State during this period. Accordingly, the rights and obligations contained in the EEA Agreement continue to apply between the UK and the EEA EFTA States until 31 December 2020”.<sup>57</sup>

The EEA EFTA States and the UK signed a [Separation Agreement](#) on the 28 January 2020, which covers a number of separation issues including rights of those already working in affected states:

“The Separation Agreement mirrors the relevant parts of the EU-UK Withdrawal Agreement and secures the rights of EEA EFTA and UK citizens that are already residing or working in the EEA EFTA States or the UK, respectively. In addition to provisions on citizen rights, the Separation Agreement covers other separation issues – such as goods placed on the market before the end of the transition period, IPR, ongoing police and judicial cooperation, judicial procedures, data protection, and public procurement - and institutional provisions”.<sup>58</sup>

The Common Travel Area (CTA), which pre-dates Irish and UK membership of the EU and is not dependent on it, takes on an important context in the post-Brexit world. The DETE has explained that Brexit has not resulted in British citizens requiring an employment permit to work in Ireland now, owing to the CTA:

“Under the Common Travel Area (CTA), Irish and British citizens move freely and reside in either jurisdiction and enjoy associated rights and entitlements including access to employment, healthcare, education, social benefits, and the right to vote in certain elections.

This means that British citizens are able to work in Ireland without an employment permit. The Irish Government will continue to provide information to citizens.”<sup>59</sup>

The [General Scheme](#), which preceded this Bill, did foresee the change in the UK’s status from being an EEA member to that of a third country post-Brexit in a small number of provisions. This is described as follows in the Information Note on the General Scheme:

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<sup>56</sup> Eurostat webpage, Glossary: European Economic Area (EEA). Available at [https://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:European\\_Economic\\_Area\\_\(EEA\)](https://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:European_Economic_Area_(EEA)).

<sup>57</sup> EFTA webpage, Frequently asked questions on EFTA, the EEA, EFTA membership and Brexit. Available at <https://www.efta.int/About-EFTA/Frequently-asked-questions-EFTA-EEA-EFTA-membership-and-Brexit-328676>.

<sup>58</sup> EFTA webpage, Frequently asked questions on EFTA, the EEA, EFTA membership and Brexit. Available at <https://www.efta.int/About-EFTA/Frequently-asked-questions-EFTA-EEA-EFTA-membership-and-Brexit-328676>.

<sup>59</sup> DETE, *Employment Permits Frequently Asked Questions*. Available at <https://enterprise.gov.ie/en/Publications/Publication-files/Employment-Permits-FAQs-2020.pdf>.



“UK nationals, by virtue of the *Aliens Act 1935*, will not be employment permit required following Brexit, but as a third country there may be some unintended negative consequences on the operation of the employment permit system. The legislation will make the necessary amendments to address any issues that may arise (Head 3, Head 14, Head 15 Head 37)”.<sup>60</sup>

This Bill also contains provisions that relate to the current status of the UK following its withdrawal from the EU. For example, Section 20 of the Bill deals with “Restriction on grant of an employment permit” and the 50:50 Rule. As explained in the [Explanatory Memorandum](#):

“This section prohibits the grant of an employment permit unless 50 percent or more of the 5 employees of the employer, the contractor, subcontractor, relevant person or the connected person as the case may be, are nationals of the EEA, Swiss Confederation, citizens of the UK or a combination of these. This is Post Brexit, citizens of the UK are included in the count with citizens of the EEA and Swiss Confederation pursuant to the conditions of freedom to live and work between Ireland and the UK emanating from the Common Travel Area. Provision is made so that in the case of a contract for service.”

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<sup>60</sup> Department of Business, Enterprise and Innovation [Information note on the General Scheme of an Employment Permits \(Consolidation and Amendment\) Bill](#).

**Text box 2: Details of exemptions for certain non-EEA nationals (DETE description)**

The following non-EEA nationals do not require an employment permit:

(A) Van der Elst Case: the European Court of Justice delivered a judgment on the Van der Elst Case (Freedom to Provide Services) on 9 August, 1994. The Court ruled that in the case of non-EEA workers legally employed in one Member State who are temporarily sent on a contract to another Member State, the employer does not need to apply for employment permits in respect of the non-nationals for the period of contract.

(B) Where a non-EEA national has been granted permission to remain in the State on one of the following grounds:

- Permission to remain as spouse/civil partner or a dependant of an Irish/EEA national
- Permission to remain as the parent of an Irish citizen
- Temporary leave to remain in the State on humanitarian grounds, having been in the Asylum process
- Explicit permission from the Department of Justice to remain resident and employed in the State
- Permission to be in the State as a registered student who is permitted to work 20 hours during term time and 40 hours during holiday periods
- Permission to be in the State under the terms of the Diplomatic Relations and Immunities Act 1967, and are assigned to a Mission of a country with whom the Government has entered into a Working Dependents Agreement
- Swiss Nationals: In accordance with the terms of the European Communities and Swiss Confederation Act, 2001, which came into operation on 1 June 2002, this enables the free movement of worker between Switzerland and Ireland, without the need for Employment Permits.

**Source:** DETE webpage, *Who needs an Employment Permit?* Available at <https://enterprise.gov.ie/en/what-we-do/workplace-and-skills/employment-permits/employment-permit-eligibility/who-needs-an-employment-permit/>

**Data on employment permits**

Allowing access to the host country's labour market has been identified as key to facilitating the integration of immigrant communities.<sup>61</sup> As previously explained, in Ireland this is typically only an issue for non-EEA nationals who will generally have to apply for an employment permit to work here. The DETE has responsibility for employment permit applications and publishes headline figures regularly on its website.

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<sup>61</sup> Éamonn Fahey, Frances McGinnity and Emma Quinn (2019) *Data for Monitoring Integration: Gaps, Challenges and Opportunities*. Available at <https://www.esri.ie/system/files/publications/BKMNEXT373%20%281%29.pdf>

Data is also published by the Skills and Labour Market Research Unit (SLMRU) in SOLAS, on behalf of the National Skills Council. This dataset can illustrate, *inter alia*, how widespread each permit type is among the non-EEA population. By way of further background and context to this Bill, this section presents some data on employment permits in Ireland over recent years, based on information published by those two sources.

**Table 4: Work permits, 2010-2022 (Jan-Sept)**

Year	New	Renewal	Total	Refused	Withdrawn
2010	3,672	4,042	7,714	973	213
2011	3,184	2,016	5,200	1,007	201
2012	2,919	1,088	4,007	829	246
2013	3,034	829	3,863	541	122
2014	4,861	634	5,495	503	144
2015	6,076	1,177	7,253	797	166
2016	7,691	1,682	9,373	1,321	206
2017	9,401	1,960	11,361	1,458	319
2018	11,305	2,093	13,398	1,247	542
2019	14,163	2,220	16,383	1,364	848
2020	N/A	N/A	16,419	956	660
2021	N/A	N/A	16,275	957	736
2022 (Jan to Sept)	N/A	N/A	31,076	2,531	1,531

**Source:** Compiled from DETE *Employment Permits statistical tables and company listings*. Available at <https://enterprise.gov.ie/en/what-we-do/workplace-and-skills/employment-permits/statistics/>

**Note:** Figures for 2020, 2021 and 2022 (Jan to Sept) show the total number of permits issued. However, these are not broken down into figures for new permits and renewals.

To date, there have been nine permit types to facilitate access to different eligible occupations of employment in Ireland since the introduction of the *Employment Permits (Amendment) Act 2014*. Looking at the data presented in table 4 above, it shows that there were 16,419 employment permits issued in 2020 and a broadly similar figure of 16,275 in 2021. This compares to 31,076 permits issued in the year to date during 2022. One commentator has highlighted the fact that a consistent number of permits have been issued in each month during 2022 to date<sup>62</sup>.

<sup>62</sup> Schengen Visa News (2022) Ireland Doubles the Number of Work Permits Issued to Foreigners. 21 September 2022. Available at <https://www.schengenvisainfo.com/news/ireland-doubles-the-number-of-work-permits-issued-to-foreigners/>

Analysis by SLMRU on behalf of the National Skills Council shows that Critical Skills Permits accounted for the largest share of new permits in 2020 (see figure 1). It explains that new permits issued for critical skills accounted for over half (59%) of all new permits in 2020, with a further 34% for general permits and 5% for intra-company transfers.

**Figure 1: New Employment Permits by type, 2019-2020**

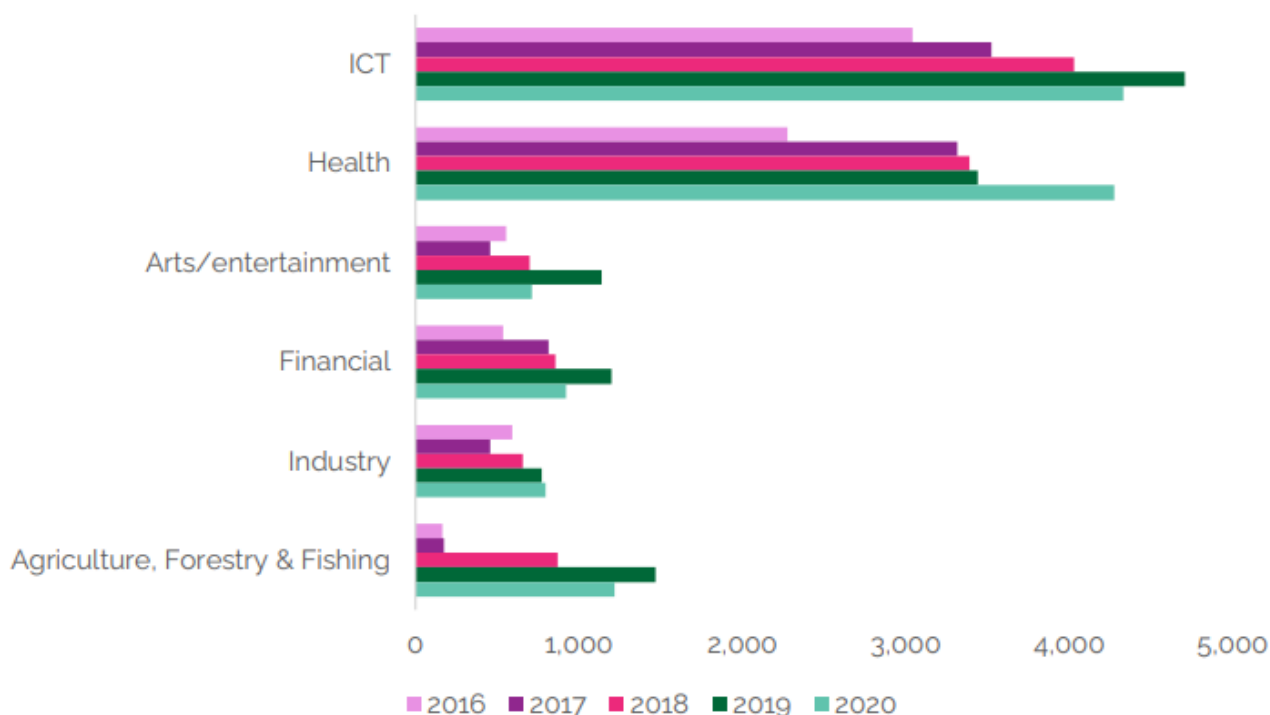


**Source:** Skills and Labour Market Research Unit (SLMRU) in SOLAS on behalf of the National Skills Council (2021) *National Skills Bulletin 2021*. Available at [https://www.solas.ie/f/70398/x/fcee571661/solas\\_nsb\\_report.pdf](https://www.solas.ie/f/70398/x/fcee571661/solas_nsb_report.pdf)

Figure 2 illustrates the breakdown of new employment permits issued by sector between 2016 and 2020.<sup>63</sup> It shows that the number of permits issued has increased for most sectors in recent years, particularly in the health and ICT sectors. However, the [National Skills Bulletin 2021](#) points to the likely impact of the Covid-19 pandemic on certain sectors:

“The number of permits issued has increased for most sectors in recent years, particularly in the health and ICT sectors. In 2020 however, the impact of COVID-19 restrictions affected certain sectors of the domestic economy causing possible job losses in areas such as accommodation, food, arts and entertainment. The number of permits issued in 2020 grew in only two sectors, the health sector which grew by 24% and industry which grew by 3%”.

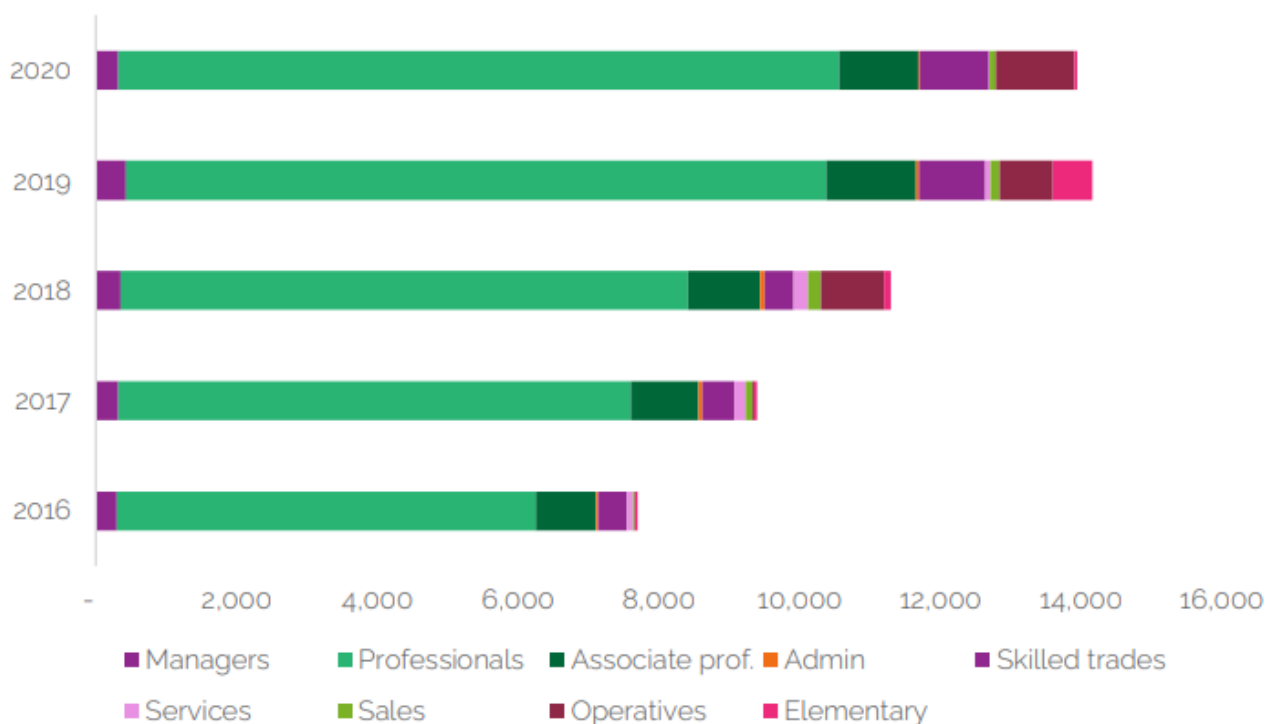
<sup>63</sup> This is based on data presented in the National Skills Bulletin 2021 edition – the most recent edition available at the time of writing.

**Figure 2: New Employment Permits for Selected Sectors\*, 2016-2020**

**Source:** Skills and Labour Market Research Unit (SLMRU) in SOLAS on behalf of the National Skills Council (2021) [National Skills Bulletin 2021](#).

**Notes:** \*In 2020, these six selected sectors account for 88% of all new permits issued.

Professional occupations accounted for the majority of growth in new permits issued in the years between 2016 and 2020, as shown in figure 3 overleaf. According to the [National Skills Bulletin 2021](#), the increase in the number of new permits issued for elementary occupations between 2018 and 2019 related primarily to the opening of the employment permit system to horticultural workers from May 2018, however new permits for these occupations which were predominantly general employment permits, decreased significantly in 2020.

**Figure 3: New Employment Permits by Broad Occupation, 2016-2020**

**Source:** Skills and Labour Market Research Unit (SLMRU) in SOLAS on behalf of the National Skills Council (2021) [National Skills Bulletin 2021](#).

The [National Skills Bulletin 2021](#) also provides information on new employment permits by occupation and salary in 2020. This data shows that of those new permits issued for managers, 86% were for roles which offered a salary of €60,000 or above. 40% of permits issued for professionals were for a salary of €50,000 or above (see figure 4).

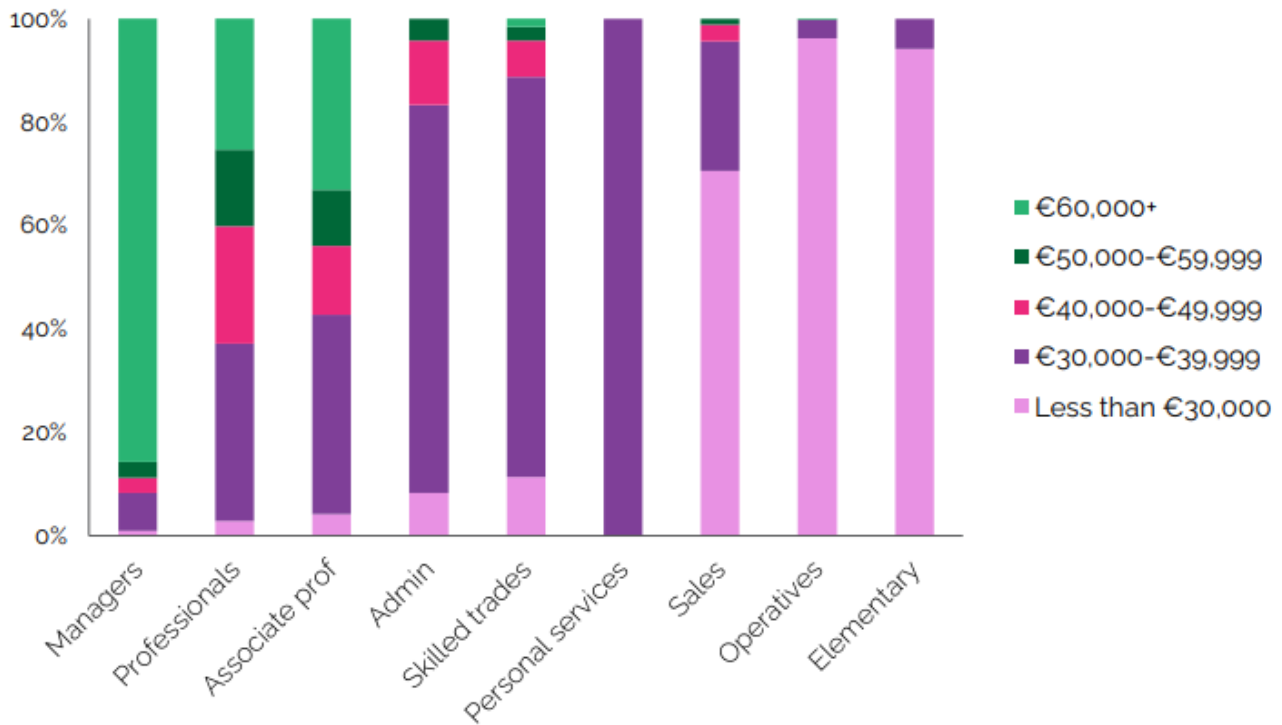
During its PLS, the Joint Committee on Enterprise, Trade and Employment was provided with further context on employment permits numbers and the impact of Covid-19, during its meeting with the DETE on 16 February 2021:

“We issued about 16,400 employment permits last year, which was 1% higher than the number issued in 2019, which in turn was about 13% higher than the number we issued in 2018. Despite the Covid crisis, the numbers did not reduce. We were able to reduce our backlog because we introduced an e-type of temporary permit arrangement with our colleagues in the Department of Justice. We had a backlog of about 2,800 applications and that is down to less than 900 at the moment.

In terms of the sectors, 31% of the permits were in the health sector. We have been prioritising those permits for processing since the Covid crisis commenced. The next highest sector is the ICT sector. About 28% of permits issued to it. The next highest sector is the agricultural sector, which got 11% of the permits. They are the three sectors with the highest

number of permits issued in 2020. The agricultural quota scheme is exhausted at this stage and there are no permits available for that pilot scheme at the moment".<sup>64</sup>

**Figure 4: New Employment Permits by Occupation and Salary, 2020**



**Source:** Skills and Labour Market Research Unit (SLMRU) in SOLAS on behalf of the National Skills Council (2021) [National Skills Bulletin 2021](#).

<sup>64</sup> [Joint Committee on Enterprise, Trade and Employment debate](#) - Tuesday, 16 February 2021.



## Pre-legislative scrutiny of the General Scheme of the Bill

The [General Scheme of an Employment Permits \(Consolidation and Amendment\) Bill](#) was published on 1 November 2019.

The Joint Committee on Enterprise, Trade and Employment agreed to undertake pre-legislative scrutiny of the General Scheme during 2021, as the previous Committee was unable to complete its scrutiny due to the dissolution of the Dáil in January 2020. The Joint Committee held the first session of PLS on the General Scheme with officials from the Department of Enterprise, Trade and Employment (DETE) on 16 February 2021.<sup>65</sup> A second meeting with Ibec and ICTU took place on 9 March 2021.<sup>66</sup> Its third and final PLS meeting took place on 13 April 2021 with Meat Industry Ireland and Migrants Rights Centre of Ireland.<sup>67</sup> In addition, it sought written submissions from a range of different stakeholders.

The Joint Committee published its PLS findings in November 2021, in its [Report on the Pre-Legislative Scrutiny of the General scheme of the Employment Permits \(Consolidation and Amendment\) Bill 2019](#).

The Joint Committee's PLS report made a number of recommendations related to various parts of the General Scheme of the Bill. These are detailed in Table 6 overleaf.

As part of the Bill Digest process, the L&RS compares the recommendations made in the PLS report with their inclusion, partial or otherwise, in the subsequent Bill. We do this through liaison with the Department, in this case, the Department of Enterprise, Trade and Employment, by asking the Department to outline the extent to which, in their view, each of recommendations of the Joint Committee influenced the drafting of the resulting Bill. Along with the Department's input, the L&RS also assess the extent to which the PLS process impacted the drafting of the Bill. We do this, as set out in Table 6 below, by means of a 'traffic light' system, which for each recommendation allocates a green, orange or red light indicating respectively the extent to which it has been accepted in full, in part or is not reflected in the published Bill.

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<sup>65</sup> [Joint Committee on Enterprise, Trade and Employment debate](#) - Tuesday, 16 February 2021.

<sup>66</sup> [Joint Committee on Enterprise, Trade and Employment debate](#) - Tuesday, 9 March 2021.

<sup>67</sup> [Joint Committee on Enterprise, Trade and Employment debate](#) - Tuesday, 13 April 2021.

**Table 5: Key to traffic light dashboard comparing the Bill as published with Committee PLS recommendations**








L&RS categorisation of the Department's response in the Bill to the Committee's key issue	Traffic light dashboard used in Table to highlight impact of the Committee's PLS conclusion
Key issue has clearly been accepted and is reflected in the Bill.	
The Bill may be described as adopting an approach consistent with the key issue or the impact of the key issue is unclear.	
Key issue has not been accepted or implemented in the Bill.	



Table 6 below therefore shows for each recommendation the extent or otherwise it has been reflected in the Bill along with the commentary in each instance from the Department of Enterprise, Trade and Employment.



**Table 6: Traffic light dashboard comparing the Bill as published with Committee PLS recommendations**

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill <sup>68</sup>
The Committee recommends that instead of introducing the Seasonal Employment Permit, the scope and terms of the General Employment Permit be adapted to meet the need for seasonal employment. The protections and provisions under the existing General Employment Permit scheme must not be diminished, and workers' rights must not be undermined.	 <p>DETE understands the Committee's concerns however the Permit was a recommendation of the Review of Economic Migration Policy and the need for it has been borne out in our stakeholder engagement. We have continued to work on the shape of the Permit by engaging with relevant Departments and looking at best practice internationally. The Department will work with the Committee at Committee Stage to finalise the permit.</p>

<sup>68</sup> The response text in this column is taken directly from the Department of Enterprise, Trade and Employment's email communication to the L&RS on 7 October 2022. The responses was received from the Department following the routine request, as part of the preparation of Bill Digests, from the L&RS to Departments in respect of Bills that have undergone PLS and the extent to which the resulting Bill has adopted the recommendations made by the relevant Joint Committee.

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill <sup>68</sup>	
<p>The Committee recommends that the Special Circumstance Employment Permit should only be issued following certification by a relevant enterprise agency that the circumstances set out in law are met, and the worker has been made aware of his or her rights in language understandable and accessible by him or her. A review of the operation of the permit should be undertaken by that agency after one year of operation.</p>		<p>The Department agrees with the Committee's concerns and having considered the option of a recommendation by an Enterprise Agency it was felt there could still be a risk of circumventing the system or the use of the permit to be expanded beyond the scope intended. We have withdrawn the proposal and will address the issue of niche roles administratively.</p>
<p>The Committee recommends that if a waiver to the 50:50 rule is introduced –</p> <ul style="list-style-type: none"> <li>• it should only be applied following certification by a relevant enterprise agency that the circumstances set out in law are met, and the worker has been made aware of his or her rights in language understandable and accessible by him or her, and</li> <li>• a review of the operation of the waiver should be undertaken by that agency after one year of operation.</li> </ul>		<p>The 50:50 waivers in the current legislation have proved beneficial to enterprise (start-up waiver and sole employee waiver) and the Department is strongly supportive of continuing with these. Currently, the sole employee 50:50 waiver is used quite rarely.</p> <p>The Bill proposes that employers availing of the sole employee waiver will no longer be prevented from taking on more employees but will be subject to the regular 50:50 rule on receipt of a second permit application. It is not expected that this provision will be used regularly.</p> <p>The Department will closely monitor the actual use of the waiver and review it promptly if volumes grow strongly.</p>
<p>The Committee recommends (in relation to the proposal to amend the labour market needs test and other operational details by way of regulations) that –</p> <ul style="list-style-type: none"> <li>• the scope of such regulations should be restricted by primary legislation to limited operational features, and</li> <li>• a draft of any proposed such regulations is presented to the Houses of the Oireachtas for scrutiny, and</li> <li>• the proposal should not lead to any diminution in the rights of workers.</li> </ul>		<p>We recognise the Committee's concerns. Each instance of moving detail to Regulations has been considered carefully during the drafting process in consultation with the Attorney General's Office and internal counsel and the prescription of certain elements in secondary legislation are anchored through this Bill in primary legislation.</p> <p>However, to confine such matters such as the Labour Market Needs Test to primary legislation would result in the Bill failing to meet the requirements of adaptability and flexibility set out by the Review of Economic Migration Report 2018 and</p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill <sup>68</sup>	
		<p>agreed by Government Decision of 25th July 2019.</p> <p>The Department agrees that the rights of all workers in the State should be upheld and any drafting will ensure those rights are protected.</p>
<p>The Committee recommends that workers with General Employment Permits are provided the same rights as those employed with Critical Skills Permits. A holder of a General Employment Permit should have the right to gain access to the labour market after two years instead of five, which would make it easier for them to challenge exploitation and substandard conditions.</p> <p>The Committee recommends that –</p> <ul style="list-style-type: none"> <li>• holders of General Employment Permits should be given improved rights in relation to family reunion and the access of family members to the labour market, and</li> <li>• the Minister for Enterprise, Trade and Employment and the Minister for Justice should address this matter in conjunction with this Bill.</li> </ul>		<p>In 2021, of the 5,896 General Employment Permits issued, 2,366 were for doctors. The Department of Justice recently agreed to allow doctors on General Employment Permits to apply for a Stamp 4 (similar to permanent residency) after two years instead of five, which is the same as a key benefit of the Critical Skills Employment Permits. Stamp 4 holders can readily change employer.</p> <p>Any employee can change the employer freely after the first 12 months. The Bill will also continue with provisions already set out in current legislation which provide for an employee to change employer within the first twelve months in cases of exploitation or substandard conditions.</p> <p>Rights in relation to family reunion and the access of family members to the labour market for permit holders are a matter for the Minister for Justice. Officials are in dialogue with the Department of Justice on these issues.</p>
<p>The Committee is concerned about the difficulty that arises from work permits being linked to a particular employer. In particular, where work with such an employer comes to an end, the employee has difficulty in securing a renewal of the permit. While recognising the need to safeguard the position of the employer in such situations, the rights of the employee should also be protected, perhaps by giving him or her –</p> <ul style="list-style-type: none"> <li>• an earlier right of access to the Labour market, or</li> </ul>		<p>The State's Employment Permit system is predicated on the fundamental ground of an employment contract to underpin any grant of a permit. To remove this ground would undermine both the preferential access of resident jobseekers to job vacancies and also undermine the protections which are in place for non-EEA workers by virtue of the link to a specified employer.</p> <p>It should be noted that the current legislation already provides that an employment permit holder may change employer within the first 12 months due to</p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill <sup>68</sup>	
<ul style="list-style-type: none"> <li>the right to move employer within the term of the permit.</li> </ul>		<p>redundancy or in circumstances which, although unforeseen at the time of application, have fundamentally changed the employment relationship, for example the introduction of terms and conditions which were not provided for in the contract of employment. This would include exploitative or abusive practices. The Bill carries forward these provisions.</p> <p>In cases of redundancy an employee may seek a new permit for a new role, and is exempt from any changes to the occupations lists which might otherwise result in a refusal.</p>
<p>The Committee would like to see the concept of conditionality in the work permit system developed, so that sectors repeatedly using them would develop strong human resource policies to develop local talents and strong opportunities for professional development.</p>		<p>The Department agrees with the Committee about the concept of conditionality. Conditions already exist for certain sectors under employment permit schemes e.g. provision of accommodation, training and language training. The Bill now allows the Minister to link the grant of certain permits to taking on apprentices and trainees.</p>
<p>The protection and enhancement of the position of employees should be at the centre of proposals to amend the employment permit system.</p>		<p>Employment permit holders have exactly the same protections under Irish employment law as any other worker in the State. The Employment Permits system has been designed to ensure that the employment rights of migrants are observed.</p>

**Source:** L&RS is grateful to the Department of Enterprise, Trade and Employment for providing their analysis of how the Committees recommendations have impacted on the Bill. The traffic light assessment represents the analysis of the L&RS.

## Principal Provisions

The Bill is comprised of 71 sections and 7 Parts. The section below provides further details on Parts 1 to 4. Parts 5, 6 and 7 provide for Miscellaneous Provisions, Transitional Provisions and Consequential Amendments respectively. These are set out in the Table of Provisions.

### Part 1 – Preliminary and General

#### Section 2 - Interpretation

Section 2 provides for definitions of terms used in the Bill. A selection of the definitions provided are set out below (the full list of definitions is provided in section 2 of the Bill):

“Act of 1963” means the Registration of Business Names Act 1963;

“Act of 1967” means the Redundancy Payments Act 1967;

“Act of 1997” means the Taxes Consolidation Act 1997;

“Act of 2003” means the Employment Permits Act 2003;

“Act of 2006” means the Employment Permits Act 2006;

“connected person” means a person carrying on business in the State who is connected to a foreign employer;

“contract of employment” means—

(a) a contract of service or apprenticeship, or

(b) any other contract whereby an individual agrees with another person, who is carrying on the business of an employment agency within the meaning of the Employment Agency Act 1971 and is acting in the course of that business, to do or perform personally any work or service for a third person (whether or not the third person is a party to the contract), whether the contract is express or implied and if express, whether it is oral or in writing;

“contract service agreement” means an agreement between a relevant person and a contractor whereby the contractor agrees to provide, cause, or arrange for, services to be rendered for or on behalf of the relevant person;

“contractor”, in relation to a contract service agreement, means the person who agrees to provide, cause, or arrange for, services the subject of the contract service agreement to be rendered for or on behalf of a relevant person;

“employer”, in relation to a foreign national who is in employment in the State, means the person with whom the foreign national has entered into or for whom the foreign national works under (or where the employment has ceased, entered into or worked under) a contract of employment;

“employment permit”, subject to *section 63*, means an employment permit granted under *section 17*;

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

“foreign employer” means a person carrying on business outside the State;

“foreign national” means a non-national within the meaning of the *Immigration Act 1999*;

“Minister” means the Minister for Enterprise, Trade and Employment;

“national minimum hourly rate of pay” has the same meaning as it has in the National Minimum Wage Act 2000;

“relevant person”, in relation to a contract service agreement, means the person for whom, or on whose behalf, services are rendered under 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 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)*—

(i) has been given the permission referred to in *section 8(1)(e)* to remain in the State, and

(ii) is in employment in the State pursuant to the condition, referred to in *section 8(1)(e)*, of that permission;

“standard working week remuneration” means the weekly remuneration that the foreign national concerned would receive if he or she were to work 39 hours each week at—

(a) the national minimum hourly rate of pay, or

(b) if the hourly rate of pay fixed under or pursuant to any enactment that applies to the employment concerned is greater than the national minimum hourly rate of pay, the hourly rate of pay that is fixed under or pursuant to that enactment;

“subcontractor”, in relation to a contract service agreement, means a person who enters into an agreement with a contractor to provide services (in whole or in part) the subject of the contract service agreement.

### **Section 3 - Remuneration**

Section 3 provides for the definition of “remuneration”. This is to be:

- the salary that is paid to a foreign national, the hourly rate of which shall not be less than the national minimum hourly rate of pay or at a level that is appropriate to the relevant employment that is undertaken; and
- any payment for health insurance.

Separate provisions are included for intra-company transfer employment permits and contract service agreement employment permits.

### **Section 4 – Regulations**

Section 4 provides that the Minister may make regulations in relation to any matter referred to in the Bill as prescribed or to be prescribed.

### **Section 6 – Repeals and revocations**

Section 6 provides that the [Employment Permits Act 2003](#) and [Employment Permits Act 2006](#) are repealed by the Bill, and the [Employment Permits Regulations 2017](#) (S.I. No. 95 of 2017) are revoked.



## Part 2 – Employment in State of Foreign Nationals

### Chapter 1 - Prohibition on employment in State without employment permit

#### Section 7 - Employment in State of foreign nationals

Section 7 provides that a foreign national shall not

- (a) enter the service of an employer in the State, or
- (b) be in employment in the State,

except in accordance with an employment permit that is in force in respect of that foreign national.

Further, a person shall not employ a foreign national in the State except in accordance with an employment permit that is in force in respect of that foreign national (subsection (3)) and, in respect of a contract service agreement, all such steps as are reasonable must be taken by the relevant person (i.e. the person for whom, or on whose behalf, services are rendered under the contract service agreement) to ensure that a foreign national is employed in accordance with an employment permit that is in force in respect of that foreign national (subsection (4)).

A person shall not permit a foreign national who is employed outside the State by a foreign employer to carry out duties for, or participate in a training programme provided by, that person where that person is connected to the foreign employer, except in accordance with an employment permit that is in force in respect of that foreign national (subsection (5))

Subsection (6) provides that a person who contravenes subsection (1), (3), or (5), or fails to take the steps specified in subsection (4), shall be guilty of an offence. Subsections (7) and (8) provide defences to this offence, which is to show that the accused took “all such steps as were reasonably open” to them to ensure compliance with the relevant subsections.

#### Section 8 - Non-application of section 7 to certain foreign nationals

Section 8 provides that section 7, on the employment of foreign nationals, **shall not apply** to certain categories of foreign nationals. These are set out in full at section 8 of the Table of Provisions.

### Chapter 2 - Purposes for which employment permits may be granted

#### Section 9 - Purposes for which employment permit may be granted

Section 9 sets out the purposes for which an employment permit may be granted. These include to provide for the employment of a foreign national:

- a) whose skills are required in the State, where those skills are in “critical short supply”, and that shortage is likely to hinder growth and economic development;
- b) who is a dependant of a foreign national who has been granted a critical skills permit or is a dependant of a research project researcher, pursuant to Directive 2005/71/E;
- c) where a person in the State has been unable to recruit an employee for a vacancy in the State;
- d) who is employed outside the State by a foreign employer to carry out duties in the State for, or participate in a training programme provided in the State by, a connected person;

- e) who is employed outside the State by a contractor or a subcontractor to perform duties in the State that arise out of a contract service agreement, where the person is contractually obliged to perform those duties;
- f) who has a reactivation employment permit;
- g) to whom an exchange agreement applies (as specified in regulations under section 40);
- h) who has the knowledge and skill required for the development and operation of a sporting or cultural activity in the State;
- i) who is a full-time student, including a post-graduate student, enrolled in a course of study in a third-level institution outside the State; or
- j) who has a seasonal employment permit.

The Minister may make regulations specifying the seasonally recurrent employments for which a seasonal employment permit may be granted.

### Chapter 3 - Application for employment permit

#### Section 10 - Application for employment permit

Section 10 provides at subsection (1) that an application for an employment permit may be made by the foreign national or employer. It is set out below which type of permit may be applied for and by whom:

- Intra-company transfer: the application shall be made by the connected person concerned;
- Contract for service employment permit: the application shall be made by the contractor or subcontractor; and
- A contract of employment referred to in paragraph (b) of the definition of "contract of employment"<sup>69</sup>: the application shall be made by the relevant employment agency

Subsection (4) provides that an application under this section, other than an application referred to in subsection (5), shall not be made unless an offer of employment in the State has been made in writing to a foreign national within such period preceding the application as may be prescribed.

Subsection (5) states that the application must include a confirmation in writing that the foreign national concerned:

- is required to carry out duties, or participate in training, in the State (intra-company transfer employment permit); or
- is required to perform duties in the State that arise out of a contract service agreement (contract for service employment permit).

Subsections (6) and (7) provide that the application will identify:

- the relevant employer of the foreign national; and

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<sup>69</sup> As defined under Section 2 of the Bill as: "Any other contract whereby an individual agrees with another person, who is carrying on the business of an employment agency within the meaning of the *Employment Agency Act 1971* and is acting in the course of that business, to do or perform personally any work or service for a third person (whether or not the third person is a party to the contract.)"

- the purpose for which the application is made.

The application shall be made in writing and will include any prescribed fee (subsection (11)).

Subsection (8) provides that any application for a critical skills employment permit shall not be made unless the duration of the employment in respect of which the application is made is for a period not less than the period prescribed in respect of that employment for the purposes of the subsection.

Subsection (10) provides that an application shall not be made for the grant of an employment permit in respect of an employment where, in the 6 months preceding the day on which the application is made:

- (a) a person was employed in the employment that is the subject of the application, and
- (b) that person was dismissed by reason of redundancy from that employment within that period of 6 months.

### **Section 11 - Application – information to be provided**

Section 11 sets out the information that shall be included in an application for an employment permit. The full list of information to be provided is set out at section 11 of the Table of Provisions above.

### **Section 12 - Foreign nationals who may apply for a dependant employment permit**

Section 12 provides for applications for dependant<sup>70</sup> employment permits.

A dependant employment permit may be granted to a foreign national if:

- (a) he or she is the dependent of a Critical Skills Employment Permit holder (the primary permit holder) and that primary permit is in force and the primary holder is in employment in the role for which the primary permit was granted; or
- (b) the primary permit is expired but the primary permit holder now holds a permission granted by the Department of Justice to reside and work in the State.<sup>71</sup>

### **Section 13 - Amendment by Minister of application**

Section 13 provides that the Minister may, at the request of an applicant, amend an application. Further, the Minister may make regulations:

- (a) prescribing the matters specified in an application that may be amended under subsection (1),

<sup>70</sup> Under Section 2 of the Bill, “dependant” means a foreign national who—

- (a) has been determined by the Minister for Justice to be a dependant, other than the spouse or civil partner, 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
- (d) resides with the primary permit holder or the research project researcher referred to in paragraph (a);

<sup>71</sup> A [Stamp 4 immigration permission](#), which indicates permission to stay in Ireland for a specified period, subject to conditions.

and

(b) the procedure relating to the making of any such amendment to an application.

### **Section 14 - Recommendation by enterprise development agency**

Section 14 allows for Enterprise Development Agencies ([IDA](#) and [Enterprise Ireland](#)) to make a recommendation to the Minister in writing in support of the grant or renewal of an employment permit. The Minister must have regard to the recommendation but is not bound by it (subsections (2) and (3)).

### **Section 15 - Consultation by Minister in respect of certain applications**

The Minister may, in respect of an application for a sports and cultural employment permit, consult with any suitably knowledgeable person.

### **Section 16 - Consideration by Minister of application**

Section 16 provides that when making a decision on the grant of an Employment Permit, the Minister shall consider consistency with broader economic policy; relevance of the knowledge, skills, qualifications and experience referred to in Section 11(b) to the role; such other relevant matters referred to in section 10 or 11 as are relevant to the application; the different purposes, specified in section 9(2), for which an employment permit may be granted; and whether any of the mandatory grounds for refusal set out under Sections 25 and 26 apply.

Subsection (2) provides that the Minister may take the necessary steps to establish the accuracy or authenticity of the information provided.

Subsection (3) provides that the Minister may return incomplete applications without further consideration, with a written notification to the applicant that the application is incomplete, a prescribed portion of the fee, and any documentation received. The prescribed portion of the fee may also be returned to a person nominated by the applicant (subsection (4)).

Subsection (5) provides that the Minister may give priority to the consideration of applications for certain employment permit types as he or she considers appropriate in light of the economic context.

## **Chapter 4 – Grant of employment permit**

### **Section 17 – Grant of employment permit by Minister**

Section 17 provides that an employment permit may be granted by the Minister to the foreign national, subject to the provisions of the Bill. The permit shall permit employment in the State in the employment specified in the application and by the person identified in the application.

For an Intra Company Transfer Employment Permit, the permit is granted to permit the employment of the foreign national concerned to carry out duties or participate in training provided by the connected person.

Subsection (4) provides that the permit shall specify the duration for which the permit remains in force, subject to any maximum set out in regulations. A dependent permit shall remain in force for a maximum period prescribed in regulations or for the duration of the primary permit, whichever is the lesser (subsection (7)).

The foreign national must commence the employment within a certain period of the permit being granted or coming into force, where that period will be prescribed in regulations (subsection (9)).

### **Section 18 - Cancellation of previous employment permit still in force**

Section 18 provides that where the Minister decides to grant an employment permit in respect of a foreign national, the Minister shall cancel any employment permit previously granted in respect of the foreign national concerned that is still in force. The foreign national and the employer specified in the cancelled employment permit shall be notified in writing of the cancellation.

### **Section 19 - Issue of employment permit, information to be specified in permit etc.**

Section 19 provides that the Minister must issue a permit to both the foreign national and the employer identified in the application (or in the case of an Intra Company Transfer Permit, the connected person). The information that will be provided on the permit is listed in section 19(2).

This includes:

- (a) the **purpose** for which the permit is granted;
- (b) a **description of the employment** in respect of which the permit has been granted and a statement of the remuneration and any deductions, where agreed, for board and accommodation or either of them in respect of the employment;
- (c) the **name of the employer** of the foreign national concerned in relation to the employment in respect of which the permit has been granted;
- (d) a statement that the foreign national concerned be paid the **national minimum hourly rate of pay**;
- (e) a statement that a **new application** for the grant of an employment permit may be made in respect of the foreign national concerned subject to the provisions of the Bill;
- (f) a statement of any **conditions** attaching to the grant of the employment; and
- (g) **any other information** that, in the opinion of the Minister, is appropriate.

An employment permit shall include or be accompanied by a summary of the principal employment rights of an employee (subsection (3)).

### **Section 20 – Restriction on grant of employment permit**

Section 20 provides for the “50-50” rule, where an employment permit will not issue unless at the time of application at least 50% of the employees in a firm are EEA nationals.<sup>72</sup> UK citizens and nationals of the Swiss Confederation are included when calculating the number of EEA employees.

Subsection (2) states that in the case of an application for a critical skills employment permit, a general employment permit or an intra-company transfer employment permit, subsection (1) shall not apply to such application where:

- a) the person who has made the offer of employment, or the connected person, has been registered with the Revenue Commissioners for a prescribed period;
- b) an enterprise development agency has made a recommendation referred to in section 14 in respect of that application (i.e. that an employment permit be granted or renewed); 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.

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<sup>72</sup> [General Employment Permit](#), Enterprise.gov

Applications for the Dependent Employment Permit, the General Employment Permit, the Reactivation Employment Permit and the Sports and Cultural Employment Permit also have access to a waiver to the 50:50 rule if on the day of application the employer has no employees and the foreign national will be the sole employee on the date the employment specified in the application begins. The waiver no longer applies only to employers who intend to limit themselves to one employee. It now applies even if the employer intends to expand in the future. The 50:50 rule will be triggered when a second application is made for an employment permit for the same employer.

#### Section 21 - Establishing need for grant of certain employment permits

Section 21(1) provides that this section applies to the

- General Employment Permit,
- Contract for Services Employment Permit; and
- Seasonal Employment Permit.

This section provides that the Minister shall not grant an employment permit unless he or she is satisfied that the employer (or the contractor or subcontractor, as appropriate) has published a notice of the employment as prescribed and has, before making the application, offered the employment to an Irish citizen (or a person in the State under Section 8 of this Act) or a citizen of the EEA or Swiss confederation. The Bill's Explanatory Memo indicates that this provision fulfils the State's obligation with regard to community preference and helps to protect the domestic and EEA labour market. It is commonly referred to as the [Labour Market needs Test](#) (LMNT).<sup>73</sup>

The employer must advertise the vacancy in a prescribed manner for a prescribed duration. It is required that the role be advertised on the EU-based jobs website EURES, and one or more additional online employment platforms in a manner and for a period to be prescribed in regulations. These platforms will be listed in regulations.<sup>74</sup>

The minimum period for which the role must be advertised has been moved to regulations to allow for increased flexibility. An exemption is provided subject to a recommendation from an enterprise development agency, which the Minister may take into account. Further exemptions are provided where the Minister is satisfied that the role is in an area where there is a shortage of skills as set out in regulations (occupations listed on the Critical Skills Occupations List), the application is in respect of a foreign national to whom a general employment permit has been granted who was dismissed by reason of redundancy, or the application is in respect of the care of a person with exceptional medical needs. The terms of the LMNT will be set out in regulations and the Minister may make enquiries to satisfy himself/herself that the LMNT has been conducted as prescribed.

#### **Section 22 - Conditions of grant of intra-company transfer employment permit**

Section 22 provides that where an intra-company transfer employment permit is granted to a foreign national the hourly rate of that salary shall be not less than the national minimum hourly rate of pay or, where appropriate to the employment in respect of which the application is made,

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<sup>73</sup> [Labour Market Needs Test](#), Enterprise.gov.

<sup>74</sup> Explanatory Memorandum, p. 5



the hourly rate referred to in paragraph (b) of the definition of “standard working week remuneration”<sup>75</sup> (subsection (1)).

Subsections (2) and (3) provide that where the hourly rate of the salary paid outside the State by the foreign employer is less than the national minimum wage or, where appropriate, the hourly rate referred to in paragraph (b) of the definition of “standard working week remuneration”, the foreign employer shall make an additional payment to the foreign national so that their hourly wage is not less than the national minimum hourly rate of pay or the hourly rate referred to in paragraph (b) of the definition of “standard working week remuneration”, as applicable.

Section 22 requires a statement of earnings which breaks down the elements of the foreign national’s pay and provides detail on the remuneration information required for an application. The foreign national concerned must be employed by the foreign employer for a minimum period before an application for an employment permit may be made, that period will be prescribed in regulations (subsection (5)).

### **Section 23 - Conditions of grant of contract for service employment permit**

Section 23 provides that, like section 22, the hourly rate of remuneration paid by the contractor (or if there is a subcontractor, the subcontractor), shall be not less than the national minimum hourly rate of pay or, where appropriate to the employment in respect of which the application is made, the hourly rate referred to in paragraph (b) of the definition of “standard working week remuneration” (subsection (1)).

Where the hourly rate of pay that the foreign national usually receives falls below this amount, an additional payment will be required to be paid for the duration of the employment permit, to meet the national minimum hourly rate of pay. This section requires the provision of a statement of earnings by the contractor or subcontractor, which breaks down the elements of the foreign national’s pay, and provides detail on the remuneration information required for an application.

### **Section 24 - Change to name of employer, connected person or relevant person**

Section 24 provides that the Minister may amend a permit in the event of a transfer to which the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) applies.

## **Chapter 5 - Refusal to grant employment permit**

### **Section 25 - Mandatory grounds for refusal of employment permit**

Section 25 provides for mandatory grounds for refusal of employment permits. The Minister must refuse an employment permit:

- If the foreign national concerned was made redundant from the same role within the six months preceding the date of the application (subsection (1));
- Where the employer is either not registered with the Revenue Commissioners or is not engaged in substantive business in the State (subsection (2));

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<sup>75</sup> (b) if the hourly rate of pay fixed under or pursuant to any enactment that applies to the employment concerned is greater than the national minimum hourly rate of pay, the hourly rate of pay that is fixed under or pursuant to that enactment;



- In the case of a Contract for Services Employment Permit, where the contractor or subcontractor is not registered with the Revenue Commissioners (subsection (2));
- In the case of a Contract for Services Employment Permit, where there are reasonable grounds to believe the foreign national will not be employed by the contractor or subcontractor (subsection (3));
- In the case of an application for an intra-company transfer employment permit, the connected person is not engaged in substantive business operations in the State, the connected person is not registered with the Revenue Commissioners, the foreign employer is not engaged in substantive business operations in the place, outside the State, in which it is established, or the connected person is not connected with the foreign employer (subsection (5)); and
- In the case of an Intra Company Transfer Employment Permit and Contract for Services Employment Permit, where the remuneration falls short of the requirements specified specifically for those permit types in the Act (subsection (6)).

### **Section 26 - Discretionary grounds for refusal of employment permit**

Section 26 provides discretionary grounds on which the Minister may refuse to grant an employment permit. These include:

- where the applicant fails to provide information required under the Act or the prescribed fee;
- where the foreign national, or the employer (or in certain cases the contractor, subcontractor, relevant person, the connected person or the employment agency) has, in the preceding five years, been convicted of an offence under this Act or an enactment set out in Schedule 1;
- where to grant the permit would be manifestly inconsistent with the Government's economic policy.
- where the employee has been working for less than 12 months in their first employment in the State and an application for another employment permit was made within that time;
- where the Minister considers it to be in the public interest;
- an irregularity with the permission of the foreign national to land or be in the State;
- issues related to fraudulent documents, remuneration levels and/or the relevance of skills, qualifications knowledge or experience required for the employment;
- where there was a failure by the employer or connected person to comply with conditions attaching to a previously issued employment permit, not necessarily for the same foreign national; or
- where the foreign national is not registered with a regulatory body or a Minister of Government where this is required for the occupation to be undertaken in the State.

The Minister may also refuse to grant an Intra Company Transfer Employment Permit or a Contract for Service Employment Permit if the foreign employer, connected person, contractor or subcontractor, where applicable, has not made adequate provision for board and accommodation (or either of them) or health insurance. The Minister may refuse to grant an employment permit if the employer does not comply with relevant company law.

### **Section 27 - Notification of refusal and return of fee**

Section 27 provides that the Minister must notify the applicant in writing of a refusal to grant an employment permit. This notification must include the decision, the reasons for the refusal and the fact that the applicant may submit the decision for review. The Minister shall also return the prescribed portion of the fee to the person who paid the fee or a person nominated by them.

## Section 28 - Review of decision to refuse grant of employment permit

Section 28 provides that a decision by the Minister to refuse to grant an employment permit may be submitted by the applicant for review. This application for review shall be made within a prescribed period from the date the decision is notified to the applicant under section 27. A review may be directed by the Minister when all relevant material has been submitted and the procedures for review have been followed by the applicant (subsection (3)). The review shall not be carried out by the same person who made the decision being appealed (subsection (4)).

The decision may be confirmed or cancelled by the reviewer (subsection (5)). In the latter case, the reviewer may grant the applicant the employment permit sought. Before the reviewer makes their decisions, the applicant shall have the right to make representations in writing (subsection (6)), including where the reviewer is of the view that there are reasons to confirm the decision that differ to the reasons notified to the applicant (subsection (7)). Where new information is provided during the review process, the application will be referred back to the decision-maker for reconsideration and the making of a new decision in relation to it (subsection (8)).

## Chapter 6 - Renewal of employment permit

### Section 29 - Renewal of employment permit

Section 29 provides that the Minister may, on application, renew an employment permit.

Subsection (2) provides that the following employments shall not be renewable:

- an intra-company transfer employment permit granted in respect of an employment referred to in section 9(2)(d)(ii);<sup>76</sup>
- an internship employment permit.

An application for renewal shall be made within a prescribed time (subsection (3)), and may be made by the holder of the employment permit concerned or the employer, or, in prescribed circumstances and where relevant, by the contractor or subcontractor, connected person or relevant employment agency (subsection (4)). The Bill's Explanatory Memorandum notes that this section exempts renewals from the Labour Market Needs Test and the Ineligible Occupations List.<sup>77</sup>

### Section 30 - Period for which employment permit may be renewed

Section 30 provides that the period for which an employment permit may be renewed under the Bill shall not exceed such period as may be prescribed by the Minister.

In the case of the renewal of an intra-company transfer employment permit, the Minister may renew the permit where he or she 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 (subsection (2)).

In the case of the renewal of a contract for service employment permit, the Minister may renew the permit where he or she is satisfied that the duties to be performed in the State pursuant to the

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<sup>76</sup> "in an employment that requires the foreign national to participate in such training programme"

<sup>77</sup> Explanatory Memorandum, p. 8.

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 (subsection (3)).

The Bill also sets out the period for which a dependant employment permit may be renewed (subsection (7)).

### **Section 31 - application of sections 16, 19, 20, 25, 26, 27 and 28 to renewal of employment permit**

Section 31 provides for the refusal of a renewal application. The Bill proposes to separate the refusal of initial applications for employment permits and the refusal of renewal applications.

### **Section 32 - Additional grounds for refusing renewal of employment permit**

Section 32 provides for further discretionary grounds on which the Minister may refuse to renew an employment permit. These include where:

- there are changes in the foreign national's employment as specified in the original permit;
- the remuneration paid to the foreign national is less than the national minimum wage, or the minimum required by the Bill;
- the foreign national has spent a continuous period of not less than 3 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;
- renewal of the permit would contravene regulations under section 40 of the Bill; and/or
- information, documents and evidence required were not provided.

This section operates in addition to the grounds for refusal under sections 25 and 26 (subsection (5)).

## **Chapter 7 – Cessation of employment permit**

### **Section 33 – Revocation of employment permit**

Section 33 provides that the Minister may revoke an employment permit. The grounds are set out in full in at section 33 of the Table of Provisions.

Subsection (2) provides that where the Minister decides to revoke an employment permit, the holder of the permit and the employer or connected person, as applicable, shall be notified of this in writing.

### **Section 34 - Review of decision to revoke employment permit**

Section 34 provides for the process of reviewing a decision to revoke an employment permit. This section is similar to section 17 of the *Employment Permits Act 2006*, which is repealed by the Bill. The decision may be submitted to the Minister for review by the holder of the permit, the employer or the connected person. The person who conducts the review shall be of a more senior grade than the person who made the decision to revoke the permit (subsection (3)). Following the review, the decision may be cancelled or confirmed (subsection (4)).

Before a decision is confirmed, the applicant shall be notified in writing and given the opportunity to make representations (subsection (5)). If new material is made available during the course of the review, the decision shall be referred back to the decision-maker for reconsideration. (subsection (6)).

### **Section 35 - Order under section 3 or 4 of [Immigration Act 1999](#)**

Section 35 provides that if a foreign national who has been granted an employment permit has been made the subject of a deportation or exclusion order under the [Immigration Act 1999](#), the

permit shall be revoked. If the order under the 1999 Act is revoked or otherwise ceases to be in force, the permit may be revived.

### **Section 36 - Termination of employment**

Section 36 provides that if the employment of a foreign national pursuant to an employment permit is terminated by the employer or holder of the permit or otherwise, the Minister shall be notified in writing within a prescribed period of the date of termination (subsection (1)). The Minister shall also be notified in the same manner if the employment of a foreign national employed pursuant to an intra-company transfer employment permit is terminated (subsection (2)).

The Minister shall, on receipt of the notification, cancel the employment permit concerned (subsection (3)).

Subsection (4) provides that a person who fails to notify the Minister (per subsections (1) and (2) of section 36) shall be guilty of an offence. It shall be a defence for a person charged with an offence under subsection (4) to show that he or she took all reasonable steps to notify the Minister within the period referred to in subsection (1) or subsection (2), as the case may be.

## **Chapter 8 - Redundancy of certain permit holders**

### **Section 37 - Redundancy of critical skills employment permit holder**

Section 37 provides that where a critical skills employment permit holder has been made redundant, they shall notify the Minister in writing of the date of dismissal and provide any documents specified (subsection (1)).

The permit holder may apply for an employment permit within 6 months of the date of dismissal, and such application shall be for a critical skills employment permit 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) a different employment to the one for which the employment permit referred to in subsection (1) was granted, that is specified in regulations under section 40 as an employment for which a critical skills employment permit may be granted.

An application may still be made notwithstanding that the employment is no longer an employment, or falls within a category of employment, for which a critical skills employment permit may be granted; or is an employment, or falls within a category of employment, specified in regulations under section 40 for which an employment permit shall not be granted (subsection (4)).

The Minister shall not grant the employment permit concerned unless the Minister is satisfied that the foreign national was dismissed by reason of redundancy (subsection (6)). The applicant shall supply any information required by the Minister (subsection (9)).

### **Section 38 - Redundancy of general employment permit holder**

Section 38 provides that, in an instance where the foreign national permit holder has been made redundant, they may make an application for an employment permit within 6 months of the date of dismissal (subsection (3)). They shall also notify the Minister of the date of their dismissal within a prescribed period (subsection (2)).

The section also waives the application of the ineligible list if the status of the occupation from which the permit holder was made redundant has changed to ineligible since the permit was first granted.

### Section 39 - Information, documents, supplementary provisions relating to redundancy

Section 39 sets out the material to be supplied to the Minister in the notification that the foreign worker has been made redundant. These include:

- (a) the date of dismissal,
- (b) the reason for the dismissal by reason of redundancy as specified in paragraph (a), (b), (c), (d) or (e) of section 7(2) of the Act of 1967 or in section 21 of that Act,
- (c) such information and documents as may be specified in regulations under section 43 that the Minister may require to be satisfied that the dismissal of the foreign national was a dismissal by reason of redundancy, and
- (d) a statement specifying whether the foreign national has notified the Minister in accordance with section 36

## Part 3 – Regulations relating to employment permits

### Section 40 - Regulations governing grant of employment permit, etc.

Section 40 provides for the regulation-making powers of the Minister for each class of employment permit.

Subsection (2) provides that the matters in respect of which the Minister may regulate include

- (a) the **maximum number of employment permits** that may be granted in respect of a particular class of employment permit 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**;
- (c) the employments for which an employment permit **shall not be granted**;
- (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 without prejudice to the generality of the foregoing, in respect of such minimum amount of remuneration—
  - (i) in so far as it relates to the salary referred to in paragraphs (a)(i) and (b)(i) of section 3(1),<sup>78</sup> the hourly rate for the salary shall be not less than the national minimum hourly rate of pay, or where appropriate to the employment or the

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<sup>78</sup> (i) the salary that is paid to a foreign national, the hourly rate of which shall not be less than the national minimum hourly rate of pay or, where appropriate to the employment in respect of which the application is made, the hourly rate referred to in paragraph (b) of the definition of “standard working week remuneration”, and  
(ii) any payment for health insurance in respect of a foreign national should he or she require medical treatment for illness or injury during the period for which the employment permit is in force

category of employment, the hourly rate of pay referred to in paragraph (b) of the definition of “standard working week remuneration”, and

(ii) in so far as it relates to the payments for board and accommodation, referred to in section 3(1)(b)(ii)<sup>79</sup> and the payments for health insurance referred to in paragraphs (a)(ii) and (b)(iii) of section 3(1), a maximum amount that may be paid in respect of those payments or the maximum amount of the value of such board and accommodation that are directly provided;

(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 in respect of a specified employment or category of employment;

(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 and maximum periods** for which an employment permit may be **granted**; and

(j) the **minimum and maximum periods** for which an employment permit may be **renewed**.

Subsection (5) provides that when making regulations providing for critical skills employment permits and general employment permits, the Minister may make different provisions for foreign nationals to whom sections 37 or 38 apply (redundancy provisions for individuals with these permits).

Subsection (6) provides for regulations relating to exchange agreement employment permits. The Minister:

- shall specify in those regulations each exchange agreement in respect of which an employment permit may be granted, and
- may specify the employments referred to in that exchange agreement in respect of which an employment permit may be granted for that class of employment permit.

Subsection (7) provides that the Minister may, when providing for any class of employment permit or any matter specified under subsection (2) in regulations, make provision in respect of a recommendation referred to in section 14 (a recommendation by an enterprise development agency), and may, in respect of such recommendation, make different provision for different relevant classes and cases.

Subsection (8) provides that, in respect of the qualifications held by the foreign worker, the Minister may provide for certain requirements that the foreign national be registered with a regulatory body or that their qualifications be recognised by a regulatory body.

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<sup>79</sup> The salary that is paid to a foreign national, the hourly rate of which shall be not less than the national minimum hourly rate of pay or, where appropriate to the employment in respect of which the application is made, the hourly rate referred to in paragraph (b) of the definition of “standard working week remuneration”



Subsection (9) provides that when specifying the employments for which an employment permit may be granted, the Minister may specify such employments by reference to employments that require qualifications, experience or skills, referred to in section 42(1)(c), that are required for the proper functioning of one or more economic sectors and the Minister is satisfied that there is a shortage those skills.

Subsection (10) provides that the Minister, when making regulations, may specify as a condition for the grant of an employment permit:

- (a) any accommodation, training or expenses that shall be provided to a foreign national to whom such an employment permit is granted, and
- (b) any measures that shall be taken by the employer of the foreign national to whom such an employment permit is granted to increase the skills, knowledge, qualifications or experience of employees, or to otherwise reduce the employer's reliance on the employment of foreign nationals in respect of the employment concerned, including by way of the introduction of technical changes to work processes.

Subsection (11) provides that where the Minister specifies the maximum number of employment permits that may be granted in respect of a class of employment permit, the Minister shall specify a period during which that maximum number of employment permits shall be granted.

Subsections (12) and (13) stipulate that the Minister may make regulations providing for restrictions on the issuing of permits of a particular class for a particular period of time specified in the regulations.

Subsection (14) provides that the Minister shall carry out a review of the regulations made in accordance with Section 40 periodically.

#### **Section 41 - Remuneration relating to employments**

Section 41 provides that, when making regulations related to remuneration, the Minister may make a distinction between different employments. The Minister may have regard to the amounts of remuneration paid in respect of different employments and categories of employment, and the minimum number of hours of work required for an employment as a condition for the grant of an employment in respect of it.

#### **Section 42 - Criteria for making regulations under section 40**

Section 42 sets out the criteria for the making of regulations by the Minister under section 40 of the Bill, which states that the Minister may make regulations having regard to the matters specified in section 42. These matters include:

- (a) the qualifications, experience or skills that, in the opinion of the Minister, are required for economic and social development and competitiveness,
- (b) the economic sector or sectors that, in the opinion of the Minister, will be involved in the achievement of such economic and social development and competitiveness,
- (c) the qualifications, experience or skills that, in the opinion of the Minister, are required for the proper functioning of such economic sector or sectors, and
- (d) in a case where, in the opinion of the Minister, there is likely to be a shortage or surplus in respect of qualifications, experience or skills falling within paragraph (c), an estimate as best the Minister may make (and which estimate the Minister is, by virtue of this section, required to make) of what the extent of that shortage or surplus will be.



### **Section 43 - Regulations governing procedure in relation to applications for employment permits etc.**

Section 43 sets out the Minister's regulation making powers with regard to the procedures around the making of applications for employment permits (under section 10) and applications for permit renewals (under section 29). These focus primarily on the documents, evidence and other materials to be produced as part of these applications.

Subsection (2) provides that these regulations may make provision for all or any of the following:

- (a) the form that an application for a permit or permit renewal shall take;
- (b) the production to the Minister, with an application for an employment permit, of such information and documents as the Minister may specify and request (these are set out in detail in subsection (2)(c)(i)-(ix); and
- (c) the production to the Minister, with an application to renew an employment permit, of information and documents as the Minister may specify and request (these are set out in detail in subsection (2)(d)(i)-(viii)

## **Part 4 – Enforcement, Offences and Penalties**

### **Section 44 - Authorised officers**

Section 44 provides for the power of the Minister to appoint authorised officers under the Bill. Those who were authorised officers under the *Employment Permits Act 2006* before the commencement of the Bill shall remain so. Subsection (4) outlines the circumstances in which an authorised officer shall cease to be such an officer. Subsection (5) sets out actions that an authorised officer may perform (these are set out in subsection (5)(a)-(k).

Subsection (11) provides that a person who

- (a) obstructs or impedes an authorised officer in the exercise of a power under this section,
- (b) without reasonable excuse, does not comply with a requirement under this section, or
- (c) in purported compliance with such a requirement, gives information that is false or misleading in a material respect,

shall be guilty of an offence.

### **Section 45 - Warrant relating to offences under section 7(6)**

Section 45 provides for the issuing of search warrants relating to offences committed under section 7 of the Bill (regarding engaging in employment as a foreign national and employing foreign nationals in the State). Section 45 provides that where there are reasonable grounds for suspecting that evidence relating to an offence under section 7(6) is to be found at a specified place, a judge of the District Court may issue a warrant for the search of that place. The section sets out the powers of the authorised officer in this instance and subsection (4) creates an offence for obstruction, failure to comply with requirements under this section and failure to provide name and address.

### **Section 46 - Prohibition on forgery, fraudulent alteration or fraudulent use of employment permit**

Section 46 provides that a person shall not

- (a) forge a document purporting to be an employment permit,

- (b) alter an employment permit with intent to deceive,
- (c) use an employment permit with intent to deceive,
- (d) permit the alteration of an employment permit with intent to deceive,
- (e) permit the use of an employment permit with intent to deceive, or
- (f) use, with intent to deceive, a forged document purporting to be an employment permit.

A person who contravenes these provisions shall be guilty of an offence.

#### **Section 47 - Prohibition on certain use of employment permit**

Section 47 prohibits the transfer of an employment permit, its use by a different foreign national or a different employment, whether by employer or permit holder. It establishes such use as an offence.

#### **Section 48 - Prohibition on deduction from remuneration and retention of personal documents**

Section 48 prohibits deductions made by an employer relating to the grant of a permit, and the holding of personal documents of the foreign national and establishes an offence for such cases.

The Explanatory Memorandum indicates that this is intended to prevent the imposition of coercive or extortionate deductions by employers or agents and mirrors the provisions of section 23 of the *Employment Permits Act 2006*.

#### **Section 49 - Provision of false or misleading information**

Section 49 creates an offence relating to the provision of misleading information in an application for grant or renewal of an employment permit. The Explanatory Memo indicates that this section reinstates section 25 of the *Employment Permits Act 2006*, as amended, with no changes.

#### **Section 50 - Penalties and proceedings**

Section 50 provides for penalties for specified offences under the Bill. These are set out in full in the Table of Provisions, at section 50.

#### **Section 51 - Offences by body corporate**

Section 51 provides that where an offence under the Bill has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any wilful neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

#### **Section 52 - Civil proceedings**

Section 52 provides that if a foreign national was, in contravention of this Bill, in employment without an employment permit, and if they were not paid or not paid sufficiently for their work, the Minister may institute civil proceedings against the employer to recompense the foreign national (subsection (2)).

This section applies to a foreign national who, in contravention of section 7(1)

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

(b) was in employment in the State, without an employment permit and who is no longer in such service or employment

This section requires that the foreign national can demonstrate that they took reasonable steps to regularise their position. The section sets guidance on the sums to be paid, and a two-year limit under which civil proceedings may be taken (subsection (3)). Proceedings cannot be taken for work done more than six years prior to the cessation of the employment (subsection (6)). Costs, if awarded, will be awarded to the Minister (subsection (9)). Compensation for the foreign national is not considered a reckonable emolument under the *Social Welfare Consolidation Act 2005*, as having worked without an employment permit the foreign national is not entitled to build up payments to Social Welfare.

The section sets out the jurisdiction of the District Court (awards up to €15,000) and Circuit Court (awards up to €75,000) (subsections (13)-(16)), as well as the right of the foreign national to institute proceedings under this section on his/ her own behalf but so doing would preclude the Minister from taking proceedings (subsection (12)).

### **Section 53 - Prohibition on penalisation**

Section 53 prohibits the penalisation of an employee by a set of clearly defined actions including dismissal, demotion or intimidation.

In this section, “penalisation” means any act or omission by an employer or a person acting on behalf of an employer that affects an employee to his or her detriment with respect to any term or condition of his or her employment.

An employer shall not penalise or threaten penalisation against an employee for—

- (a) **making a complaint** to a member of the Garda Síochána or the Minister that a provision of this Act is not being complied with,
- (b) **giving evidence** in any proceedings under this Act, or
- (c) giving notice of his or her **intention to do any of the things** referred to in paragraphs (a) or (b).

### **Section 54 - Presumption of employment in certain proceedings**

Section 54 provides that, in relation to proceedings under Section 7(6), where evidence is given by a member of An Garda Síochána, immigration officer or authorised officer, it shall be presumed that if a person was witnessed carrying out a job in a premises, that they have been employed to carry out that job.

### **Section 55 - Presumptions in proceedings under Act**

Section 55 provides for the following presumptions under the Bill:

- A document was created by a person purported to be the document’s creator;
- Documents created and sent by the first person to a second person, were so created and received by the first and second person respectively;
- A notice or document has been served and received by the intended recipient;
- A document or record retrieved from an electronic storage was authored by the person who ordinarily uses that device; and
- Material removed from a place is the property of a person, if evidence is given to this effect by an authorised officer.

### **Section 56 - Retention of records**

Section 56 provides for record keeping for a period of five years by employers to be made available to authorised officers of the Minister, if requested. Subsection (3) sets out the records to be held, which include the relevant employment, its duration, the remuneration paid, the nature of the business and the nationality of the permit holder, and records of any board, accommodation and health insurance in the case of Intra-Company Transfer/Contract for Service Employment Permit types.

The Bill's Explanatory Memo indicates that the purpose of this section is to reinstate Section 27 of the *Employment Permits Act 2006* as amended, and the section is amended to include UK nationals for the purposes of record keeping, to address their changed status following Brexit.

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