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國際運輸勞連

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Internationale Transportarbeiter-Föderation  
Международная федерация транспортников  
الاتحاد الدولي لعمال النقل

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Our ref: OGS/SMC/jm

22 November 2019

Dear Mr Hughes,

#### **Employment Permits (Consolidation and Amendment) Bill 2019**

Thank you for your letter of 4 November 2019 on behalf of the Joint Committee on Business, Enterprise and Innovation inviting the ITF to make written submission on the general scheme of the Employment Permits (Consolidation and Amendment) Bill 2019.

The ITF welcomes all opportunities to engage with the Committee on matter such as these. Attached are ITF's written submissions and should any queries arise please do get in touch

Kind regards,

Stephen Cotton  
General Secretary

Cc:  
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**INTERNATIONAL TRANSPORT WORKERS' FEDERATION**

**Submission to the Joint Committee on Business, Enterprise and Innovation**

**in relation to the general scheme of the**

**Employment Permits (Consolidation and Amendment) Bill 2019**

## **A. Introduction**

1. The International Transport Workers' Federation (ITF) is grateful for the invitation by the Joint Committee on Business, Enterprise and Innovation to make written submissions on the general scheme of the Employment Permits (Consolidation and Amendment) Bill 2019. The Bill presents an opportunity to modernise Ireland's approach to employment permits in a manner that strengthens the rights of vulnerable workers in the State.
2. ITF has 686 affiliated trade unions, representing more than 19.5 million transport workers in 148 countries. SIPTU is the Irish affiliate. The ITF represents workers on land and sea. Its main maritime emphasis is on the protection of seafarers working in the merchant marine, but in recent years it has become increasingly concerned at the mounting levels of abuse of migrant fishers from non-EEA countries.
3. ITF's submission will concentrate in particular on two problematic aspects of the Bill. First, we are concerned that tying or linking of employment permits to specific employers in the State for lengthy periods of time creates the potential for the coercion and exploitation of vulnerable workers in a range of sectors. The issue of severe labour exploitation is one which migrant workers are at particular risk of and one which has come to prominence in recent times, in part due to the employment permit regime that exists in the State. Given the demonstrated and much-documented potential for abuse, ITF recommends that the requirement that an employee be tied to a particular employer be removed from the 2019 Bill. Second, we are concerned about the continued use of tools designed for labour law enforcement for the purpose of immigration control on the basis that intertwining employment and immigration law enforcement makes migrant workers less likely to come forward with complaints about exploitation.

## **B. Ireland's National and International Obligations**

4. The State has a number of obligations to effectively protect workers and migrants against exploitation. As well as obligations arising under the Constitution, the European Convention on Human Rights and European Union law, Ireland has signed and ratified a number of international treaties that create positive obligations to ensure against labour exploitation and trafficking, including the European Social Charter (Revised), the International Covenant on Economic, Social and Cultural Rights, the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons,

Especially Women and Children to the United Nations Convention against Transnational Organized Crime, and the Council of Europe Convention on Action against Trafficking in Human Beings.

5. These positive obligations require Ireland to take concrete steps to combat labour exploitation and trafficking within the State's jurisdiction. Such actions should aim to prevent labour exploitation and trafficking in a manner that goes beyond awareness raising measures, and work in partnership with civil society, trade unions and the private sector, to reduce vulnerability to trafficking. The State must protect victims and prosecute those involved in labour exploitation and trafficking.

### **C. Government Policy and the Employment Permits Acts**

6. The current employment permit regime is governed by the Employment Permits Act 2003-2014, and by regulations made under them. Section 2(1) of the Employment Permits Act 2003, as amended, provides that a foreign national shall not enter the service of an employer or be in employment in the State except in accordance with a permit granted by the Minister for Business, Enterprise and Innovation under section 8 of the Employment Permits Act 2006. When a foreign national is granted an employment permit, he or she still needs a permission to be in the State from the Minister for Justice and Equality. It will be a condition of such permission that the person remain in the employment of the employer in respect of whom the permit was issued. For a person employed under a work permit, leaving his or her employment means losing his or her permission to be in the State.
7. In theory, it is open to a person who holds an employment permit to apply for a new one with a different employer while they are still employed. Such persons do not need to leave the State to reapply. However, given the onerous requirements involved in obtaining a permit in the first place, it is not clear how a person suffering labour exploitation can reasonably be expected, in practice, to find a new employer and make such an application successfully.
8. A further difficulty is presented by section 12(1)(e)(i) of 2006 Act, which provides that the Minister may refuse to grant an employment permit to a foreign national if a period of less than 12 months has elapsed since he or she first commenced employment in the State pursuant to a previous employment permit. While the section leaves the Minister a discretion to grant the permit even where a period of 12 months has not elapsed, the default position is that no new employment permit can be issued to a person who has a valid permit less than a year old.

9. Theoretically, the holder of an employment permit who is being exploited might also be able to apply to the Minister for Justice and Equality for variation of the conditions of his or her permission to be in the State to allow him or her to stay other than on foot of the work permit, so that he or she can leave the exploitative employment without becoming undocumented.<sup>1</sup> But again, this possibility is likely to be more illusory than real, in that a person being exploited is unlikely to be aware of this legal avenue (certainly it does not appear to be publicised by the Minister for Business, Enterprise and Innovation or by the Minister for Justice and Equality) and even if he or she is aware of the possibility, the process of application is long, complicated and onerous.
10. ITF notes that the current system of tying work permits to employers is replicated in the new Bill. We note in particular that Head 17(1)(e)(i) of the Bill provides for the refusal of an employment permit in identical terms to section 12(1)(e)(i) of the 2006 Act.

#### **D. Ireland and the Tied Employment Permit System**

11. The Minister's position is that the current arrangement strikes a reasonable balance between, the employer's expectations that the foreign national remain in their employment for a reasonable period of time given the costs involved in recruiting that foreign national on the one hand, and not unduly binding the foreign national to the employer, on the other.<sup>2</sup>
12. With respect, ITF is concerned that the proper balance has not been struck. There is a weight of evidence that indicates that tying or linking employment permit permission to employers for any length of time facilitates the labour exploitation and trafficking that Ireland is obliged to prevent. For example, the UK's Overseas Domestic Worker (ODW) visa has been criticised for tying employees to their employer for six months: research done by Professor Virginia Mantouvalou at University College London discovered a direct connection between the tied ODW visa and abuse of domestic workers in the United Kingdom.<sup>3</sup> The René Cassin Foundation noted that by not being allowed to change employers, this weakens the bargaining position of the worker and makes it difficult for them to escape abusive employers. Further, by tying their immigration status to their employer, this makes their presence in this country dependent on their continued employment. Workers who find themselves in abusive employment relationships are often reluctant to seek help from authorities

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<sup>1</sup> Immigration Act 2004, s. 4(7).

<sup>2</sup> Department of Business, Enterprise and Innovation, 'Employment Permits Frequently Asked Questions' at [5.1] <https://dbei.gov.ie/en/Publications/Publication-files/Employment-Permits-FAQs-2019.pdf>

<sup>3</sup> Virginia Mantouvalou "'Am I Free Now" Overseas Domestic Workers in Slavery' (2015) 42 *Journal of Law and Society* 329.

for fear of deportation. The result is that they either remain in exploitative ‘slave-like’ conditions or they flee and become undocumented migrants in the process. Upon doing so, their risk of falling into similarly exploitative situations is greatly increased.<sup>4</sup> The Centre for Social Justice in the United Kingdom have reported that a tied permit system presents serious risks that workers will be disempowered through restricting their freedom to leave an abusive employer and fostering increased cases of modern slavery. They note that individuals in such circumstances have three options: to remain in the situation and submit to the abuse their job entails; to leave the UK and return home (this is very often not seen as a viable option for domestic workers who are under significant financial pressure with dependents at home); or to leave their employer and their home (many migrant domestic workers live with their employers) and face the prospect of living and working illegally. The option of reporting their abuse is effectively non-existent as they would have nowhere to live and no right to earn money legally while their complaint is investigated.<sup>5</sup>

13. In Ireland, as early as 2010, the Migrant Rights Centre Ireland (‘MRCI’) found that binding a worker to one employer under the current employment permits system was a leading factor in the exploitation of migrant workers. Approximately 80% of MRCI’s exploitation cases involved migrant workers holding employment permits. Work permit holders also represented the most serious cases of exploitation that were evidenced.<sup>6</sup> Likewise, in his 2014 report to the EU Fundamental Rights Agency, Dr Robert Mooney, formerly of University College Dublin, noted that a significant issue in Ireland was that specific work permits are granted to employers and not employees, which binds the employee to the employer and gives an unequal measure of control to the employer. In these cases if the employee leaves the employer they find themselves in a situation where they have no legal permit to work in the country. Lack of knowledge about immigration rules in Ireland compound this issue.<sup>7</sup>
14. The ITF has encountered a similar difficulty in relation to migrant fishers employed on Irish-flagged fishing vessels under the Atypical Work Scheme for Non-EEA Crew in the Irish Fishing Fleet. That Scheme is not subject to the Employment Permits Acts, but the same model is applied: a fisher’s permission to be in the State is contingent on his or her working for a particular employer. If the

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<sup>4</sup> Aidan Shipman, *Tackling Modern Slavery – How Overseas Domestic Workers are still being ignored* (Rene Cassin, 2016) accessible via <https://www.renecassin.org/wp-content/uploads/2016/01/20160104-Aidan-Research-Article-Final1.pdf>

<sup>5</sup> Centre for Social Justice, *It Happens Here: Equipping the United Kingdom to fight modern slavery* (11 March 2013) at 92-93 accessible via [https://www.centreforsocialjustice.org.uk/core/wp-content/uploads/2016/08/CSJ\\_Slavery\\_Full\\_Report\\_WEB5.pdf](https://www.centreforsocialjustice.org.uk/core/wp-content/uploads/2016/08/CSJ_Slavery_Full_Report_WEB5.pdf)

<sup>6</sup> Migrants Rights Centre Ireland, *Work Permits and Exploitation: Time for Reform* (2010) accessible via <http://www.mrci.ie/wp-content/uploads/2012/11/Work-Permits-and-Exploitation- Time-for-Reform.pdf>

<sup>7</sup> Robert Mooney, *Severe forms of Labour Exploitation – Supporting victims of severe forms of labour exploitation in having access to justice in EU Member States* (Ireland 2014) accessible via [https://fra.europa.eu/sites/default/files/fra\\_uploads/severe-labour-exploitation-country\\_ie.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/severe-labour-exploitation-country_ie.pdf)

fisher leaves his employment and cannot find another fishing vessel to work on, his immigration permission is revoked. All of the exploited migrant fishers ITF has assisted described to us abuse by their employers of the power that the tie between the contract and lawful residence gave them. The Committee will recall that in its Report on the Scheme in November 2017, it recommended breaking the link between immigration permissions and employers.<sup>8</sup> ITF took legal proceedings against the State in 2018 about the risks posed by the Scheme to migrant fishers, and following a settlement reached through mediation in April 2019, the Minister for Justice and Equality announced that employers would not be able to cancel employee's immigration permissions, and that fishers would be able to change employers freely.<sup>9</sup> The tie between fishers' permissions and their employment was loosened rather than broken, and ITF continues to have real concerns about exploited workers' ability to change employers in practice. In February 2019, the United Nations Special Rapporteurs on modern slavery, trafficking in persons, racial discrimination and human right expressed wrote to the Minister for Foreign Affairs and Trade to voice their concern regarding the operation of the Scheme. They observed, in particular, that tying migrant fishers, their livelihood and immigration status to an employer, gave excessive power to potentially abusive employers over workers.<sup>10</sup> To date the State has yet to reply to this letter.

#### **E. The Danger of Enmeshing Labour and Immigration Law Enforcement**

15. Under the Employment Permits Acts 2003-2014, Workplace Relations Commission inspectors are appointed as authorised officers for the purpose of enforcing the rules relating to work permits and the employment in Ireland of foreign nationals. In ITF's view, this sits uneasily with the WRC's principal role as the Irish labour law inspectorate. Research conducted by Clíodhna Murphy, David Doyle and Muiréad Murphy at Maynooth University suggests that giving the WRC a role in immigration law enforcement undermines the confidence of migrant workers to report exploitative

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<sup>8</sup> Oireachtas Joint Committee on Business, Enterprise and Innovation 'Report on the Situation of Non-EEA Crew in the Irish Fishing Fleet under the Atypical Worker Permission Scheme' November 2017, observations 1 and 2, and recommendation 1. Accessible via [https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint\\_committee\\_on\\_business\\_enterprise\\_and\\_innovation/reports/2017/2017-12-14\\_report-the-situation-of-non-eea-crew-in-the-irish-fishing-fleet-under-the-atypical-worker-permission-scheme\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_business_enterprise_and_innovation/reports/2017/2017-12-14_report-the-situation-of-non-eea-crew-in-the-irish-fishing-fleet-under-the-atypical-worker-permission-scheme_en.pdf)

<sup>9</sup> *International Transport Workers Federation v. The Minister for Justice and Equality and Others*, High Court Record No. 2018/5398 P. Department of Justice and Equality and Others, 'Joint Press Statement: Agreement reached in mediation on the scheme for employment of non-EEA fishers in parts of the Irish sea-fishing fleet' 30 April 2019, accessible via <http://www.justice.ie/en/JELR/Pages/PR19000123>

<sup>10</sup> Letter from the Special Rapporteurs to the Irish Permanent Mission to the United Nations, OL IRL 1/2019 (12 February 2019) accessible via <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24331>

employment situations to WRC inspectors.<sup>11</sup> ITF anticipates that this problematic arrangement will be replicated under Head 32 of the Bill.

#### **F. What Is To Be Done?**

16. The State's response to the dangers posed by labour exploitation and human trafficking has come under sustained criticism in recent years. Of particular concern is that in June 2018, the United States State Department's annual Trafficking in Persons Report 2018 downgraded Ireland from a Tier 1 to Tier 2 country, one which does not meet the minimum standards for the elimination of trafficking, due to the State's failures to fully meet the minimum standards for the elimination of trafficking and make serious and sustained compared to the efforts to do so. It stated that the Government has not obtained a trafficking conviction since the law was amended in 2013, it initiated only three prosecutions in 2017, and had chronic deficiencies in victim identification and referral.<sup>12</sup> In 2019, Ireland remained on Tier 2.<sup>13</sup> One of the factors in Ireland's downgrade was the State's failure to implement this Committee's recommendation to decouple permissions from employers under the Atypical Work Scheme for Non-EEA Crew in the Irish Fishing Fleet, indicating that tied visas are considered problematic by the US State Department.
17. It is incumbent on the State, in line with its domestic and international human rights obligations, to take practical steps to ensure against trafficking and labour exploitation. Therefore, ITF recommends that the tied employment permit system be removed from the 2019 Bill. Whatever legitimate interest the State has in the integrity of the immigration system and the maintenance of an employment permit scheme, it is surely unnecessary, disproportionate and dangerous to tie employees to their employers and require them to wait such a lengthy period of time and be placed under the precarity and burden of applying for a new employment permit, should they wish to change employer or should their employer attempt to exploit them. ITF does not believe that the possibility of changing employers provides sufficient effective protection against exploitation. In practice, the current system in effect presents migrant workers with a choice between risking becoming unlawfully present in the State and liable to deportation, or submitting to coercive employment practices.

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<sup>11</sup> Clíodhna Murphy, David Doyle and Muiréad Murphy "“Still Waiting” for Justice: Migrant Workers' Perspectives on Labour Exploitation in Ireland' (2019) *Industrial Law Journal* (forthcoming).

<sup>12</sup> US State Department, *Trafficking in Persons Report 2018* (June 2018) accessible via <https://www.state.gov/wp-content/uploads/2019/01/282798.pdf>

<sup>13</sup> US State Department, *Trafficking in Persons Report 2019* (June 2019) accessible via <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>

18. While the Government's stated policy objective is to ensure a reasonable balance between the cost to the employer of recruiting a migrant worker and not unduly binding the worker to the employer, this could be addressed by adopting a system of sectoral employment permits, whereby migrant workers would be granted employment permits for particular sectors rather than to specific employers. This would facilitate the Government's policy of addressing labour shortages and skills needs, while at the same time ensuring that unscrupulous employers do not exploit leverage they have over the immigration status of their employees. It would also have the effect of simplifying the process for obtaining and granting an employment permit, reducing the administrative burden on the Department of Business, Enterprise and Innovation in issuing the employment permit and the Department of Justice and Equality in issuing a visa to enter the State. Such an approach would be in line with Canada's Federal Skilled Workers Permit and Federal Skilled Trades Permit, Open Work Permit system, and the United Kingdom's Tier 2 Work Permits, all of which provide for untied employment permits that are not contingent on the specific employee having to remain with an employer for any length of time.
19. Overall, it is clear that there is no rational policy reason for keeping the tied employment permit system in place. The 2019 Bill provides an ideal opportunity to abolish it.
20. Further, ITF submits that the practice of appointing WRC inspectors as authorised officers under the employment permits legislation should be discontinued as being damaging to the reputation of the WRC among migrant workers. Immigration law enforcement should remain a function of the Department of Justice and Equality and of An Garda Síochána, and the two enforcement mechanisms should no longer be enmeshed.

## **G. Conclusion**

21. The reform of employment permits legislation that the 2019 Bill represents is an opportunity for Ireland to reaffirm its opposition to labour exploitation and trafficking in human beings. Unless concrete steps are taken to address features of Irish law that put migrant workers at risk of exploitation, their situation will not improve. Ireland is not immune to international criticism, particularly as it advocates for a seat on the UN Security Council for the 2021-2022 session. If urgent action is not taken, criticism of Ireland's policies with respect to migrant workers will increase to the point that it cannot any longer be ignored, and the country's reputation as a safe and fair country to work in will be irreparably damaged.

