

DÁIL ÉIREANN

AN COMHCHOISTE UM GHNÓ, FIONTAIR AGUS NUÁLAÍOCHT

JOINT COMMITTEE ON BUSINESS, ENTERPRISE AND INNOVATION

Dé Máirt, 26 Samhain 2019

Tuesday, 26 November 2019

The Joint Committee met at 4 p.m.

Comhaltaí a bhí i láthair/Members present:

Imelda Munster,	Kevin Humphreys.
Tom Neville,	
Robert Troy.	

Teachta/Deputy Mary Butler sa Chathaoir/in the Chair.

Business of Joint Committee

Chairman: I propose we go into private session to deal with some housekeeping matters. Is that agreed? Agreed.

The joint committee went into private session at 4.09 p.m., suspended at 4.32 p.m. and resumed in public session at 4.34 p.m.

General Scheme of the Employment Permits (Consolidation and Amendment) Bill 2019 (Resumed): Discussion

Chairman: The committee is meeting to continue its pre-legislative scrutiny of the general scheme of the employment permits (consolidation and amendment) Bill 2019. Our first session is with representatives from IBEC and will be followed by a session with representatives from the Irish Congress of Trade Unions, ICTU. From IBEC, I welcome Dr. Kara McGann, head of social policy, and Mr. Rhona Murphy, head of employment law services, and thank them for taking the time to attend.

I remind members, guests and those in the Public Gallery to please ensure their mobile phones are switched off or to flight mode for the duration of the meeting as they interfere with the broadcasting equipment, even when on silent. In accordance with procedure, I am required to read the following. By virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. If, however, they are directed by the committee to cease giving evidence on a particular matter and they continue to do so, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or entity by name or in such a way as to make him, her or it identifiable.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable. They have been circulated with copies of the presentations submitted by our guests.

I invite Dr. McGann to make her presentation to the committee.

Dr. Kara McGann: I thank the joint committee for the opportunity to address it on this important issue for the business sector. IBEC is pleased to have contributed to the review of economic migration policy carried out by the interdepartmental group last year, which served to inform many elements of the Bill. We are familiar, therefore, with the detailed work that has gone into the development of the general scheme. We also welcome the commitment of the Department of Business, Enterprise and Innovation, notably the team in the economic migration policy unit, to engage with business.

This timely Bill seeks to build on the existing employment permits system, which has provided a strong framework to supplement skills and labour needs in the State, and ensure it will be future-proofed, agile and responsive to the dynamic Irish labour market. It will give priority, quite correctly in our view, to the ability of the system to adapt to rapid changes in the needs of

the labour market of the future, something that will support the competitiveness of business in Ireland. Its success, however, will ultimately be judged by how it delivers. This complex area will require collaboration from all stakeholders, including business, if we are to respond to the changing needs of the economy and citizens.

We will be unable to comment in detail on a 117-page general scheme document in a short input and, therefore, I will highlight where the most significant opportunities and challenges exist from a business perspective. A constant challenge in this area of labour market policy is the ability to remain responsive to the changing needs of organisations and industries, and the swift administration process of various permit types. Backlogs and delays in the permit process generate uncertainty in the business community and can in some cases result in jobs or significant projects falling through, while failure to respond to growing challenges in meeting skills or labour needs has implications for the ability of business to meet existing demands or grow.

In the current economic expansion, the combined effects of EU migration and domestic labour market activation are not sufficient to meet Ireland's rapidly growing demand for labour. The level of difficulty in filling vacancies has increased in the past 12 months, with almost three quarters of those vacancies deemed "hard to fill", primarily due to an insufficient number of candidates with skills in the Irish labour market. The vacancies spanned both high and low-skilled roles. Industry remains committed to enhancing our indigenous skills supply to meet labour market needs through a combination of upskilling and reskilling programmes. We know, however, that given the fast-paced, changing global business model, education and training cannot meet all demands in real time. Developments in infrastructure, increased capacity, innovation and changing skills needs take time.

The general scheme has identified several areas where flexibility and responsiveness can be built into the system. They include retaining sensible rules such as the 50:50 rule, except where the individual in receipt of the permit would be the only employee; reforming the operational features of the labour market needs test to align it with the appropriate vacancy advertising practices used by employers today; and introducing a seasonal employment permit, which will help alleviate labour market demands during peak production or delivery times in specific sector. The provision of streamlined renewal processes for the permit's users will encourage it to be used appropriately and prevent seasonal workers from overstaying their permit permissions, thus ensuring it will be retained for its agreed usage. Other areas include simplifying the administration of intra-company transfers and contract-of-services employees in line with trade agreements, which will also enhance the efficiency and effectiveness of these important processes for business; streamlining the permission of spouses, partners and dependents of critical skills employment permit holders or researchers on hosting agreements through the provision by the Minister for Justice and Equality of a visa for them to reside and work, thus supporting the aim of retaining these important skills in the State; and working on the processing system to ensure an automated system is available to reduce the administration burden on applicants, given that system that allows for auto-population and ease of completion will increase efficiencies on all sides and support the speed and accuracy of administration and reduce the backlog in this process.

Unfortunately, the general scheme does not directly tackle the issue of the low and unskilled workers who are needed to support the maintenance and growth of industry in certain sectors, such as food processing, hospitality, agriculture, social care and health care. The absence of this category of workers is not addressed by the reduced pool of resident workers and these sectors fail to be in a position to compete with higher-paying sectors like construction due to low mar-

gins. However, failing to resolve this crisis is likely to endanger existing business and limit the ability of organisations to take on new business opportunities internationally. Yet, in the context of Brexit that is crucial. In the longer term this will impact on the ability to meet Department targets set for certain sectors, e.g. Food Wise 2025. Shortages among lower-skilled workers and subsequent pressure on wages have the potential to be as harmful to the Irish economy as a shortage of skilled labour. This is particularly true for indigenous businesses predominantly based in sectors that use a higher proportion of low-skilled labour, such as tourism, care, retail, manufacturing and agrifood. These sectors then often set the cost floor and thus competitiveness in the economy as a whole. Many of these workers in the care or food processing sectors remain on the ineligible list, thus stunting the ability of businesses to meet existing needs, let alone grow. Some employers have found this is impacting workforce development as well as they struggle to staff a shift let alone release people for learning and development. Given our commitments to lifelong learning as a way to remain competitive, this is a concerning trend.

IBEC believes that a model such as the lower skilled occupations visa used in Canada or the essential skills work visa in New Zealand could offer opportunities and parameters that could suit Ireland's need for lower-skilled general operatives beyond what the general employment permit offers. Eligibility requirements include the equivalent of a high school diploma or two years of job-specific training and enable a worker to remain in the country from six to 24 months and, as such, fill immediate labour shortages where gaps exist. In addition, such visas define the duration, wages and conditions for the stay of the worker in the country. One of the challenges to the provision of low-skilled workers that arose during discussions contributing to the review of economic migration policy related to how greater access to low-skilled immigrant workers may stifle innovation and automation of certain roles. However, many of the sectors in question are sectors where future automation is not possible or where a transition to automation away from labour will be slow and costly, such as tourism, hospitality, social care and health care. These jobs require unpredictable, non-routine work involving personal interaction and emotional rather than artificial intelligence and are not easily replaced by automation. As such, the repeated reference to conditionality around knowledge transfer and process innovation to be prescribed in regulations is a worrying one that many employers may struggle to fulfil.

Immigration will remain an important source of labour for Ireland in future, one that can allow a quick response to emerging skills shortages and provide an ongoing supply of skilled workers where the number of new entrants or experienced workers is too low. The continued economic recovery means that shortages will be observed in greater number and in more occupations and sectors. In an increasingly uncertain global environment, policy must continue to innovate and challenge boundaries. New ways to attract migrants must be undertaken to meet the labour market needs that extend beyond our capacity. Competition will increase and failure to meet the skills and labour market demands will do untold long-term damage to elements of our economy.

The general scheme of the Bill is welcome. It aims to provide a more responsive and agile employment permit system for Ireland. In doing so it will support the Irish economy and its ambitions for growth while future-proofing the system for the expected ebbs and flows of the labour market. I thank the members of the joint committee for the opportunity to present the views of Ibec on this important Bill.

Chairman: Thank you, Dr. McGann. We will take questions from the floor. Deputy Troy is first.

Deputy Robert Troy: I thank Ms Murphy and Dr. McGann for presenting the IBEC posi-

tion today. We had the general scheme discussion a fortnight ago with officials from the Department appearing before the committee. I raised some of the concerns that the IBEC deputation raised today relating to certain sectors that are going to be exempt from applying for the worker permits. I gave an example relating to the hospitality and health care sectors. There is no automatic entitlement or qualification. I would be interested to hear a little more from IBEC on the potential long-term damage that could be done to these sectors if they continue to be prohibited from providing work permits.

Dr. Kara McGann: We talk to employers in these sectors. The views we are getting suggest it is not only already stifling their growth but also their ability to meet current business. It is damaging how they deliver on a daily basis and their opportunities to upskill and develop their staff. Several employers have particular concerns in light of the extra challenges that Brexit brings. They believe this will further impede their ability to do business. In some cases it is a question of meeting the current need let alone trying to grow and be competitive. That is what they are experiencing on a daily basis.

Deputy Robert Troy: I asked the question because I was thinking of care assistants in nursing homes and people working in the hospitality sector, perhaps those working front-of-house and those in the cleaning section and housekeeping. It is similar to the challenges those in the food processing industry find in terms of attracting and recruiting workers. This is because of the type of work. The pay associated with the work makes it difficult to attract people locally. That is why there is a permit to facilitate people from non-EEA countries to work in this sector. It is extended for up to nine months.

When I made the point on the hospitality sector and the health care sector, departmental officials actually said they are not coming under pressure. They encouraged people to make the point if particular sectors were feeling a challenge or were coming up against obstacles in trying to attract key staff in certain roles. They said people need to make that point to the Department. When I made the point to Department officials they pushed back and said there was no one telling them that. They said if people were telling them that then they would have to respond. It is welcome that IBEC has made the point today. I realise the IBEC representatives are limited in what they can say in a short period. However, they should ensure that these points are made to the Department. It is crucial that this permit system is available to the sectors that need it. Frankly, at the moment with almost full employment some sectors are struggling to find the right staff and to retain staff. As a consequence industry is not growing to its full potential.

Dr. Kara McGann: I thank Deputy Troy for those comments. It is something we raised both at the review and in different submissions and conversations. We will absolutely go back to members to bring the point up again. One sector in particular is the home care sector. It is trying to meet the needs and demands of the strategy in terms of the approach to try to keep people in their homes longer and out of other health systems. However, it is struggling to meet those needs. That is one example of a sector that will be hit by this particular issue. It is something those in the sector are vocal on and we will certainly bring that point back and ensure it is continued.

Deputy Robert Troy: The IBEC representatives have given a good example citing the New Zealand and Canadian models. Under these systems a restrictive permit can be offered to help to meet the challenges that currently exist. I call on IBEC to reinforce the message with the departmental officials, because they did not believe me when I said it from this side of the table.

Deputy Imelda Munster: Page 5 of the document furnished to the committee flags that the

proposed legislation does not make provision for low-skilled workers. I am curious and seek the opinion of the deputation on this point. Is it the fact that there are such low standards in these sectors? Is that the reason there is such a shortage of staff?

Dr. Kara McGann: The range of roles that come under that heading crosses a number of different sectors. What they have found is that the resident available workforce is not coming into contact with the sector or tapping into it. They are not able to resource from the local population. We have different interest in different roles in some cases. They are just not getting the interest from the local population and are having to look further afield.

Deputy Imelda Munster: Why does Dr. McGann think they are not getting the take-up from the local population? What are the barriers? Could it be low pay?

Dr. Kara McGann: In some cases the types of roles would be for low-skilled and maybe unskilled general operatives in the area, where employers are competing with the construction sector, for example, where the pay may be higher. Some of these sectors are on low margins and are not in a position to compete with the likes of the construction sector, which adds challenges to the area.

Deputy Imelda Munster: I suppose the same could be said in response to the Irish Hotels Federation submission. If we are looking at giving out permits we would need to be confident that the pay would be sufficient for people to live on. In the hospitality sector, we would need to be confident that people who would come here on a work permit would be given sufficient hours instead of these zero-hour or six hour a week contracts and that there would not be any other exploitation. What are employers doing to ensure this is not the case?

Dr. Kara McGann: Employers are very keen to look at various ways that we would look at these areas including both engaging in training and development and in how and where they look for the different types of staff. Just because they are low margin does not mean they are not quality jobs and opportunities to careers. All of that feeds in to the business and how people run their businesses. We have a lot of supports in place to protect that.

Ms Rhona Murphy: If I may add, the Deputy mentioned zero-hours and low hours contracts. I understand there has been a particular concern in recent years about the predictability of employment and to what extent people will know in advance what kind of hours they are going to work. We do have legislation in place since about this time last year, namely the Employment (Miscellaneous Provisions) Act 2018, which significantly curtails the circumstances in which zero-hours arrangements can be used. Many of the arrangements we would be looking at here would not be in scope. There is also an entitlement for someone to gain predictability of working hours where they can apply to their employer to be placed on a band of hours and make sure they follow that pattern for the following 12 months. These are areas that are already quite heavily regulated. For any compliant employer, and we would say the vast majority are compliant, those issues are really largely addressed now.

Deputy Imelda Munster: Given that the witnesses have flagged up the fact about the low-skill workers, the reality on the ground is that a substantial part of the reason people are not taking up those jobs is the low pay and the lack of a guarantee of sufficient hours to get by. That is the reality.

Ms Rhona Murphy: In terms of sufficient hours to live, that is not something we are hearing back from our employer members. In fact what they are saying is that they cannot get staff.

It is not a case that people are being denied hours of work that they want to work. It is quite the opposite. They cannot bring them in and cannot get enough people to come in and work the hours they have available. In terms of the issue of pay, I am sure pay is a factor in determining whether somebody decides to take up a position. We must bear in mind as well that a lot of the sectors in which employment permits will be needed will not necessarily have particularly high profit margins. Very often there is a public service element and people are relying on these services in their own homes, for example.

Chairman: We are straying away from pre-legislative scrutiny of the permits a little bit. The critical skills employment permit, CSEP, currently has a minimum threshold of €30,000 and the worker must hold a degree qualification. A CSEP could also be granted where remuneration is above €60,000. The €30,000 is going to increase to €32,000 and the €60,000 is going to increase to €64,000. For those who will come in on those particular permits, the terms and conditions will be fixed. That is all part of it. We are straying into questions of why we cannot get people locally to do those jobs and why we need to bring people in on permits. It is quite clear in what the Department is setting out that the remuneration is there in respect of full-time hours.

Deputy Imelda Munster: I was just flagging up that IBEC itself had raised the fact that the legislation does not make provision for low-skilled workers. It is an ongoing, continuous shortage. Do we need to have a conversation about low pay in the State rather than lobbying for permits to bring workers in? Is that the conversation we need to have?

Dr. Kara McGann: I do not believe so. We are at a current unemployment rate of 4.8% and we are looking for additional sources of labour beyond what we can provide within the labour market. I think that is probably the underlying issue.

Deputy Tom Neville: The Chair has clarified that there is a set remuneration for these positions and that a permanent position has to be created. I was at the receiving end of this when I was in Australia. I was a sponsored worker and all those parameters of certain conditions and a certain salary applied. I had to be on the list of skilled migration, whatever it was, and the list of skills changed over time. I could have been in a position where my skill was knocked off the list and it would be “Goodbye”. This is a few years ago. It was not very reassuring when somebody went into a country. Are there any parameters or provisions for attracting workers at that level by providing some sort of career path or permanent path so they have something to work towards? If what Dr. McGann is saying is correct and we are at such a high rate of employment that we are trying to attract people in, is there any provision for a permanent path so that those who make a move here can see some sort of bridging to enhance their career and stay in Ireland? Is it more about giving people two years and reviewing? What are the parameters around that?

Dr. Kara McGann: I think it is still a little bit of an unknown area because we do not have anything like that at the moment. If they came in through the general scheme or whatever, that would be where those parameters would probably kick in. In the low skill piece, I suppose it is to try to look at how we would address that challenge. Something like the Canadian or New Zealand model, which has a very defined duration much like what the Deputy is describing, would be at a point in time where we would be but certainly looking at how we could go broader than that would be something we would need to review.

Deputy Tom Neville: Have there been any studies of attracting workers, namely on whether it works? If it applies for a set period, do people move?

Dr. Kara McGann: It appears to work in other jurisdictions, yes.

Deputy Tom Neville: Is there a migration path in those other jurisdictions? Is there a trans-ferral path? I am basing my questions on my own situation, because I am not too *au fait* with this. A worker in my situation could work for several years on a sponsorship visa. My visa allowed me to apply for different roles. I qualified on one strand of the visa and the company qualified on another. If I wanted to change company, only the new company had to apply. I had already qualified for four years. The other strand had to be applied for every time to allow people to move. Are parameters in place to make this process as easy as that? I had the choice of whether I wanted to apply for permanent residency, or down the road, citizenship. All those parameters were in place. Has experience in other countries shown that these people stay? Is it being proposed for Ireland, or is it still just-----

Chairman: If I could interrupt the Deputy for one second, I note that there is a pathway for a worker who enters the country with a critical skills employment permit.

Deputy Tom Neville: Right.

Chairman: I do not know much about it, but we can delve into it a little bit deeper. There is a pathway for those with a critical skill. That is another thing we can inquire about. The beauty of pre-legislative scrutiny is that we can delve into all those areas.

Deputy Tom Neville: I understand. I might be going off the point here, but I would like to hear IBEC's opinion on this.

Dr. Kara McGann: My apologies. I thought the Deputy was specifically concerned with low-skills migration.

Deputy Tom Neville: I am asking about the situation across the board.

Dr. Kara McGann: There are pathways in place across the board, particularly to allow the retention of people with critical skills.

Deputy Tom Neville: What about lower-skilled workers?

Dr. Kara McGann: Because we do not have a specific low-skills permit at this point, those transitions would have to be worked out. There are paths in other jurisdictions.

Deputy Tom Neville: We are now having to look outside the EU for these workers.

Dr. Kara McGann: That is right.

Deputy Tom Neville: That is how niche this is. I am thinking about agriculture. I represent a lot of constituents in the agricultural sector. I refer to dairy farmers looking for farmhands, labourers, etc. A 55 year old dairy farmer might have to milk 70 or 80 cows. He could take a labourer on and find the labourer is gone within 18 months. He then has to start the whole process again. This is what I am talking about in practical terms.

Chairman: That is a very valid point. I would like to raise a further question. The new Bill seeks to introduce a seasonal employment permit. Does IBEC have any thoughts on how long the seasonal employment permit should be valid for? The Department's officials were before the committee two weeks ago. It has not really finalised its position on this. It is open to different viewpoints. In the tourism industry the season runs with the weather. It could be

four, five or six months depending on what kind of summer it is. Does Dr. McGann have any thoughts on that?

Dr. Kara McGann: There is certainly a conversation worth having. We think it should be between six and 18 months. The important considerations would be very strong parameters around how people would leave and ease of renewal should somebody wish to return, for example in the following season. It would be important to ensure that the seasonal permit works efficiently to allow people to come for a period and then leave and allow them to return for a later season should they wish to. It appears that a lot of people move from one jurisdiction to another in different seasons, depending on where they are at certain times. The conversations we have had have envisaged somewhere between six and 18 months.

Chairman: The seasonal employment permit is being introduced to alleviate labour market demands in peat production. I am not sure that sector would call for 18 months. I thought it would be between six and nine months. A lot of seasons are included in 18 months. I am just thinking out loud. It is great to hear Dr. McGann's thoughts on this. Do we need to cover anything else? Would the witnesses like to make any further comments? Does IBEC generally support this new Bill?

Dr. Kara McGann: Absolutely. It contains a significant amount of very positive developments which will allow it to respond to the changes in the labour market as they happen, with an ease that has been restricted in the past. It is a very timely Bill.

Chairman: I wish to ask another question. Does IBEC support moving the details of the test of the labour market's needs to regulation and adapting the requirements to each sector?

Dr. Kara McGann: Yes. Is the Chairperson referring to the 50:50 rule?

Chairman: Yes.

Dr. Kara McGann: Absolutely.

Chairman: In the last meeting we spent a lot of time discussing skilled workers who come into the country with their spouses or partners, and whether these spouses or partners are entitled to be here, entitled to work, entitled to annual remuneration or to a medical card etc. They absolutely are not entitled to some of those things. That is not going to change, but we welcome the fact that the spouse or partner will be entitled to work, which is hugely important.

Dr. Kara McGann: Definitely. Where new rules have come in since the changeover to the critical skills employment permit in March, they appear to be working really well for those on that visa.

Chairman: It really came to light during the summer, when farmers were protesting outside the meat factories. A lot of the workers there came into the country on permits. They were living from week to week. Some of them were laid off. I was in contact with some of these workers. It was one of the side-effects of the strike. Jobs were being lost outside and inside the plants. Some of these workers, who were low-skilled or had no skills, were literally living on a week-to-week remuneration. Things were very difficult at that stage. It is very welcome that the permit Bill is being examined. It is very important.

I thank the witnesses for their input and for attending today's meeting to engage with the committee. If they would like to listen to the rest of the meeting they are more than welcome.

Sitting suspended at 5.07 p.m. and resumed at 5.08 p.m.

Chairman: We will now resume the committee’s pre-legislative scrutiny of the general scheme of the employment permits (consolidation and amendment) Bill. From the Irish Congress of Trade Unions I would like to welcome Dr. Peter Rigney, industrial officer, and Dr. Laura Bambrick, social policy and legislative officer. I thank the witnesses for coming before us today.

In accordance with procedure I am required to read out the rules concerning privilege. The witnesses were both in the room when I read them previously and I am sure they heard them.

Dr. Peter Rigney: Gabhaim buíochas na comhdhála leis an gCathaoirleach agus le comhaltaí as ucht seans a thabhairt dúinn labhairt ar an ábhar fíorthábhachtach seo.

Migrants have played and continue to play a key role in the Irish economy since 2004 and before. The issue for unions is what rights migrants have and how those rights can be vindicated. This involves examining the bona fides of the sector seeking the permits and the process whereby minimum wage levels are set and enforced. Unions also have a concern for the maintenance of decent societal values and the promotion of social cohesion.

Job vacancy rates in the Irish private sector are low by international standards. I checked last week and according to the Central Statistics Office, CSO, they range between 0.6% in transportation and storage to 2.1% in professional and scientific services. In fact, the vacancy rate in professional scientific services has fallen by a percentage point between the first and second quarters of 2019. According to EUROSTAT, the vacancy rate in Ireland was 1% in the second quarter of 2019 compared to a rate of 2.3% in the EU and the euro area in the second quarter of 2019. To put things in perspective, our overall vacancy rate is the fourth lowest in the EU 28. If we take a broader definition of labour supply, known as PLS 2, 3 + 4, as defined by the CSO, we find that the rate is 17% compared to a headline unemployment rate of 5.7%. Taken together with the fact that Ireland has an in-work training rate of 23.3%, which is 9% behind the EU 28 average, it is apparent that there is a mismatch in the Irish labour market which current policies are not addressing and that will not be addressed by migration.

There are a number of downsides to relying on labour migration as a policy instrument. Labour migration will pose additional strains on housing. This would not be the case if greater effort was put into mobilising people already on or beyond the live register. Principle 5 of the review of economic migration policy states the intention that permit holders should be a net contributor to society.

Another downside is contained in the review of migration policy, which highlights “the risk that the development of particular skills in the resident labour pool may be discouraged if it seems attractive on a cost basis for employers to hire non-EEA nationals at salary levels below the [national] average salary”.

There is a danger that the demand for more non-EEA visas for low-paid workers will be seen as a stratagem to drive down wages. This perception is not helped by the opaque way in which the wage thresholds for permits, originally set at €30,000 and €60,000 per annum, have been gradually eroded. I refer, for example, to thresholds for recent graduates and customer service roles with non-EEA languages of €27,000 per annum; for meat boners of €27,500 per annum; and for specified agrifood categories of €22,000 per annum. No logic has ever been provided for the erosion of these thresholds.

A significant and uncontroversial part of the Bill involves tidying up existing legislation. One major concern is the effect on the labour market and on society as a whole. Consideration is needed of the consequences of moving decisions from primary legislation into statutory instruments. In practice, that frustrates public scrutiny. In 2018, 42 Acts were passed by the Oireachtas compared with 675 statutory instruments enacted. Administrative convenience should not trump transparency and the right of citizens to be able to follow what is happening in society.

A report published last week by the EU Directorate General for Economic and Financial Affairs, DG ECFIN, pointed out that activity rates and participation rates in Ireland have not recovered as expected in the decade since 2008. The report acknowledges the continuing role of migrants in our workforce but also points to lower participation rates by women. It is important that the work permit regime should not be used as a sticking plaster for other more deep-seated problems such as the participation of women in the labour market or the still low levels of take-up of in-company training.

The role of pre-legislative scrutiny is rather like the role of risk assessment that one would have in the private sector. The members may ask what could possibly go wrong. What could possibly go wrong is the fishery workers fiasco, which was dealt with by a committee of the Houses. It has ended up in the courts. The operation of this scheme is one of the main reasons Ireland has been downgraded from tier 1 to tier 2 in the US State Department's trafficking index. This downgrading brings significant reputational damage to Ireland. That unhappy episode demonstrates the danger that a lead Department could be subject to regulatory capture and could act solely in the interest of employers.

That brings me to my next point. The thresholds for employment permits were originally set at €30,000 and €60,000 in 2006 and are derived from the then average industrial wage of €29,911 for all employees. Since then, those thresholds have remained constant, thus falling behind average industrial earnings, which are currently €38,490. We acknowledge the intention of the Department to realign them with average annual earnings on a phased basis. The link between these threshold levels and average earnings should be enshrined in primary legislation.

It is unacceptable that the current opaque wage-setting mechanism for permits should continue. In all other cases where the institutions of the State set a wage, it is done in public after the interests of employers and workers are heard. That would occur in the case of the Labour Court or the Civil Service Arbitration Board. In contrast, the wage thresholds for employment permits seem to be set internally in the Department of Business, Enterprise and Innovation in a closed internal process.

With regard to seasonal work visas, the proposal to introduce these visas is fraught with potential difficulty, more so as it would seem the process of designation of sectors would be undertaken within the Department. The difficulties of enforcement multiply and the difficulties for workers to secure redress increase exponentially. Ireland has a larger than average number of young people attending third level who traditionally seek work during the summer months. This should be more than adequate for the needs of highly seasonal employers. As to the argument that we are unique in the EU in not having seasonal work visas, if there is to be an alignment with mainland European standards, it should be part of a widespread review of all aspects of labour standards, including redundancy rights and the right to collective bargaining. It is not acceptable for us to pick out one aspect of the labour code and say that we are out of line on that without looking at other aspects.

The purpose of the trade union movement is to protect the interests of workers in Ireland, regardless of their nationality. Irish and EEA citizens have demonstrably equal rights under the law. The work permit regime allows non-EEA workers these rights *de jure*. It is questionable whether they are available *de facto*, especially for lower paid and more vulnerable workers. That is why we have suggested amendments to this legislation. This is best served by having a transparent wage-setting mechanism involving the labour market institutions of the State. The rules have to be calibrated with a view to the regulation of high-risk employer behaviour, in the light of previous experience.

An important aspect that politicians, as opposed to administrators, have to pick up on is the general climate surrounding foreign workers in society and how it fuels other attitudes. The interaction between the labour market and migration needs to be managed carefully to preserve our civic values. We have openness to foreign workers, inspired possibly by our experience as an emigrating nation. We must preserve this value and the best way of doing it is to have regard for the weak and vulnerable in the framing of public policy.

The members will see I have included footnotes at the bottom of my script showing from where I got information. I am happy to answer any questions they might wish to put.

Chairman: I thank Dr. Rigney. Does any Member want to lead off on the questions? In that case, I will start the questioning. Overall, does Dr. Rigney welcome that the Department is trying to bring in a new Bill to update the current permit regime?

Dr. Peter Rigney: Absolutely, because the more legislation is amended the more we look at it and see wording such as to delete the word “and” in section 63 and insert the word “might” or something like that, and it becomes unintelligible. There are some eminently sensible aspects such as spouse’s permission on critical skills work permits. There is a lot of common-sense material in that respect. What we are doing is flagging attention to what we see are the shortcomings and the dangers.

Chairman: A question I had intended to ask but Dr. Rigney has answered is if he would like to see any changes in the legislation surrounding minimum remuneration. Obviously, he would because he flagged that even though a worker should be paid a minimum of €30,000 per year, he is aware of instances where that is not the case.

Dr. Peter Rigney: This is the case. In an ideal situation, where the State sets a wage, those representing the sellers of labour and those representing the buyers of labour come together in a process and thrash out this argument, and an institution of the State decides on the figure. That is not the case in these thresholds. We hope that there would be a section in this legislation stating that what was to be €30,000 is set with reference to the average wage for full-time employees, which is as stated in the submission. There would have to be a transitional provision to take up the slack to cover the years where this was neglected and not brought up, which in our view is an argument for having it in primary legislation.

The other argument we make in respect of primary legislation rather than statutory instruments is that this is not the Shannon navigation by-laws. This is a vital part of society and the labour market that, if it is not handled properly, will have people whipping up anti-foreigner sentiment in the community. The more of it that is in primary legislation where it can be debated by elected Members of the Oireachtas, the better. It may be inconvenient for the administrators but in an area like this, that is something they have to accept as being a civic price that is necessary to be paid.

Chairman: I will ask another question that I put to the other representatives earlier. It concerns seasonal work visas for seasonal employment. Dr. Rigney said in his presentation that he believes it is fraught with potential difficulty. Will Dr. Rigney expand on that? Has ICTU a timeframe in mind for this? I believe this is one part of the legislation that will into force. The Department officials thought this was a good idea. Has Dr. Rigney any thoughts on a specific timeframe for it?

Dr. Peter Rigney: I remain to be convinced it is a good idea, given the number of third level students we have available. Traditionally, people always took up summer work. There should be a forum where people can make a case for that. I had a very bad experience dealing with a particular Department. I am cautious in speaking about it, given the strictures the Chairman laid upon me. We told the Department we needed work permits, that we had a consortium in to talk about it and that the margins were cut-throat. At the meeting I said we would discuss anything and that we were in the business of discussing issues. I asked it to send us information on the grounding arguments for its position. I was given an undertaking that information would be provided but when I followed up that request with an email I was told that information was commercially sensitive. How information for a consortium in a cut-throat industry can be commercially sensitive is beyond my ken. I have a belief that Departments which act in a conscious way, whose officials are honourable men and women, can be subject to regulatory capture. They act as advocates for the sector but there is an absence of a voice for the potential workers. If there is a case for seasonal workers, somebody in a sector should have to go to a forum of the State and say those in the sector are being crucified because they cannot get seasonal workers, that their season for doing X, whether it be serving breakfasts, killing cattle or picking mushrooms, is for three, four or five months and they need those workers and can prove it. They can provide evidence, say they hired an economist and can present a highly important paper that weighs half a kilogram and, therefore, it must be of high quality given that its weight. A licence to lower wages and employ people on a minimum wage is de facto a subsidy from society, if not, from the State and it should be done in a public manner. The onus should not be put on a civil servant to go into a room and be told to come up with a figure.

Chairman: The market trends should determine it.

Dr. Peter Rigney: It is not so much the market trends. Somebody said “give me a one-handed economist” because an economist will say on the one hand and on the other hand. There should be an institution of the State that would say, for example, in the case of the widget-making sector, taking account of all the circumstances involved, its peak season is from February to April and it considers the sector should get the numbers sought to make widgets from February to April.

Chairman: Family members of mine have gone to America on a J1 visa. They went while they were in college and they knew they would be coming home again. If seasonable employment permits are issued, I imagine many students would come to Ireland to take up those permits. A timeframe for the termination of such permits would be required. I did not agree with the earlier comment of it ranging between and six and 18 months. I am thinking it should be shorter than six months.

Dr. Peter Rigney: In terms of the word “season”, as we learned in primary school-----

Chairman: Is three months.

Dr. Peter Rigney: -----there are four in a year. Therefore, if it is singular, it cannot be for

longer than three months.

Chairman: Yes. I call Deputy Troy.

Deputy Robert Troy: I thank Dr. Peter Rigney and Dr. Laura Bambrick for coming before us today. I agree fully with Dr. Rigney's comment that it is critically important we get this right, given the potential for the rise of any anti-immigrant sentiment. Unfortunately, in recent weeks and months, we witnessed an underbelly and an undercurrent of blatant racism that exists. We certainly do not want to bring forward any legislation that could give that any sort of ventilation. We have to get this right. I was encouraged by Dr. Rigney's stating at the end of his presentation that we have an openness to foreign workers, inspired possibly by our experience as an emigrating nation, which we do. We must welcome them. Often, in instances, they are critically important. We need them to ensure certain sectors of our economy perform, develop and grow. Without some of those workers, certain sectors of our economy would not develop and grow.

I take on board what Dr. Rigney said about seasonal workers and potential for sectors to take on third level students. As was said by previous contributors, certain sectors of the economy operate under tight single-digit margins. I refer to food processors and Dr. Rigney mentioned mushroom pickers, which he may have mentioned in passing, but the latter is a sector that only afford to pay a certain amount. We would love it to pay more but it can only afford to pay a certain amount to ensure that sector of the economy is sustainable into the future. When we have practically full employment, there are sectors that cannot get people to take up jobs. In an ideal situation it would be great if sectors could get workers. I am sure most businesses would rather employ people locally because it is expensive to recruit people from the international market. Where there are tight margins and businesses cannot attract workers, how does Dr. Rigney propose they recruit workers?

Dr. Peter Rigney: I would need to see more evidence of people being unable to recruit and to fill positions. There are difficulties but some of them can be resolved. There is a differentiation between low-skill industries. For example, the contract cleaning and security industries both have employment regulation orders and pay a little bit above, albeit not wildly above, the minimum wage, and have certain minimum conditions, relating to basic sick pay, provision of uniforms and so on, laid down. That does not apply to the meat cutting or hospitality sectors. Sometimes, the possibility of having an employment regulation order, which would increase conditions slightly in the sector, can improve matters. For example, on a day like this, if I had a choice, with all other things being equal, of being out working on a roof in the construction sector or being inside as a kitchen porter, I would prefer to be inside as a kitchen porter. The fact that guys, and they are mainly guys, would prefer to be out on a roof is because the construction industry pays more. It is rule one of first-year economics.

Deputy Robert Troy: That is because the industry has the capacity to pay more, remain sustainable and make a profit at the end of the year. If a business is to be sustainable and profitable because ultimately it is taking a risk and making an investment, there must be an element of profit for the employer. In certain sectors, there are certain wages that can be and are being paid but they are not attracting people at that level. If we do not facilitate people from the non-European Economic Area to come here and take up the slack where Irish people and local people are not taking up the jobs, those sectors of the economy will be challenged and will flounder.

Dr. Peter Rigney: I would make two points in response. First, it is not Irish people and local people. There is a labour market of, I think, 55 million in the EU 28. We as unions get

complaints and the last one I heard was from a very vocal shop steward in a company who was giving out about what he considered to be an abuse of work permits. Second, in order to evaluate the case, one has to look at the evidence. Normally, when I am dealing with a company which is in difficulties, I go to the Companies Registration Office to look at its last filings. In some of these sectors, one finds a multiplicity of companies, sometimes hundreds of companies, within the one family which are availing of the small company exemption or are registered in the Isle of Man or Jersey. There are companies in the food sector in particular which are highly profitable and are flagships of the Irish food industry. They still manage to pay a decent wage and their reports are regularly available on the Irish Stock Exchange. There are also some people who avail of their constitutional right to privacy to have a network of private companies. I can only go on the evidence I can find.

Deputy Robert Troy: The witnesses should not get me wrong. I do not support people manipulating the system to drive down the cost of wages. However, certain industries in our economy are working on tight margins. Dr. Rigney referred to the mushroom industry. It has gone through a serious challenge with Brexit.

Dr. Peter Rigney: I accept that.

Deputy Robert Troy: That industry would find it much easier if it could get in workers from the EU for recruitment and a whole plethora of other reasons. In certain cases, the industry simply cannot do this and it can only afford to pay a certain wage. We have to be careful. While not compromising any employees' terms and conditions, we must support certain industries which could make a tangible case to employ non-EEA workers.

Dr. Peter Rigney: That is the basis of my point. Where and to whom does one make the tangible case? Who else participates in this? That is at the nub of what I was saying. The Constitution states justice shall be administered in public. That has been extended to wage setting, which is not a legal matter. The mushroom industry was one of the first to get widespread access to EU labour. The bestselling book in Latvia one year was *The Mushroom Covenant: Baltic Blacks among Celts*, a diary of a Latvian woman picking mushrooms, along with many other women from the Baltic states, in the Border counties. I was only able to read bits of it. I do not believe it has been translated into English. It is interesting to look at us through others' eyes.

I remember when I was studying for the leaving certificate, the Irish text was *Rotha Mór an tSaoil* by Míic Mac Gabhann. He went first to east Donegal, then to England, Cleveland, Ohio, and then to Alaska. That man spoke very little English but he had enough to be able to read a danger sign or his rights. Many of the people in question do not speak a word of English. If certain sectors want to bring in people from a non-English speaking background, they should encourage or facilitate them to learn the language.

What conditions my view on this is as follows. I mentioned the trawler visas. That fiasco was settled by the State on the steps of the High Court in a case taken by the International Transport Workers Federation which has a quasi-legal role in dealing with maritime matters from a trade union point of view. The weekend Romania came into the EU, the International Transport Workers Federation stopped a ship in Dublin Port. RTÉ news had a lovely shot of the crew members with their money, who had just been paid by this intervention. There was a picture of Romanians waving wads of €50 notes but the reporter then stated the Ukrainian crew members decided to stay on the ship. If people believe that they have citizen rights, as the Romanians did as EU citizens, they feel they have the strength to assert them.

The high-skilled workers have a skill which is in shortage and, by and large, they will be able to look after themselves. Those in the low-skilled area, however, do not feel they have the capacity to vindicate their rights. That is the problem. They are in danger of being exploited by others with a particular view of the world. That is what we are trying to sort out.

Bills to codify and tidy up unwieldy legislation are always welcome. There is a special point about the labour market which requires it to be kept in the public view and where legislators have control of it and the issues around it. There is a particular issue with the setting of wages. It should be done in a public forum.

Chairman: Several years ago, when the committee examined the case of non-EEA fishers, one of its key recommendations was that translation services should be provided. Those from a non-English speaking background will have language issues. We can certainly flag this again as it is important.

Deputy Imelda Munster: On the seasonal work visas, ICTU flagged up alignment with mainland European standards and that there should be a widespread review of all aspects. Dr. Rigney also stated there are other areas in which we fall behind other EU countries. Dr. Rigney referred to redundancy rights and the right to collective bargaining. What are the other areas?

Dr. Peter Rigney: I merely make the point that if the Department wants to pick one item to align with mainland Europe, we would say we need to look at the range of issues.

Deputy Imelda Munster: Are redundancy rights and the right to collective bargaining the two main issues or are there other aspects of Irish labour law that need to be addressed?

Dr. Peter Rigney: They would be the two main issues. Many other aspects of Irish labour law come from the EU.

Deputy Imelda Munster: The International Transport Workers Federation put forward a position on the current system. In cases where a visa is tied to a particular employer, it can in many cases leave the workers in an exploitive situation. As way of rectifying that, what does ICTU think of sectoral permits as a solution?

The Migrants Rights Centre showed that 80% of exploitation cases involved migrant workers who had employment permits. The majority of those cases were where they were tied to a particular employer. I would imagine for many of them the information was not freely available. Does Dr. Rigney think sectoral permits would be a way of-----

Dr. Peter Rigney: I do not know. I would need to look at the evidence of infringements and what particular sectors from which it came. In many cases, it is in the ethnic catering area where people are being exploited by people of their own nationality. There may be a clustering in that sector. I would listen to arguments both for and against in that case.

Chairman: Another one of the committee's key recommendations for non-EEA fishers on Irish vessels was that the permit should stay with the employee, not with the vessel. We discovered during different briefings that in cases of abuse, the person working on the vessel was not able to leave it because he or she did not own the permit. Instead, the permit stayed with the vessel. It was one of our key recommendations at the time but unfortunately it was not enacted. We were very strong and united on it as a committee.

Deputy Imelda Munster: I asked IBEC about low-skilled workers or areas of employ-

ment and am interested in Dr. Rigney's opinion on it. Does he believe that poor standards in these sectors lead to the difficulty in filling positions? Is he of the opinion that minimum hour contracts, low pay and so on, which mean that people cannot be guaranteed a living wage or a wage sufficient to survive week to week, are a difficulty?

Dr. Peter Rigney: I said before that there are differences between sectors. There will always be high-paid and low-paid sectors in any economy. In contract cleaning and security, where there are joint labour committees and employment regulation orders, the problems do not seem to be as severe. The issue of zero-hour contracts or uncertainty of hours has been addressed by the Employment (Miscellaneous Provisions) Act.

Deputy Imelda Munster: We all know of students who are unsure from week to week. They certainly would not get a decent wage if they are guaranteed four hours on one day, five hours another day and so on. That is still ongoing to a significant extent, where a person does not get 39 hours or a wage for that.

Dr. Peter Rigney: There was consensus among many in the Dáil in the discussions on that when a package came up in negotiations with all the parties. Like in the trade union business, that was the best that could be secured between various interests and parties in the Oireachtas, and we will go on from there.

Deputy Tom Neville: There is a lot of information and I am trying to take it all in. It is quite interesting and I am reflecting on it. Dr. Rigney is saying that some sort of public commission would set a bar for salaries in a specific sector if we are to offer permits outside the EEA. Is that correct?

Dr. Peter Rigney: Yes.

Deputy Tom Neville: Dr. Rigney is saying that already happens in the cleaning sector.

Dr. Peter Rigney: In the cleaning and security sectors, there is a joint labour committee. They pay slightly above minimum wage. The committee sets down conditions where overtime will be paid.

Deputy Tom Neville: That is across the board. It is a collective agreement.

Dr. Peter Rigney: It is across the board in the sector and everyone pays that.

Deputy Tom Neville: So Dr. Rigney's proposal is that a similar style would be used again?

Dr. Peter Rigney: The law is there to facilitate employers and trade unions who wish to do that. Employers in a number of sectors do not wish to do that.

Deputy Tom Neville: Is it because of commercial sensitivity?

Dr. Peter Rigney: From an observation point of view, these sectors seem to have fewer problems in recruiting, yet they are at a similar low level of skill. The problems for low-skilled workers are not universal and I am suggesting that there is a causal connection between the two.

Chairman: Would Dr. Rigney like to add anything further before we conclude?

Dr. Peter Rigney: No.

Chairman: I thank Dr. Rigney and Dr. Bambrick for coming and engaging with the com-

mittee.

The joint committee adjourned at 5.44 p.m. until 4 p.m. on Tuesday, 10 December 2019.