

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

### **Draft Heads of Bill**

#### **Note**

- **Most of the text in the draft Scheme is based on that contained in the Acts it is consolidating.**
- **For ease of examination, any changes are flagged, in italics, in the Explanatory Notes to the relevant Heads. Text which differs from the text of the existing Acts is also flagged in italics.**

Date July 2019

### **Employment Permits Consolidation and Amendment Bill 202-**

#### **ARRANGEMENT OF SECTIONS**

##### **Section**

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2. Employment of foreign nationals.
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32. Authorised officers.
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34. Surrender of employment permits.
35. Provision of false or misleading information.
36. Prohibition on penalisation.
37. Retention of records.
38. Register of permits.
39. Regulations.
40. Further provisions in relation to Regulations.
41. Service of notices.
42. Penalties and proceedings.
43. Offences by body corporate
44. Presumption of employment
45. Evidence through video link
46. Delegation of functions.
47. Data exchange in respect of certain matters.
48. Transitional provision.
49. Expenses.
50. Short title, collective citation, construction and commencement.
51. Repeals

#### SCHEDULE 1

Enactments offences under which fall within section

#### SCHEDULE 2

Repeals and revocations

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## **Acts referred to**

**Bankruptcy Act 1988, No. 27**  
**Carers Leave Act 2001, No. 19**  
**Companies Act 2014, No. 38**  
**Courts Act 1981, No. 11**  
**Electronic Commerce Act 2000, No. 27**  
**Employment Agency Act 1971, No. 27**  
**Employment Permits Act 2003, No. 7**  
**European Communities Acts 1972 to 2003**  
**Immigration Act 1999, No. 22**  
**Immigration Act 2004, No. 1**  
**Industrial Relations Act 1946, No. 26**  
**Industrial Relations Act 1990, No. 19**  
**International Protection Act 2015, No. 66**  
**Irish Nationality and Citizenship Act 1956, No. 26**  
**Minimum Notice and Terms of Employment Acts, 1973 to 2005**  
**National Minimum Wage Act 2000, No. 5**  
**Organisation of Working Time Act 1997, No. 20**  
**Payment of Wages Act 1991, No. 25**  
**Protection of Employees (Employers' Insolvency) Act 1984, No.21**  
**Protection of Employees (Fixed-Term Work) Act 2003, No. 29**  
**Protection of Employees (Part-Time Work) Act 2001, No. 45**  
**Protection of Young Persons (Employment) Act 1996, No.16**  
**Redundancy Payments Act 1967, No. 21**  
**Safety, Health and Welfare at Work Act 2005, No. 10**  
**Terms of Employment (Information) Act 1994, No. 5**  
**Unfair Dismissals Acts 1977 to 2005**

## **Title**

AN ACT TO CONSOLIDATE AND AMEND THE EMPLOYMENT PERMITS ACTS 2003  
- 2014

*BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS*

### **Explanatory Note**

The long title of the Bill will be considered further in consultation with the Office of the Parliamentary Counsel.

## Head 1 – Interpretation

1.—(1) In this Act—

‘Act of 1994’ means the Terms of Employment (Information) Act 1994;

‘Act of 1963’ means the Registration of Business Names Act 1963;

‘Act of 1967’ means Redundancy Payments Act 1967;

‘application’ means an application under Section 9;

‘citizen’ means an Irish citizen within the meaning of the Irish Nationality and Citizenship Act 1956;

‘connected’, in relation to the connection between a connected person and a foreign employer, means—

- (a) the connected person is a subsidiary of the foreign employer,
- (b) the foreign employer is a subsidiary of the connected person,
- (c) the connected person and the foreign employer are both subsidiaries of a holding company that carries on business in the State or outside the State, or
- (d) the connected person and the foreign employer have entered into an agreement with another person whereby each of them agree to carry on business or provide services with each other in more than one state and to carry on business or provide services in the manner provided for in the agreement;

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

‘contract of employment’ has the meaning assigned to it by the Act of 1994;

*‘contractor’ means a person outside the State who has entered into an agreement with a person in the State to provide a service to or on behalf of that person*

*‘contract service agreement’ means an agreement of defined duration made between a contractor and a person in the State to undertake a specified service or project for or on behalf of that person*

‘date of dismissal’, in relation to a foreign national who is dismissed by reason of redundancy, has the meaning assigned to it by section 2 of the Act of 1967;

‘dismissed by reason of redundancy’ means—

- (a) the dismissal by an employer from employment within the meaning of section 9 of the Act of 1967, and

(b) the dismissal is—

(i) attributable wholly or mainly to the condition specified in paragraph (a), (b), (c), (d) or (e) of section 7(2) of the Act of 1967, or

(ii) a dismissal referred to in section 21 of the Act of 1967;

*‘Document’ means a written record, in electronic (within the meaning of the Electronic Commerce Act 2000) or paper form;*

‘enactment’ has the meaning assigned to it by the Interpretation Act 2005;

‘economic sector’ means a sector of the economy concerned with a specific economic activity requiring specific qualifications, skills or knowledge;

*‘employer’ means a person who employs a foreign national under a contract of employment pursuant to an employment permit;*

*‘employment in the State’ means employment which is undertaken for at least 183 days out of any full calendar year of the employment permit’s validity in Ireland and which is remunerated in Ireland, and which does not involve the absence of the foreign national from the State for any period comprising 90 days or more;*

‘employment permit’ means an employment permit granted under section 12;

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

‘exchange agreement’ means an agreement, including an international agreement to which the State is a party, that provides for the reciprocal employment, *or the undertaking of duties in the State—*

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

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

‘foreign employer’ means a person carrying on business outside the State;

‘foreign national’ means a person who is not a citizen of a Member State of the EEA.

*‘full-time employment’ means employment for a working week of twenty hours or more, that is sufficiently remunerated to support the foreign national as their sole employment*

‘health insurance’ means insurance providing for the costs and charges of medical treatment;

‘health insurer’ means a person entered in the Register of Health Benefits Undertakings referred to in section 14 of the Health Insurance Act 1994;

‘holding company’ has the meaning assigned to it by section 155 of the Companies Act

1963;

‘holder’, in relation to an employment permit, means the foreign national to whom it has been granted;

*‘knowledge transfer’ means the dissemination of knowledge and skills between employees in a company, to increase the availability of such knowledge and skills in the State;*

‘medical treatment’ includes medical services or medical care;

‘Member State of the EEA’ means a state that is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as amended for the time being;

‘Minister’ means the Minister for Business, Enterprise and Innovation;

‘national minimum hourly rate of pay’ has the meaning assigned to it by the National Minimum Wage Act 2000;

‘prescribed’ means prescribed by regulations made by the Minister under this Act;

*‘process innovation’ means a change to technical processes or labour practices by the employer which improves productivity or efficiency in the company, or otherwise reduces the requirement to further avail of a labour pool outside of the EEA;*

‘public interest’ includes—

- (a) public order and the interests of national security,
- (b) public health and safety,
- (c) the need to protect and strengthen the labour market, and
- (d) supporting the economic growth of the State;

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

‘relevant person’ means the person with whom a contractor has made the contract service agreement;

‘subsidiary’ has the meaning assigned to it by section 155 of the Companies Act 1963.

(2) In this Act—

- (a) a reference to any enactment shall, unless the contrary otherwise requires, be construed as a reference to that enactment as amended or extended by or under any subsequent enactment including this Act,
- (b) a reference to a section is a reference to a section of this Act unless it is indicated that reference to some other enactment is intended, and
- (c) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference

occurs unless it is indicated that reference to some other provision is intended.

(3) For the purposes of this Act, a person (the “first person”) is not, by virtue of the following contract with another (the “second person”), an employer of the second person.

(4) That contract is one which—

- (a) provides that the second person is to do work or perform a service for a third person (whether the third person is a party to the contract or not), and
- (b) has been entered into by the first person in the course of carrying on the business of an employment agency within the meaning of the Employment Agency Act 1971,
- (c) whether the contract is express or implied and if express, whether it is oral or in writing.
- (d) *For clarity, the provision by an employer of a service by deployment of their employees in an organization operated by a second employer does not fall into section 1(2), where the first employer retains the management of the employees so deployed.*

## **Section 1A**

(1) ‘Remuneration’ means—

(a) subject to paragraph (b), the total amount of—

(i) the salary that is paid to the 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 section 17(21)(b), and

(ii) a 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 and which is made to a health insurer by the person who made the offer of employment,

or

(b) in respect of an employment permit granted for the purposes referred to in section 4(2)(c) and 4(2)(d), the total amount of—

(i) the salary that is paid to the 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 section 17(21)(b),

(ii) a payment for board and accommodation, or either of them, or the monetary value of board and accommodation directly provided by the connected person, foreign employer or contractor, and

(iii) a 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 and which is made by the foreign employer or the connected person or both of them or by the contractor to—

- (I) a health insurer, or
- (II) a person outside the State who provides insurance for medical treatment in respect of the foreign national that has the same, or similar, effect as the health insurance provided by a health insurer.

(2) In this Act—

(a) references to remuneration in relation to an application for the grant of an employment permit and the consideration of such application by the Minister shall be construed as the remuneration, specified in that application, that is proposed to be paid by—

- (i) the person who has made the offer of employment in respect of which the application is made,
- (ii) in the case of an employment permit for the purpose referred to in section 4(2)(c), the foreign employer, in accordance with section 6 and the payments in respect of the remuneration to be paid, in accordance with section 6, by the connected person, or
- (iii) in the case of an employment permit for the purpose referred to in section 4(2)(d), the contractor in accordance with section 7, and

(b) references to remuneration after a permit has been granted shall be construed as the remuneration paid to the holder of the permit by an employer, a foreign employer in accordance with section 6, a connected person in accordance with section 6, or a contractor in accordance with section 7, during the period for which the employment permit has been granted in respect of the employment for which the employment permit was granted.

### **Explanatory Note**

Head 1 amalgamates Section 1 of the Employment Permits Act 2003 and Section 1 of the Employment Permits Act, 2006, as amended. It provides definitions of certain terms that are used throughout the Bill. These definitions link certain terms to provisions of this or other legislation or clarify the definition of certain terms. A definition of remuneration is included above – a remuneration review to take place in later 2019 may suggest amendments to the current definition.

## Head 2 – Employment of foreign nationals

2. (1) 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 granted by the Minister under section 12 of this Act.

(2) Subsection (1)(b) applies whether the employment concerned results from—

- (a) the foreign national being employed in the State by a person,
- (b) the foreign national being employed by a person outside the State (the ‘contractor’) to perform duties in the State, the subject of an agreement between the contractor and another person, or
- (c) any other arrangement.

(3) A person shall not employ a foreign national in the State except in accordance with an employment permit granted by the Minister under section 12 of this Act.

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

- (a) had entered the service of an employer in the State, or
- (b) was in employment in the State, without an employment permit granted by the Minister under section 12 of this Act

and who is no longer in such service or employment.

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

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

the foreign national or, in accordance with subsection (8), the Minister, may institute civil proceedings for an amount of money to recompense the foreign national for such work done or services rendered.

(6) Where, in proceedings under subsection (5), a court before which the proceedings are brought is satisfied that the foreign national took all steps as were reasonably open to them to comply with section 2(1), it may make an order that in recompense for such work done or services rendered an amount of money shall be paid to the foreign national by the employer who employed the foreign national, or, as the case may be, the person referred to in section 2(2)(a) or the contractor referred to in section 2(2)(b).

(7) The amount of money to be paid, pursuant to an order under subsection (6), to a foreign national in recompense for work done or services rendered shall be—

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

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

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

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

(i) the amount paid, and

(ii) an amount equal to the greater of—

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

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

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

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

(10) In proceedings instituted by the Minister pursuant to subsection (8), the foreign national shall not be liable for costs but the court before which the proceedings are brought may order that any costs that might otherwise have been awarded against the foreign national shall be paid by the Minister.

(11) Subsection (8) shall not be in derogation of any right of a foreign national to institute proceedings under this section on their own behalf.

(12) A person who contravenes subsection (1) or (3) or fails to take the steps specified in subsection (13) shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or

(b) if the offence is an offence consisting of a contravention of subsection (2) or a failure to take the steps specified in subsection (13), on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 10 years or both.

(13) Those steps are all such steps as are reasonable to ensure, that a foreign national, or foreign nationals, employed in the State, that that foreign national or each of those foreign nationals is employed in accordance with an employment permit granted by the Minister under section 12 of this Act.

(14) It shall be a defence for a person charged with an offence under subsection (3) consisting of a contravention of subsection (1) to show that they took all such steps as were reasonably open to them to ensure compliance with subsection (1).

(15) It shall be a defence for a person charged with an offence under subsection (3) consisting of a contravention of subsection (2) to show that he or she took all such steps as were reasonably open to him or her to ensure compliance with subsection (2).

(16) Where, on the sworn information of a member of the Garda Síochána not below the rank of sergeant, a judge of the District Court is satisfied that there are reasonable grounds for suspecting that evidence of or relating to an offence under subsection (3) is to be found at a place specified in the information, the judge may issue a warrant for the search of that place and any persons found at that place.

(17) A warrant issued under this section shall authorise a named member of the Garda Síochána alone or accompanied by such other members of the Garda Síochána and such other persons as may be necessary—

- (a) to enter, within 7 days from the date of the warrant, and if necessary by the use of reasonable force, the place named in the warrant,
- (b) to search it and any persons found there, and
- (c) to seize anything found there, or anything found in the possession of a person present there at the time of the search, which that member reasonably believes to be evidence of or relating to an offence under subsection (3).

(18) A member of the Garda Síochána acting in accordance with a warrant issued under this section may require any person found at the place where the search is carried out to give the member their name and address.

(19) Any person who—

- (a) obstructs or attempts to obstruct any member of the Garda Síochána acting in accordance with a warrant issued under subsection (16),
- (b) fails or refuses to comply with a requirement under this section, or
- (c) gives a name or address which is false or misleading,

shall be guilty of an offence and shall be liable on summary conviction to a fine exceeding €3,000 or imprisonment for a term not exceeding 12 months or both.

(20) A member of the Garda Síochána may arrest without warrant any person whom the member reasonably suspects of having committed an offence under subsection (19).

(21) Where an offence under this Act 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 neglect on the part of the 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 shall be guilty of an offence and be liable to be proceeded against and punished as if they were guilty of the first-mentioned offence.

(22) Where the affairs of a body corporate are managed by its members, subsection (21) shall apply in relation to the acts and defaults of a member in connection with their functions of management as if they were a director or manager of the body corporate.

(23) In this section “place” includes any dwelling or any building or part of a building.

## Explanatory Note

Head 2 provides for the requirement for an employment permit in order for a non-EEA national to work in the State. It provides clarification around what is classed as employment, an employer and contract service providers.

It provides for

- The Irish employer, the contractor, the affiliate company, and any other arrangement
- Offences if these provisions are contravened
- Defence and entitlement to seek redress for non-payment
- Issue of warrant, Garda investigation
- Offence by body corporate, natural person with governance powers

*Provisions relating to third party contracts have been removed.*

### **Head 3 - Non-application of Section -- to certain foreign nationals.**

3.(1) Without prejudice to the other provisions of this Act, section 2 does not apply to a foreign national—

- (a) in respect of whom a declaration under section 47 of the International Protection Act 2015 is in force,
- (b) who is entitled to enter the State pursuant to section 56, 57 or 59 of that Act,
- (c) who is entitled to enter the State and to be in employment in the State pursuant to the treaties governing the European Communities (within the meaning of the European Communities Acts 1972 to 2003),
- (d) who is permitted to remain in the State by the Minister for Justice, Equality and Law Reform and who is in employment in the State pursuant to a condition of that permission that the person may be in employment in the State without an employment permit referred to in subsection 2(1),
- (e) *who is permitted to enter the State and to be in employment in the State pursuant to an (exemption) order under the Aliens Act 1935, or*
- (f) to a foreign national who is in the State pursuant to the Diplomatic Relations and Immunities Act 1967, and where the Minister for Foreign Affairs and Trade has certified in writing that that foreign national falls within a reciprocal arrangement that permits a foreign national who is a member of the family of an assigned person, forming part of their household, to be in employment in the State for the duration of the assignment to official duties in the State of the assigned person concerned.

#### Explanatory note

This section provides for the exemption of particular categories of foreign nationals from the requirement to hold a permit – these are EEA citizens, foreign nationals given an alternative permission to reside and work in the State by the Minister for Justice and Equality, refugees, beneficiaries of Subsidiary Protection, foreign nationals in State pursuant to the Diplomatic Relations and Immunities Act 1967 and family members of such foreign nationals, *and will now include UK nationals.*

## Head 4 - Employment Permit Schemes.

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

4. (1) Subject to any requirement that this Act specifies is to be satisfied in respect of the grant of an employment permit, an employment permit granted under section 12 shall be granted in respect of a purpose specified in subsection (2).

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

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

- (i) in enterprises in an economic sector that is of importance for the economic and social development of the State, *or either*, and
- (ii) in employments that are essential to the development and growth of those enterprises or economic sector,

and that are in critical short supply in the State, are encouraged to become available for employment in the State, in such enterprises and employments and the Minister is satisfied that where such enterprises are unable to recruit such appropriately skilled persons, or there is a shortage of such persons, the inability to recruit or such shortage is likely to hinder—

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

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

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

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

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

(ii) in employments that require the foreign national to participate in such training programme, where the foreign national is required, pursuant to their employment with the foreign employer, to carry out those duties for the connected person or participate in such training programme;

- (d) in the case of a contract service agreement, to provide for the employment in the State of certain foreign nationals referred to in section 7 who are employed by a contractor, so that such foreign nationals may perform duties in the State that arise out of such contract service agreement;
- (e) to provide for the employment in the State of a foreign national—
- (i) to whom an employment permit had been granted and the permit is no longer in force,
  - (ii) who is not in employment, or in the service of an employer, in the State,
  - (iii) who has received permission from the Minister for Justice and Equality to be in the State for the purposes of making an application for an employment permit, and
  - (iv) in respect of whom an offer of employment has been made in respect of an employment for which an employment permit is required;
- (f) to provide for the employment in the State of foreign nationals, *or the undertaking of duties in the State* by foreign nationals to whom an exchange agreement, that is specified in regulations under section 19, applies in employments *or economic sectors* that are referred to in the exchange agreement or to which the exchange agreement applies;
- (g) to provide for the employment in the State of foreign nationals who have the required knowledge and skills and, where appropriate, qualifications and experience as may be required, for the development and operation of sporting or cultural activities in the State;
- (h) to provide for the employment in the State of a foreign national who is—
- (i) a full-time student, including a post-graduate student, enrolled in a course of study in a third-level institution outside the State,
  - (ii) pursuing a course of study that is wholly or substantially concerned with the qualifications or skills referred to in section 21(1)(c) and the Minister is satisfied, having regard to section 21(1)(d), there is a shortage of those skills or qualifications, and
  - (iii) required, for the completion of that course of study, to obtain experience in the practice of those skills or qualifications with which the course of study is concerned for *a prescribed period* in an employment that requires the practice of those skills or qualifications,
- and at the end of the *prescribed period* the foreign national is to return to that institution outside the State to complete that course of study.
- (i) *to provide for the employment in the State of a foreign national in a seasonally recurrent employment, as prescribed in regulations;*
- (j) *to provide, on an exceptional basis, for the employment in the State of a foreign*



*national where the Minister is satisfied that their employment would be beneficial for economic or social development in the State, in circumstances prescribed in Regulations.*

Explanatory note

This section sets out the purposes for which an employment permit might be granted. These will retain the categories of permit already in existence, with some adjustment. Provision for the partners and spouses of Critical Skills Employment Permit holders is now made by the Minister for Justice and Equality so *the Dependant/Partner/Spouse Employment Permit will be eliminated. The section will make provision for a Seasonal Employment Permit and add a Special Circumstances Employment Permit to provide for very unusual occupations/skill sets which may not otherwise meet General Employment Permit criteria, for Critical Skills Employment Permit holders' dependants, and for bilateral arrangements.*

### **Head 5 - Recommendation by enterprise development agency**

5. (1) An enterprise development agency may make a recommendation in writing to the Minister in respect of an application for—
- (a) the grant of an employment permit, or
  - (b) the renewal of an employment permit referred to in section 26(15),
- that the employment permit that is the subject of the application be granted, or renewed, in respect of the employment concerned and to the foreign national concerned.
- (2) The Minister shall have regard to a recommendation referred to in subsection (1).
- (3) Nothing in subsection (2) shall be construed as requiring the Minister to grant or renew an employment permit on foot of a recommendation referred to in subsection (1).

#### Explanatory note

This section provides for the consideration by the Minister of a recommendation made by an enterprise development agency that an employment permit be granted or renewed. The section does not impose a requirement that the Minister should act on the recommendation.

## Head 6 - Supplemental provisions relating to the grant of employment permit for purpose referred to in section 4(2)(c)

6. (1) Where a foreign employer requires a foreign national employed by them outside the State to carry out duties for, or participate in a training programme provided by, a connected person without prejudice to any other requirement under this Act or to the employment outside the State of the foreign national—
- (a) notwithstanding that the remuneration, in so far as it relates to salary is to be paid by the foreign employer, it shall be a condition of the grant of the employment permit for the purpose referred to in section 4(2)(c) that, in respect of the remuneration, in so far as it relates to the salary to be paid to the foreign national by the foreign employer, *whether directly or by other arrangement that is clearly demonstrated in the application for an employment permit*, for the period for which the employment permit is granted, 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, the hourly rate referred to in section 17(21)(b),
  - (b) in respect of the payment of the remuneration to the foreign national in so far as it relates to—
    - (i) board and accommodation, or either of them, the payment may be made by the foreign employer and the connected person or by either of them, and
    - (ii) health insurance, the payment may be made by the foreign employer and the connected person or by either of them, and
  - (c) it shall be a condition of the grant of the permit that the statement of earnings provided by the foreign employer to the foreign national during the period for which the employment permit is in force shall, in addition to the information on the gross amount of the remuneration and the deductions made from it, specify—
    - (i) the amount of the additional payment referred to in subsection (4)(b),
    - (ii) the total amount referred to in subsection (4)(c), and
    - (iii) the amount of the deductions referred to in subsection (4)(d).
- (2) Where—
- (a) in respect of the remuneration, in so far as it relates to the salary, to be paid to a foreign national in respect of whom an application for the grant of an employment permit for the purpose referred to in section 4(2)(c) is made, and
  - (b) in respect of the condition referred to in subsection (1)(a), the hourly rate of the salary paid outside the State by the foreign employer, *whether directly or by other arrangement that is clearly demonstrated in the application for the employment permit*, to the foreign national is less than the national minimum hourly rate of pay, the foreign employer shall, in respect of that condition, *provide for an additional payment to the foreign national for the period for which the employment permit is in force so that the hourly rate of the*

salary to be paid to the foreign national during the period for which the employment permit is in force is not less than the national minimum hourly rate of pay.

- (3) Where, in respect of the remuneration, in so far as it relates to the salary, to be paid to a foreign national in respect of whom an application for the grant of an employment permit for the purpose referred to in section 4(2)(c) is made and the condition referred to in subsection (1)(a)—
- (a) the appropriate hourly rate of pay for the employment in respect of which the application is made is the hourly rate referred to in section 17(21)(b), and
  - (b) the hourly rate of the salary paid outside the State by the foreign employer to the foreign national is less than that hourly rate of pay, the foreign employer shall, in respect of that condition, *provide for* an additional payment to the foreign national for the period for which the employment permit is in force so that the hourly rate of the salary to be paid by the foreign employer, *whether directly or by other arrangement that is clearly demonstrated in the application for an employment permit* to the foreign national during the period for which the employment permit is in force is not less than the hourly rate referred to in section 17(21)(b).
- (4) Without prejudice to section 11, the connected person shall, when making an application pursuant to section 9(2), provide, in addition to the information required under section 11(e), information and documents, including any information and documents as may be specified in regulations under section 39, in respect of—
- (a) the amount of the salary that is paid, on the day the application is made, by the foreign employer to the foreign national in respect of whom the application is made, in such form as may be specified in regulations under section 39,
  - (b) where, having regard to the amount of salary referred to in paragraph (a) and the number of hours worked by the foreign national, the hourly rate of that amount of salary is less than—
    - (i) the national minimum hourly rate of pay and an additional payment referred to in subsection (2) is to be made, or
    - (ii) where appropriate, an hourly rate referred to in subsection (3), and an additional payment referred to in subsection (3) is to be made,the amount of the additional payment to be made to the foreign national for the period for which the employment permit is in force, in such form as may be specified in regulations under section 39,
  - (c) the total amount of the amounts referred to in paragraphs (a) and (b) in such form as may be specified in regulations under section 39,
  - (d) all deductions to be made by the foreign employer to—
    - (i) the amount referred to in paragraph (a), and
    - (ii) where an additional payment referred to in paragraph (b) is required to be made, the amount of that additional payment, referred to in paragraph

(b),

(e) the total amount referred to in paragraph (c), the amount to be paid to the foreign national during the period for which the employment permit is in force after the deductions referred to in paragraph (d) have been made, in such form as may be specified in regulations under section 39,

(f) the payment of board and accommodation, or either of them, and where either or both are provided directly by the connected person or the foreign employer, or both of them, the monetary value of the board and accommodation, or, as the case may be, either of them, and

(g) the arrangements for making the additional payment referred to in paragraph (b)(i) or (b)(ii).

(5) A foreign national referred to in section 4(2)(c) shall be employed by the foreign employer concerned for a period that is not less than the minimum period of employment specified in regulations made under section 19 before an application for an employment permit may be made in respect of them.

(6) In this section ‘statement of earnings’ means the statement of the remuneration paid by a foreign employer, *or that they have caused to be paid, whether directly or by other arrangement that is clearly demonstrated in the application for an employment permit to a foreign national—*

(a) that is provided to the foreign national by the foreign employer *or their agent* to demonstrate that the foreign national has received their remuneration, and

(b) that accompanies the periodic payment of that remuneration and specifies in writing the gross amount of the remuneration paid and any deductions made from that gross amount.

#### Explanatory note

This section allows remuneration conditions applying to Intra-Company Transfer Employment Permits to be prescribed in Regulations and the period of employment that the foreign national may undertake on the basis of this permit to be prescribed.

*The text has been adjusted to allow for different practices between affiliates, and it may be further adjusted after the remuneration review to be held later this year.*

**Head 7 - Supplemental provisions relating to the grant of employment permit for purpose referred to in section 4(2)(d)**

7. (1) Where, pursuant to the employment outside the State by a contractor of a foreign national, the contractor requires the foreign national to carry out duties in the State that arise out of a contract service agreement without prejudice to any other requirement under this Act or to the employment outside the State of the foreign national—
- (a) notwithstanding that the remuneration in so far as it relates to salary, is paid to the foreign national outside the State, it shall be a condition of the grant of the employment permit for the purpose referred to in section 4(2)(d) that, in respect of the remuneration, in so far as it relates to the salary to be paid to the foreign national by the contractor, for the period for which the employment permit is granted, 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, the hourly rate referred to in section 17(21)(b), and
  - (b) it shall be a condition of the grant of the permit that the statement of earnings, within the meaning of section 6(6), provided by the contractor to the foreign national during the period for which the employment permit is in force shall, in addition to the information on the gross amount of the remuneration and the deductions made from it, specify—
    - (i) the amount of the additional payment referred to in subsection (4)(b),
    - (ii) the total amount referred to in subsection (4)(c), and
    - (iii) the amount of the deductions referred to in subsection (4)(d).
- (2) Where—
- (a) in respect of the remuneration, in so far as it relates to the salary, to be paid to a foreign national in respect of whom an application for the grant of an employment permit for the purpose referred to in section 4(2)(d) is made, and
  - (b) in respect of the condition referred to in subsection (1)(a),
- the hourly rate of the salary paid outside the State by the contractor to the foreign national is less than the national minimum hourly rate of pay, the contractor shall, in respect of that condition, make an additional payment to the foreign national for the period for which the employment permit is in force so that the hourly rate of the salary to be paid by the contractor to the foreign national during the period for which the employment permit is in force is not less than the national minimum hourly rate of pay.
- (3) Where, in respect of the remuneration, in so far as it relates to the salary, to be paid to a foreign national in respect of whom an application for the grant of an employment permit for the purpose referred to in section 4(2)(d) is made and the condition referred to in subsection (1)(a)—
- (a) the appropriate hourly rate of pay for the employment in respect of which the application is made is the hourly rate referred to in section 17(21)(b), and
  - (b) the hourly rate of the salary paid outside the State by the contractor to the foreign national is less than that hourly rate of pay,
- the contractor shall, in respect of that condition, make an additional payment to the

foreign national for the period for which the employment permit is in force so that the hourly rate of the salary to be paid by the contractor to the foreign national during the period for which the employment permit is in force is not less than the hourly rate referred to in section 17(21)(b).

- (4) Without prejudice to section 11, the contractor shall, when making an application pursuant to section 9(2)(a), provide, in addition to the information required under section 11(e), information and documents, including any information and documents as may be specified in regulations under section 39, in respect of—
- (a) the amount of the salary that is paid, on the day the application is made, by the contractor to the foreign national in respect of whom the application is made, in such form as may be specified in regulations under section 39,
  - (b) where, having regard to the amount of salary referred to in paragraph (a) and the number of hours worked by the foreign national, the hourly rate of that amount of salary is less than—
    - (i) the national minimum hourly rate of pay and an additional payment referred to in subsection (2) is to be made, or
    - (ii) where appropriate, the hourly rate referred to in subsection (3), and an additional payment referred to in subsection (3) is to be made, the amount of the additional payment to be made by the contractor to the foreign national for the period for which the employment permit is in force, in such form as may be specified in regulations under section 39,
  - (c) the total amount of the amounts referred to in paragraphs (a) and (b) in such form as may be specified in regulations under section 39,
  - (d) all deductions to be made by the contractor to—
    - (i) the amount referred to in paragraph (a), and
    - (ii) where an additional payment referred to in paragraph (b) is required to be made, the amount of that additional payment, referred to in paragraph (b),
  - (e) the total amount referred to in paragraph (c), the amount to be paid to the foreign national during the period for which the employment permit is in force after the deductions referred to in paragraph (d) have been made in such form as may be specified in regulations under section 39,
  - (f) the payment of board and accommodation, or either of them, and where either or both are provided directly by the contractor, the monetary value of the board and accommodation, or as the case may be, either of them, and
  - (g) the arrangements for making the additional payment referred to in paragraph (b)(i) or (b)(ii).
- (5) A foreign national referred to in section 4(2)(d) shall be employed by the contractor concerned for a period that is not less than the minimum period of employment specified in regulations made under section 19 before an application for an employment permit may be made in respect of them.

This section allows remuneration conditions applying to Contract for Service Employment Permits to be prescribed in Regulations and the period of employment that the foreign national may undertake on the basis of this permit to be prescribed. These provisions may be adjusted after the remuneration review to be held later this year.



## **Head 8 - Consultation by Minister**

**8.** The Minister may, in the case of an application for an employment permit in respect of the purpose referred to in section 4(2)(g), consult with any person who, the Minister is satisfied, has knowledge of or expertise in the sport or cultural activity concerned, *or who has knowledge or expertise of the requirement or significant contribution to be rendered by the foreign national in the case of the purpose referred to in section 4(2)(j).*

### Explanatory note

The section allows the Minister to consult with an appropriate governance body for Sports and Cultural Employment Permits, *and to consult with an appropriate body or person in relation to Special Circumstances Employment Permits.*

## Head 9 – Application for an Employment Permit

9.—(1) An application for the grant of an employment permit in respect of the employment in the State of a particular foreign national may, subject to subsection (3), be made, other than in a case referred to in subsection (2), by—

- (a) the person proposing to employ the foreign national, or
- (b) the foreign national.

(2) In a case—

- (a) where the application is made in respect of the purpose referred to in section 4(2)(d), the application shall be made by the contractor concerned, or
- (b) where the application is made in respect of the purpose referred to in section 4(2)(c), the application shall be made by the connected person concerned.

(3) Subject to section 15, an application under this section 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.

(4) An application—

- (a) referred to in subsection (2)(a), shall be made in respect of the employment that is the subject of the contract service agreement,
- (b) referred to in subsection (2)(b), shall be made in respect of the employment in the connected person, and

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

(5) When making an application for the grant of an employment permit, the person making the application shall specify the purpose, referred to in section 4(2), in respect of which the employment permit concerned may be granted.

(6) An application under this section for an employment permit in respect of the purpose referred to in section 4(2)(a) shall not be made unless the duration of the employment in respect of which the application is made, is for *a period to be prescribed*.

(7) 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.

(8) Such amendments to an application may be made by the Minister, with the agreement of the applicant, as may be prescribed.

Explanatory note

This section sets out who may make the application for an employment permit – the employee, employer, contractor, or connected person. It provides for the specification of the employment, for the requirement for a written offer of employment, for the specification of the purpose, for prescription of the duration of the employment permit, for the 6 month prohibition on the grant of an employment permit after the employment is subject to redundancy.

Transitions and savings may be included.

*A provision for an unspecified employment relationship to make an application has been removed; this provision was intended to facilitate third party contracts.*

## **Head 10 – Grantee of permit and general provisions**

**10.**—(1) In all cases, irrespective of who the applicant for the grant of the permit under section 12 is—

(a) an application for the grant of an employment permit under section 12 shall be expressed to be an application for the grant under that section of such a permit to the person proposed to be employed pursuant to the permit (in this Act referred to as the “foreign national concerned”), and

(b) a grant under section 12 of an employment permit shall be to the foreign national concerned.

(2) An application for an employment permit shall be in writing and be accompanied by such fee as may be prescribed.

### Explanatory note

The purpose is to reinstate Section 5 of the Employment Permits Act 2006 as amended. The section designates the foreign national as the grantee of the permit and provides for written applications and fees.

## Head 11 – Application information

### 11. An application for an employment permit shall—

- (a) provide a full and accurate description of the employment in respect of which the application is made (the ‘employment concerned’) and the terms and conditions, including the hours of work in each week, and the duration, of the employment concerned,
- (b) provide information in respect of the qualifications, skills, knowledge and experience that are required for the employment concerned,
- (c) provide information and, where required, any relevant documents in respect of the qualifications, skills, knowledge or experience of the foreign national concerned,
- (d) specify the place at or in which the employment concerned is to be carried out and, where the employment concerned is to be carried out in more than one place, specify each such place,
- (e) specify the remuneration and any deductions, where agreed, for board and accommodation or either of them in respect of the employment concerned,
- (f) in respect of the foreign national concerned—
  - (i) specify whether or not they have sought permission to land in the State on a previous occasion or have been in the State on a previous occasion without permission to land,
  - (ii) where they are in the State at the time of the application, provide information and documents, where required by the Minister, relating to the permission granted to them to be in the State,
  - (iii) where they are in employment in the State at the time of the application, provide information and documents, where required by the Minister, relating to the permission granted to them to be in such employment, and
  - (iv) provide information as to whether they were at any time prior to such application in employment in the State and, where requested by the Minister, provide any information and documents relating to the permission granted to them to be in such employment, or, as the case may be, an employment permit granted in respect of that employment,
- (g) provide such other information, documents and evidence to verify such information and documents—
  - (i) as may be prescribed, or
  - (ii) which the Minister may request and which, in the Minister’s opinion, might materially assist in the making of a decision on the application,

- (h) without prejudice to the generality of paragraph (g), provide information and documents, as the Minister may request, concerning the offer of employment referred to in section 9(3), and
- (i) provide information, documents and evidence in respect of the requirement under section 9(7) in relation to—
  - (i) the employment, in the period referred to in section 9(7), of any person in the employment that is the subject of the application, and
  - (ii) the confirmation that such person was not, within such period, dismissed by reason of redundancy from that employment.
- (j) *provide information to verify the provision of accommodation and training where these are prescribed in Regulations*
- (k) *Provide information in relation to process innovations and knowledge transfer practices being developed by employer where these are prescribed in Regulations*

Explanatory note

This section specifies information to be provided in an application for an employment permit. *It now includes information relating to training, innovation, accommodation, as may be prescribed in Regulations.*

## Head 12 - Grant by Minister

12.—(1) Subject to sections 4, 14, 15, 17, 19, 28 and 29, the Minister may, on consideration of an application, grant or renew an employment permit.

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

- (i) the person, specified in the application, who made the offer of employment,
- (ii) in the case of an application referred to in section 9(2)(a), the contractor concerned, or
- (iii) in the employment specified in the application in respect of which, in the case of an application referred to in section 9(2)(b), the foreign national is to carry out duties for, or participate in a training programme provided by, the connected person specified in that application.

(3) An employment permit shall specify the period for which the foreign national concerned may be employed in the State pursuant to the permit and the permit shall, subject to the provisions of this Act, remain in force for that period accordingly.

(4) The foreign national shall commence the employment specified in the application within such period beginning on the date the permit comes into force as the Minister may prescribe.

(5) An employment permit granted for the purpose referred to in section 4(2)(c) shall specify the period for which the foreign national concerned may carry out duties for, or participate in a training programme provided by, the connected person, pursuant to the permit and the permit shall, subject to the provisions of this Act, remain in force for that period accordingly.

(6) The period that shall be specified in the employment permit shall, subject to subsections (7), not exceed *a period to be prescribed* beginning on the date of the grant of the permit or on the date specified in such permit, as the date on which it is to come into force.

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

- (a) section 4(2)(c), in respect of an employment referred to in section 4(2)(c)(ii) or
- (b) section 4(2)(h)

shall not exceed 12 months.

(8) Where in the case of a transfer to which the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003)

applies, that takes effect during the period for which an employment permit is in force and pursuant to that transfer there is a change to the name of—

- (a) the employer or, as the case may be, the connected person, specified in the employment permit—
  - (i) the employer or, as the case may be, the connected person, shall notify the Minister of that change of name, and
  - (ii) the Minister may amend the employment permit to reflect that change of name of the employer or, as the case may be, the connected person and may request such information and documents, as may be specified in regulations under section 39, in respect of such change of name,

or

- (b) the relevant person—
  - (i) the contractor shall notify the Minister of that change of name, and
  - (ii) the Minister may amend the employment permit to reflect that change of name of the relevant person and may request such information and documents, as may be specified in regulations under section 39, in respect of such change of name.

#### Explanatory note

This section provides for the grant by the Minister of an employment permit, for an application for a specified employment, and the power to prescribe periods for the duration of the permit, varying for different purposes.

It also provides for transfers of undertaking.



## Head 13 – Form of Permit

13.—(1) The Minister shall cause—

(a) the original of an employment permit granted under section 12 to be issued to the foreign national concerned, in paper or electronic form as provided at the time of issue, and

(b) a copy of the permit so granted to be issued to—

(i) the person referred to in section 12(2)(i),

(ii) in the case of an application referred to in section 9(2)(a), the contractor referred to in section 12(2)(ii), or

(iii) in the case of an application referred to in section 4(2)(b), the connected person referred to in section 12(2)(iii).

(2) An employment permit shall specify the following information:

(a) 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;

(b) a statement of the requirement under the National Minimum Wage Act 2000 that the foreign national concerned be paid the national minimum hourly rate of pay by their employer and the effect of subsections (1), (2), (3) and (4) of section 33;

(c) 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, and in accordance with, this Act; and

(d) *information on training, innovation or any other prescribed condition of grant*

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

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

(4) Subsections (2) and (3) are in addition to any other provision of this Act, or any provision of regulations under section 39(2), specifying matters or information to be included in an employment permit.

### Explanatory note

This section provides that an original and copy of the employment permit should be issued to applicant and employer, respectively, and sets out information to be included on the permit, *including information on training and innovation where these are conditions of grant.*

## Head 14 – Restriction on grant of permit

**14-(1)** Subject to subsections (2) and (3), an employment permit shall not be granted unless the Minister is satisfied that on the date the application for the employment permit was made 50 per cent or more of the employees of—

- (a) the person who has made the offer of employment,
- (b) in the case of an application referred to in section 9(2)(a), the contractor or the relevant person concerned, or
- (c) in the case of an application referred to in section 9(2)(b), the connected person concerned

are nationals of any of the following:

- (i) one or more Member States of the EEA;
- (ii) the Swiss Confederation;
- (iii) a combination of any of the states referred to in paragraphs (i) and (ii), or
- (iv) *UK nationals, permitted to enter the State and to be in employment in the State pursuant to an (exemption) order under the Aliens Act 1935.*

(2) In the case of an application for an employment permit in respect of the purpose referred to in paragraph (a), (b) or (c) of section 4(2), subsection (1) shall not apply to such application where—

- (a) the person who has made the offer of employment or, as the case may be, the connected person has been registered with the Revenue Commissioners for a period not exceeding *a period to be prescribed* on the day the application is made,
- (b) an enterprise development agency has made a recommendation referred to in section 5 in respect of that application, and
- (c) the Minister is satisfied that, having regard to such recommendation, granting the employment permit that is the subject of the application concerned, will contribute to the further development of employment in the State.

(3) In the case of an application for an employment permit in respect of any of the purposes referred to section 4(2), subsection (1) shall not apply to such application where—

- (a) on the day on which the application is made the person referred to in subsection

- (1)(a) has no employees,
- (b) the foreign national in respect of whom the application for the grant of the employment permit is made will be the sole employee of the person referred to in subsection (1)(a) on the date on which the employment that is the subject of the application is to commence,

and the person making the application shall, in addition to any information required under section 11, or as may be specified in regulations under section 39, in respect of an application, provide the Minister with any information and documents the Minister may require to be satisfied with regard to the matters specified in paragraphs (a) and (b).

*(4) In the case of an application for an employment permit in respect of the purpose referred to in paragraph of section 4(2)(j), subsection (1) shall not apply to such application where a recommendation has been made by an enterprise development agency or a person who has knowledge or expertise of the requirement for or significant contribution to be rendered by the foreign national who has been consulted by the Minister, and the Minister is satisfied that the grant of an employment permit would be of benefit to social or economic development in the State.*

- (5) This section and section 15 are —
- (a) in respect of section 15, supplementary to Regulation (EU) No. 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union<sup>2</sup>, and
- (a) in addition to the other requirements that this Act specifies must be satisfied with respect to the grant of an employment permit and are without prejudice to any regulations for the time being in force under section 19.

#### Explanatory note

This section provides for the requirement that an employer's workforce is comprised of at least 50% EEA nationals or other designated nationals (Swiss, *and now also UK nationals*).

It provides for a Start-up waiver where this is supported by an enterprise development agency. It also provides for a waiver where the grant would be in respect of a foreign national, who, at the time of grant, would be the only employee of the applicant employer; *the requirement that this waiver only applies where there is no expectation of additional employment is deleted, as recommended in the Review of Economic Migration Policy. It also provides for a waiver in prescribed circumstances for the Special Circumstances Employment Permit.*

## Head 15 – Establishing need for a permit

15. (1) This section applies to an application for an employment permit in respect of the purpose specified in section 4(2)(b) or 4(2)(d), *and in the case of the purpose specified in section 4(2)(j) where prescribed.*

(2) Subject to subsections (6) and (7), the Minister shall not grant an employment permit referred to in subsection (1) unless the Minister is satisfied that a notice of the offer of the employment that is the subject of the application has been published in accordance with this section before the application referred to in subsection (1) is made and the application is made within the period referred to in subsection (5).

(3) Where an application referred to in subsection (1) is made—

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

(b) in the case of an application under section 9(2)(a), the contractor,

shall satisfy the Minister that they have, before making the application, offered the employment in respect of which the application is made to—

(i) a citizen, or

(ii) a national of a Member State of the EEA, or

(iii) *a person who is permitted to enter the State and to be in employment in the State pursuant to an (exemption) order under the Aliens Act 1935*

by causing a notice of the offer of the employment concerned to be published in accordance with subsection (4).

(4) The person referred to in subsection (3)(a) or, as the case may be, the contractor referred to in subsection (3)(b)—

(a) *shall cause the notice referred to in subsection (3) to be published as the Minister may prescribe in Regulations pursuant to this Act, and*

(b) shall publish the notice referred to in subsection (3) in accordance with paragraph (a) for a period that is not less than the period, as may be specified in regulations under this section, for which the notice is to be published.

(5) Where, following the publication of the notice referred to in subsection (3), an application referred to in subsection (1) is made under section 9, that application shall be made within the number of days, as may be specified by the Minister in

regulations under this section, from the day on which that notice was first published as prescribed in regulations.

- (6) Subsection (2) shall not apply to an application referred to in subsection (1) where -
- (a) an enterprise development agency has made a recommendation referred to in section 5 in respect of the application, and
  - (b) the Minister is satisfied that, having had regard to such recommendation, granting the employment permit that is the subject of the application concerned will contribute to the further development of employment in the State.
- (7) Subsection (2) shall not apply to an application referred to in subsection (1) where—
- (a) the Minister is satisfied that, having regard to section 21(1)(d), there is a shortage of the skills referred to in section 21(1)(d) required for that employment and the Minister has, in regulations made under section 19(21), specified the employment as an employment to which subsection (2) shall not apply,
  - (b) the application is made in respect of a foreign national to whom section 29 applies and is an application referred to in section 29(4), or
  - (c) *the application is made in respect of an employment prescribed in regulations, where the Minister is satisfied that, having regard to the circumstances of that person and that foreign national, it is not appropriate to publish a notice of the offer of that employment.*
- (8) The Minister may, without prejudice to the generality of section 39(1), make regulations under this subsection for the publication of the notice referred to in subsection (3), that is required to be carried out before an application for the grant of an employment permit referred to in subsection (1) is made, to provide for—
- (a) one or more persons with whom such notice shall be placed for publication on a website where such person or persons own or operate the website or publish notices on such website,
  - (b) one or more websites, on which such notice is to be published,
  - (c) *the duration of the period, for which such notice shall be published in respect of each of the prescribed formats, and these durations may vary between formats as prescribed,*  
which the Minister considers to be sufficient to afford an opportunity to citizens and the foreign nationals referred to in subsection (3)(ii) and (iii) to apply for the employment concerned,

- (d) the form, procedure for and the manner in which the publication of the offer of employment, referred to in subsection (2), to citizens and foreign nationals referred to in subsection (3)(ii) and (iii) is to be made,
  - (e) the number of days within which the application referred to in subsection (1) shall be made after the day the notice referred to in subsection (3) is first published as prescribed in Regulations,
  - (f) information and documents as the Minister may require to be satisfied that the notice was published in accordance with this section and the application was made within the period referred to in subsection (4) and without prejudice to the generality of the foregoing such information and documents may include information and documents demonstrating that the notice was placed with the persons specified by the Minister in regulations, and
  - (g) evidence that the Minister may reasonably require in order to verify any information or documents to be furnished to the Minister pursuant to this section.
- (9) Before publishing a notice referred to in subsection (3) the person who makes the offer of employment, or, as the case may be, the contractor, shall ensure that the employment is specified in regulations under this Act as being an employment for which an employment permit may be granted.
- (10) The Minister may make enquiries to be satisfied that the person referred to in subsection (3)(a) or the contractor referred to in subsection (3)(b) has complied with subsection (3).

Explanatory note

This section provides for a labour market needs test to be applied in certain circumstances.

It provides for this requirement in the case of specified purposes – General Employment Permit, Contract for Service Employment Permit, *and for the Special Circumstance Employment Permit where this is prescribed in Regulations.*

*It allows media for advertising vacancies, period of advertising, and the period of validity of such advertising prior to application for an employment permit to be prescribed.*

It provides for waivers- enterprise development agency advice, skill shortage, *occupations satisfying certain criteria to be prescribed and allows for prescription of information and documents.*

The section also provides that employment must be eligible for an employment permit.

## Head 16 – Consideration by Minister

**16—(1)** In considering an application for an employment permit, the Minister shall have regard to—

- (a) the extent to which a decision to grant the permit would be consistent with economic policy for the time being of the Government,
- (b) whether the knowledge and skills and, where appropriate, the qualifications and experience referred to in section 9(b) are required for, or relevant to, the employment concerned,
- (c) such of the other matters referred to in section 9 as are relevant to the application,
- (d) if any of *paragraphs (a) to (n)* of section 17(1) fall to be applied in relation to the application, any matters that, in the opinion of the Minister, are material to the application of such a paragraph or paragraphs.
- (e) the different purposes, specified in section 4(2) for which an employment permit may be granted.

(2) In considering an application for an employment permit, the Minister may take such steps as they consider necessary to establish the accuracy or authenticity of the information provided in respect of the application.

(3) This section is subject to the provisions of any regulations under section 19 that apply in relation to the application concerned.

(4) Accordingly, nothing in this section authorises the Minister to make a decision on an application for a grant of an employment permit which they would not be authorised to make by reason of the operation of those regulations.

### Explanatory note

The purpose is to reinstate Section 11 of the Employment Permits Act 2006 as amended. This section requires the Minister to consider applications in line with economic policy, factors such as qualifications, purposes, whether there are factors to consider in relation to possible refusal of the application and allows the Minister to take steps to establish veracity, subject to the provisions set out in Regulations.



## Head 17 – Refusal to grant

17.—(1) The Minister may refuse to grant an employment permit if—

(a) the applicant for the permit (the “applicant”) has failed to provide any information required by or under this Act in respect of the application for the permit (the “application”) or has failed to provide any information, documents or evidence required by or under this Act in respect of the application within the period specified in regulations under section 39,

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

- (i) in section 9(2)(a), the contractor or the relevant person, or
- (ii) in section 9(2)(b), the connected person,

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

(d) in the opinion of the Minister, the granting of the permit would be manifestly inconsistent with economic policy for the time being of the Government,

(e) the following 2 conditions are satisfied namely:

- (i) a period of less than 12 months has elapsed since the foreign national concerned first commenced employment in the State pursuant to an employment permit granted to them, and
- (ii) the application is made within the period referred to in subparagraph (i) and on the date of the application—
  - (I) the employment permit referred to in subparagraph (i) is in force, or
  - (II) the foreign national has surrendered, in accordance with section 34, the employment permit referred to in subparagraph (i), within the period referred to in subparagraph (i),

*except where the Minister is satisfied that a circumstance that is prescribed in Regulations has occasioned the surrender of the employment permit.*

(f) in the opinion of the Minister, it is in the public interest to do so,

- (g) a material misrepresentation in respect of the application has been made by the applicant,
- (h) a forged or fraudulent document has been submitted in respect of the application,
- (i) the foreign national concerned lands or has landed, or is or has been, in the State without permission,
- (ia) the foreign national in respect of whom the application is made—
  - (i) has landed in the State with the permission of the Minister for Justice and Equality but has not been given the permission referred to in section 3(d) of this Act by the Minister for Justice and Equality, and
  - (ii) was, on the date the application was made—
    - (I) employed by the person who made the offer of employment that is the subject of the application, or
    - (II) employed by another person on that date,without an employment permit or the permission referred to in section 3(1)(d) of this Act,
- (ib) the foreign national in respect of whom the application is made had been in employment in the State prior to the making of the application without an employment permit or permission of the Minister for Justice and Equality referred to in section 3(1)(d) of this Act,
- (ic) the foreign national in respect of whom the application is made has landed in the State with the permission of the Minister for Justice and Equality and that permission is granted on the condition that the foreign national concerned shall not be in employment in the State,
- (j) the remuneration to be paid to the foreign national concerned in respect of the proposed weekly hours of work (whatever they may be) is less than the standard working week remuneration,
- (k) the skills, knowledge, and where appropriate, qualifications and experience, referred to in section 9(b), are not required for, or relevant to, the employment concerned, or
- (l) if the Minister is satisfied that the foreign national concerned does not possess the qualifications, knowledge or skills for the employment concerned or the foreign national concerned does not have the appropriate level of experience required for the employment.
- (m) *The Minister shall refuse to grant an employment permit where the foreign national is in State under a permission from another Minister of Government and that*

*permission may not be renewed or transferred.*

*(n) The Minister may refuse to grant an employment permit where the foreign national holds an employment permit for another employment in the State and has made the application in order to take up a second employment in the State while remaining in the first employment.*

(2) The Minister may refuse to grant an employment permit where the application in respect of an employment that, having regard to the different purposes referred to in section 4(2), does not fall within the purpose in respect of which the application was made or is an employment that is specified in regulations under section 19 in respect of a different purpose.

*(3) The Minister may refuse to grant an employment permit where information is recovered during a review of an application under Section 18 that indicates the grant of an employment permit would contravene Regulations in place under Section 19 in force at the time of decision.*

*(4) The Minister may refuse to grant an employment permit if, where they are required to be so registered or recognised to undertake the employment, the foreign national is not registered with a Minister for Government, or a Regulatory body as prescribed in Regulations, or has not had their qualifications recognised by such a body or Minister.*

(5) In the case of an application in respect of the purpose referred to in section 4(2)(c)—

- (a) the Minister shall, subject to subsection (6), refuse to grant an employment permit if the Minister is satisfied that—
  - (i) without prejudice to subsection (11)(a)(ii), the connected person is not engaged in substantive business operations in the State,
  - (ii) the foreign employer is not engaged in substantive business operations in the place, outside the State, in which it is established, or
  - (iii) the connected person is not connected with the foreign employer,
- (b) the Minister may refuse to grant an employment permit if, in the opinion of the Minister, the connected person or the foreign employer has not, or both of them have not, made appropriate arrangements—
  - (i) to provide appropriate accommodation and board (or either of them) for the foreign national during the period in which they are in the State to carry out duties for, or participate in a training programme provided by the connected person, or
  - (ii) to provide appropriate health insurance, in respect of the foreign

national should they require medical treatment for illness or injury during the period for which they will be in the State pursuant to the employment permit,

- (c) the Minister may refuse to grant an employment permit if the Minister is satisfied that the health insurance provided by the person referred to in paragraph (b)(iii)(II) of section 1A(1) does not have the same, or similar, effect as the health insurance provided by a health insurer, or
- (d) the Minister may refuse to grant the employment permit if they are satisfied that the carrying out of the duties, or the participation in the training programme, by the foreign national is not appropriate to the requirements of the connected person.

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

(7) The Minister shall refuse to grant an employment permit in respect of the purpose referred to in section 4(2)(d) where the Minister has reasonable grounds to believe that the foreign national concerned may not be employed by the contractor concerned during the period for which the employment permit is to be granted.

(8) The Minister shall refuse to grant an employment permit if the applicant has failed to furnish the prescribed fee with the application.

(9) In the case of an application in respect of the purpose referred to in section 4(2)(d), the Minister—

- (a) may refuse to grant an employment permit if, in the opinion of the Minister, the contractor has not made appropriate arrangements—
  - (i) to provide appropriate accommodation and board, or either of them, for the foreign national while they are in the State to perform the duties arising from the contract service agreement, or
  - (ii) to provide appropriate health insurance in respect of the foreign national should they require medical treatment for illness or injury during the period for which they will be in the State pursuant to the employment permit,

or

- (b) may refuse to grant an employment permit if the Minister is satisfied that the health insurance provided by a person referred to in paragraph (b)(iii)(II) of section 1A(1) does not have the same, or similar, effect as the health insurance provided by a health insurer.

(10) In the case of an application for an employment permit for the purpose referred to in section 4(2)(h), the Minister may refuse to grant an employment permit where—

- (a) the Minister is satisfied that—
  - (i) the foreign national concerned is not a full-time student enrolled in a third-level institution outside the State,
  - (ii) the course of study concerned is not wholly or substantially concerned with the qualifications or skills referred to in section 4(2)(h), or
  - (iii) the employment in respect of which the application is made is not wholly or substantially concerned with the skills or qualifications referred to in subparagraph (ii),
- (b) the Minister is not satisfied that there is a shortage of those qualifications or skills, or
- (c) the Minister is satisfied there are reasonable grounds for believing that, at the end of the *prescribed period*, the foreign national may not return to the institution outside the State in which they are enrolled to complete the course of study concerned.

(11) The Minister shall refuse to grant an employment permit where—

- (a) the person who has made the offer of employment—
  - (i) is not registered with the Revenue Commissioners, or
  - (ii) where such person is carrying on a business, the Minister is satisfied that such person is not engaged in substantive business operations in the State,
- or
- (b) in the case of an application referred to in—
  - (i) section 9(2)(a), the contractor concerned is not registered with the Revenue Commissioners, or
  - (ii) section 9(2)(b), the connected person is not registered with the Revenue Commissioners.

(12) The Minister may refuse to grant an employment permit if they are satisfied that the person who made the offer of employment concerned—

- (a) where such person is a company within the meaning of the Companies Acts, does not comply with any requirement relating to the registration of the company pursuant to those Acts,
- (b) does not comply with any requirement relating to the registration of the business name of that person pursuant to the Act of 1963,
- (c) where such person is a limited partnership referred to in the Limited Partnerships Act 1907, does not comply with any requirement relating to the registration of the limited partnership under that Act,
- (d) where such person is an industrial and provident society within the meaning of the Industrial and Provident Societies Acts 1893 to 1978, does not comply with any requirement relating to the registration of the society pursuant to those Acts,
- (e) where such person is a friendly society within the meaning of the Friendly Societies Acts 1896 to 1977, does not comply with any requirement relating to the registration of the society pursuant to those Acts, or
- (f) where such person is a trade union within the meaning of the Trade Union Acts 1871 to 1990, does not comply with any requirement relating to the registration of that trade union under those Acts.

(13) The Minister may refuse to grant an employment permit where, in the case of an application for the purpose referred to in—

- (a) section 4(2)(e),
  - (i) an employment permit in respect of that purpose had been granted and had expired before the application was made and no application for renewal was made in respect of that employment permit, and
  - (ii) the Minister is satisfied that it is in the public interest to refuse to grant the employment permit,
- (b) section 4(2)(i), where, in accordance with section 8, having consulted with a person referred to in section 8, the Minister is satisfied that the employment that is the subject of the application concerned is not appropriate for the development and operation of sporting, or, as the case may be, cultural activities in the State,
- (c) *section 4(2)(j), having consulted with a person referred to in section 8, where prescribed, the Minister is satisfied that the grant of an employment permit will not support social or economic development in the State.*

- (d) section 4(2)(f), where the Minister is satisfied that—
  - (i) the exchange agreement concerned does not apply to the foreign national in respect of whom the application is made, or, without prejudice to subsection (3), the employment *or duties* in respect of which the application is made, or
  - (ii) without prejudice to subsection (3), the employment, *duties or economic sector* in respect of which the application is made does not come within the exchange agreement.

(14) The Minister, in the case of an application for an employment permit for the purpose referred to in paragraph (c) or (d) of section 4(2), shall—

- (a) without prejudice to subsection (1)(j), refuse to grant an employment permit if the Minister is satisfied that the hourly rate of the remuneration, in so far as it relates to the salary to be paid to the foreign national, is 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 subsection 17(21)(b)
- (b) without prejudice to subsection (1)(a), refuse to grant an employment permit where the connected person did not provide the information and documents referred to in section 6(4) or the contractor did not provide the information and documents referred to in section 7(4), or
- (c) refuse to grant an employment permit where the Minister is not satisfied with the arrangements for the additional payment referred to in section 6(4)(g) or, as the case may be, section 7(4)(g).

(15) The Minister shall refuse to grant an employment permit where they are satisfied that in the 6 months preceding the day on which the application was 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.

(16) Subsections (1) to (15) *are* without prejudice to sections 14 and 15 and subsection (17).

(17) Subject to sections 28(5) and 29(5), the Minister shall refuse to grant an employment permit if the granting of it would contravene regulations under *section 19* in force at the time the decision on the application for the permit is made.

(18) Where the Minister refuses to grant an employment permit, the Minister shall notify, in writing, the applicant of the decision and the reasons for it.

(19) Where an application for an employment permit is refused or withdrawn, *or where it is not taken up in prescribed circumstances*, the Minister shall return to the *person who paid the fee* or a person referred to in subsection (20) such portion, as may be prescribed, of the fee that has been submitted in respect of the application.

(20) *The person who paid the fee* referred to in subsection (19) may nominate a person to whom the portion of the fee is to be returned in the case where such fee is to be refunded.

(21) In this section “standard working week remuneration” means the weekly remuneration that the foreign national concerned would receive if they 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.

#### Explanatory note

This section provides for refusal reasons, including prescription in Regulations

Applications shall be refused where:

- The employer/contractor/connected person is not engaged in substantive business operations in the State
- The connected person is not connected to the foreign employer
- The employer is not registered with the Revenue Commissioners
- The remuneration does not achieve the specified hourly rate for time worked/National Minimum Wage/rate fixed under an enactment
- The required information relating to remuneration is not provided in the application
- The Minister is not satisfied with any arrangement relating to remuneration
- The foreign national is not working for the contractor
- A redundancy has taken place in the specified employment in the last six months
- The grant of the employment permit would contravene the Regulations
- *New provision: The foreign national is in State under a permission from another Minister of Government which may not be renewed or transferred*

Applications may be refused where:

- Any prescribed information, documents, or evidence is not provided with the application



- A prescribed fee is not provided with the application
- Any party to the employment permit application has been convicted of an offence under specified Acts
- It is manifestly inconsistent with Government economic policy
- It is in the public interest
- A material misrepresentation has been made
- A forged or fraudulent document has been submitted
- The foreign national has landed in the State without permission of the Minister for Justice and Equality, or has landed in the State with such permission but has been employment without permission to work or without an employment permit as the case may be, or has commenced work prior to grant of an employment permit or is in the State on a permission which precludes their employment
- The foreign national's skills, qualifications or experience are not relevant to the employment
- The foreign national does not possess the skills, qualifications or experience to undertake the employment
- The contractor or connected person has not taken steps to ensure that board, accommodation and health insurance are available to the foreign national
- The application is for an employment which does not meet the purpose or meets the criteria designated or prescribed for another purpose
- The duties or training to be undertaken are not appropriate to the operations of the connected person
- The student is not registered with a foreign university, the skills are not included on the Critical Skills List, the course of study will not continue after the internship period or the Minister is not satisfied that the foreign national will leave after the prescribed period
- The employer/contractor/connected person is not registered under any Act which requires it
- A Reactivation Employment Permit had already been issued and no renewal was sought and the Minister is satisfied that it is in the public interest to refuse the application
- The grant of an application would not be beneficial to the development of sporting or cultural activities in the State
- The foreign national, or the specified employment, or the sector, as the case may be, does not fit within the terms of a prescribed Exchange Agreement (the suggested change will allow parties in the state on the basis of an international trade agreement between the EU and a third country to avail of this permit type)
- *New provision: Additional information incidentally recovered during a review of application that had been refused which indicate that grant of the employment permit would contravene Regulations*
- *New provision: Where required, the foreign national is not registered with a Minister for Government, or a Regulatory body as prescribed in Regulations, or has not had their qualifications recognised by such a body or Minister*
- *New provision: an application for a permit may be refused where it is for a second employment and the foreign national intends to hold two jobs*

The section also requires the Minister to inform the applicant in writing of a refusal and the reason or reasons for it, makes provision for refunds of fees, *including where a permit is not taken up for prescribed reasons*, and defines standard working week remuneration.

## Head 18 – Review of decision to refuse

**18.**— (1) A decision of the Minister to refuse to grant an employment permit may, in accordance with regulations under section 39(3), be submitted by the applicant therefor to the Minister for review under this section.

(2) Such a submission of a decision for review shall be made within *a prescribed period* from the date the decision is notified under section 17 to the applicant.

(3) Where—

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

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

(ii) the information is, or documents are, received within a prescribed period from the date the decision is notified under section 17 to the applicant, and

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

and

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

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

(ii) where they so direct, shall notify the applicant of the review.

(4) A review under this section of a decision referred to in subsections (1) and (3) shall be carried out by an officer of the Minister appointed by the Minister for the purpose; the person so appointed—

(a) shall not be the person who made the decision, and

(b) shall be of a grade senior to the grade of the person who made the decision.

(5) In the case of a review of a decision referred to in subsection (1), the person so appointed having afforded the person who submitted the decision for review an opportunity to make representations in writing in relation to the matter, may—

(a) confirm the decision (and, if the person does so, shall notify in writing the second-mentioned person of the reasons for the confirmation), or

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

(6) In the case of a review of a decision referred to in subsection (3), the person so appointed, having taken into account the information or documents referred to in that subsection and afforded the applicant for the employment permit concerned an opportunity to make representations in writing in relation to the matter, may—

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

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

*(7) Where, during the review of a decision to refuse an application for an employment permit, information or documents considered by the Minister incidentally indicate further grounds to refuse the grant of an employment permit, or to grant the employment permit, the Minister shall notify the applicant in writing of those further grounds and allow in the case of grounds for refusal a further prescribed period for review of any decision based thereon.*

Explanatory note

This section provides for a review process, within prescribed periods, and *is amended to include a provision for further review of any additional grounds for refusal uncovered in the review process.*

## **Head 19 – Regulations governing grant of employment permit**

**19.**—(1) The Minister may, having regard to sections 4 and 20 and the matters specified in section 21, make regulations providing for a class of employment permit for each purpose specified in paragraphs (a) to (j) of section 4(2) and may, for each such class of employment permit, provide for one or more of the matters specified in subsection (2) and may, in such regulations, make different provision for such classes of employment permit and such matters in relation to different cases and different classes of cases and different circumstances or different classes of circumstances.

(2) The matters referred to in subsection (1) are:

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

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

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

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

(e) the minimum amount of remuneration that shall be payable in respect of an employment as a condition for the grant of an employment permit in respect of it, and 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 1A(1), 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 section 17(21)(b), and

(ii) in so far as it relates to the payments for board and accommodation, referred to in section 1A(1)(b)(ii) and the payments for health insurance referred to in paragraphs (a)(ii) and (b)(iii) of section 1A(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;

(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.

*(3) The Minister may prescribe in regulations fees to accompany an application for grant or renewal of an employment permit, and may make different provision for different classes of employment permit and such matters in relation to different cases and different classes of cases and different circumstances or different classes of circumstances.*

(4) Without prejudice to the generality of subsection (2)(e), when specifying the minimum amount of remuneration, pursuant to that subsection, that shall be payable in respect of an employment as a condition for the grant of an employment permit in respect of it, the Minister may specify—

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

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

(c) a minimum hourly rate for remuneration other than that referred to in paragraph (a) or (b), in respect of any class of employment permit, employment or category of employment,

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

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

(a) the purpose referred to in section 4(2)(a), make different provision for a foreign national to whom section 28 applies, and

(b) the purpose referred to in section 4(2)(b), make different provision for a foreign national to whom section 29 applies,

and may make different provision for such foreign nationals in respect of any matter to be provided for under subsection (2) and without prejudice to subsections (1) and (4), when providing for remuneration under subsection (2)(e), such provision may include different amounts of remuneration in respect of such class or any employment or category of employment and different provision may be made for different cases in relation to different classes of cases and different circumstances or different classes of circumstances.

(6) When making regulations under subsection (1) in respect of the class of employment permit provided under that subsection for the purpose referred to in section 4(2)(f), the Minister, in addition to providing for any of the matters specified in subsection (2) for that class of employment permit—

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

(b) may, without prejudice to subsections (1) and (2), specify the employments *or duties referred to* in that exchange agreement, or to which that exchange agreement applies, in respect of which an employment permit may be granted for that class of employment permit,

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

*(7) The Minister may prescribe in Regulations circumstances in which the purpose referred to in Section 4(2)(j) may be granted and may make different provisions for different cases and different classes of cases and different circumstances or different classes of circumstances.*

(8) In regulations under subsection (1) in relation to any class of employment permit or any matter specified under subsection (2), the Minister may, when providing for any such class or matter, make provision in respect of a recommendation referred to in section 5, and may, in respect of such recommendation, make different provision for such classes or such matter in relation to different cases and different classes of cases and different circumstances and different classes of circumstances.

(9) When specifying in regulations under subsection (1) the qualifications, referred to in subsection (2)(f), of a foreign national, the Minister may provide, in respect of such qualifications, for one or both of the following:

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

(i) a regulatory body, or

(ii) any Minister of the Government regulating the entry to or carrying on of

any profession or employment or duties in the State;

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

(i) a regulatory body, or

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

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

(11) Without prejudice to the generality of subsection (2)(b), when specifying the employments for which an employment permit may be granted, including employments specified by reference to categories of employments and to one or more economic sectors, the Minister may specify such employments by reference to employments that require qualifications, experience or skills, referred to in section 21(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, referred to in section 21(1)(d), of those skills, experience or qualifications.

(12) The Minister may, having regard to section 4 and the matters specified in section 21, make regulations providing that no permits shall be granted in respect of any purpose referred to in section 4(2) for a period as the Minister shall specify in the regulations.

(13) Where the Minister has made regulations under this section he or she shall from time to time carry out a review of the regulations having regard to section 21 and, without prejudice to the generality of the foregoing, the shortages and surpluses referred to in section 21(1)(d) in respect of the matters specified in the regulations pursuant to this section.

(14) Where under subsections (1) and (2)(a), the Minister makes regulations providing for the maximum number of employment permits that may be granted in respect of a purpose or specified employments or categories of employments, whether the maximum number is provided for on the basis of an economic sector or otherwise, the Minister shall specify a period during which that maximum number of employment permits shall be granted.

(15) In regulations under subsection (1) the Minister may, having regard to sections 4 and 20 and the matters specified in section 21, provide, in respect of each class of employment permit referred to in subsection (1), for—

- (a) one or more of the matters specified in subsection (2) other than the matters specified in paragraphs (a), (c) and (d) of that subsection, and any matter specified in subsections (3) and (5) to (11),  
in relation to the renewal, under section 26, of an employment permit and may, for each such class of employment permit in such regulations, make provision for such classes of employment permit in relation to any of the matters specified in paragraphs (a) and (b) in relation to such renewal that is different to the provision made by the Minister in relation to the grant of an employment permit under section



12 and may, in such regulations, make different provision for such classes of employment permit and such matters in relation to different cases and different classes of cases and different circumstances or different classes of circumstances.

*(16) The Minister may make regulations providing that no permits may be renewed in respect of a purpose or specified employments or categories of employment, and in such regulations make different provision in relation to different cases and different classes of cases and different circumstances and different classes of circumstances.*

*(17) The Minister may prescribe in Regulations conditions to be met for the benefit of the foreign national or for development in the occupation or sector to enable the grant of an employment permit and may make different provision for classes of employment permit and matters in relation to different cases and different classes of cases and different circumstances or different classes of circumstances.*

(18) The following modifications apply in respect of the regulations referred to in subsection (2):

(a) the substitution of references to an application for the renewal of an employment permit for references to an application for the grant of an employment permit;

(b) the substitution of references to a condition for the grant of the renewal of an employment permit for references to a condition for the grant of an employment permit;

(c) the substitution of references to the grant of the renewal of an employment permit for the grant of an employment permit.

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

(20) The Minister may, having regard to paragraphs (c) and (d) of section 4(2), section 20 and the matters specified in section 21, make regulations specifying—

(a) the minimum period of employment for which a foreign national referred to in section 6 is employed with the foreign employer before an application for an employment permit may be made in respect of him or her, which period shall be not less than *a period to be prescribed*, and

(b) the minimum period of employment for which a foreign national referred to in section 7 is employed by the contractor before an application for an employment permit may be made in respect of him or her, which period shall be not less than *a period to be prescribed*.

(21) Where—

(a) the Minister is satisfied that, having regard to section 21(1)(d), there is a shortage of the skills referred to in section 21(1)(d), and

(b) those skills are required for an employment, or a category of employment, specified in regulations under this section as an employment or a category of employment for which an employment permit may be granted in respect of the purpose referred to in paragraphs (b) or (d) of section 4(2),

the Minister may specify in regulations under this section the employments or categories of employments to which section 15(2) shall not apply—

(i) in respect of—

(I) an employment, and

(II) a category of employment or an employment falling into a category of employment, specified in regulations under this section as employments or categories of employment for which an employment permit may be granted for the purpose referred to in section 4(2)(b), and

(ii) in respect of—

(I) an employment, and

(II) a category of employment or an employment falling into a category of employment, specified in regulations under this section as employments or categories of employment for which an employment permit may be granted for the purpose referred to in section 4(2)(d).

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

#### Explanatory note

This section provides for the scope of Regulations.

It allows Minister to prescribe

- Regulations for each purpose and make different provision for different circumstances in the case of each
- Quotas for permit type or occupation or sector
- Ineligibility of occupation or sector
- Minimum remuneration
- Maximum proportion board and accommodation
- Qualifications/skills
- Minimum hours of work
- Minimum experience and minimum remuneration varying by experience
- Standard working week for remuneration
- Different provisions for renewal of different Employment Permits
- Specify exchange agreements and employment for exchange agreements
- Provisions in respect of enterprise development agency recommendations
- Regulatory bodies, requirement to register
- Names of permits
- Critical skills list
- No permits of a specific type
- Quota period

- Variation for renewal
- *Conditions where permits may not be renewed*
- Minimum period of employment for Contract for Services and IntraCompany Transfer Employment Permits
- Employments not subject to LMNT
- Employments for internship Employment Permits
- *Conditions for Special Circumstances Employment Permits*
- *Conditions for Seasonal Employment Permits*
- *Periods for permits*
- *Participation in upskilling, provision of accommodation, innovation etc*

## **Head 20 – Remuneration relating to employments**

**20.-** (1) When specifying, in regulations made under section 19, an amount of remuneration for an employment or a category of employment, the Minister may have regard to the amounts of remuneration paid in respect of different employments and categories of employment.

(2) Where—

(a) regulations under section 19 specify a minimum annual remuneration referred to in section 19(4)(a) that shall be payable in respect of an employment as a condition for the grant of an employment permit, and

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

(i) less than 39 hours in each week, the minimum annual remuneration specified in regulations under section 19 in respect of an employment as a condition for the grant of an employment permit for that employment shall not be reduced in accordance with the lesser number of hours to be worked in each week, or

(ii) greater than 39 hours in each week, the minimum annual remuneration specified in regulations under section 19 in respect of an employment as a condition for the grant of an employment permit for that employment shall be increased in proportion to the minimum hourly rate specified for the employment concerned in accordance with the number of hours, or any portion of an hour, that exceed, or exceeds, 39 hours.

### Explanatory note

The purpose is to reinstate Section 14A of the Employment Permits Act 2006 as amended. This section sets out broad parameters for setting minimum annual remuneration - variation for different employments. It also describes the standard working week and the requirement for pro-rata remuneration working hours over the standard working week, but no fall under the minimum for working hours under the standard working week. There may be some adjustment to this section after the review of remuneration for employment permits scheduled for later this year.

## **Head 21 – Criteria for making Regulations**

**21.**—(1) The matters mentioned in subsections (1) and (8) of section 19 are—

- (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) if, 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.

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

### Explanatory note

The purpose is to reinstate Section 15 of the Employment Permits Act 2006 as amended. The section provides for the orientation of the system to skills, qualifications, experience, and for assessment by the Minister of shortages and surpluses of same (which assessment currently takes the form of the Review of the Occupations Lists).

## Head 22 – Revocation of permit

22.—(1) The Minister may revoke an employment permit if—

- (a) in the opinion of the Minister, the holder of the permit or the employer or connected person has not complied with section 25,
- (b) the holder of the permit or the employer, connected person or relevant person has been convicted of an offence under this Act; the Immigration Act 2004 or an enactment specified in Schedule 1,
- (c) in the opinion of the Minister, it was obtained by fraud or misrepresentation,
- (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,
- (e) *the foreign national has not taken up the specified employment within a prescribed period of the start date indicated on the employment permit*
- (f) in the case of an employment permit granted in respect of the purpose specified in section 4(2)(c), in the opinion of the Minister the connected person or the foreign employer has failed to—
  - (i) provide appropriate accommodation and board (or either of them) for the foreign national while they are in the State to perform duties for, or participate in a training programme provided by, the connected person, or
  - (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 they require medical treatment for illness or injury during such period,
- (g) in the case of an employment permit granted in respect of the purpose specified in section 4(2)(d), in the opinion of the Minister the contractor has failed to—
  - (i) provide appropriate accommodation and board (or either of them) for the foreign national while they are in the State to perform the duties arising from the contract service agreement concerned, or
  - (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 they require medical treatment for illness or injury during such period,
- (h) the foreign national is not, in the opinion of the Minister—

- (i) employed in the employment specified, in accordance with section 13, in the employment permit,
- (ii) employed by the person referred to in section 12(2)(i), or, as the case may be, the contractor referred to in section 12(2)(ii), or
- (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 12(2)(iii),

(i) in the opinion of the Minister, the remuneration paid, insofar as it relates to the salary referred to in paragraphs (a)(i) and (b)(i) of section 1A(1), to the foreign national is less than the national minimum hourly rate of pay or the hourly rate referred to in section 17(21)(b),

(j) without prejudice to subparagraph (1)(i), in the opinion of the Minister, the remuneration paid to the foreign national, during the period for which the employment permit has been in force, is less than the remuneration stated *or approved by the Minister on receipt of a notification of a change to the original remuneration under circumstances prescribed in Regulations*, pursuant to section 13(2), in the employment permit, or the deductions referred to in section 13(2), stated pursuant to that section in the employment permit, were different to the deductions made by the employer,

(k) the statement of earnings, referred to in section 6, or section 7, does not comply with the requirements of section 6(1)(c), or, as the case may be, section 7(1)(b),

(l) the employment permit was granted by virtue of an administrative error, or

(m) in the opinion of the Minister, it is in the public interest to do so.

(2) Where the Minister decides to revoke an employment permit, they shall notify in writing the holder of the permit and the employer or, as the case may be, the connected person of—

- (a) the decision,
- (b) the reasons for it, and
- (c) the fact that the holder or the employer or both of them, or, as the case may be, the holder or the connected person, or both of them, may in accordance with regulations under section 39(3), and within a period to be prescribed from the date of notification of the decision, submit the decision to the Minister for review under section 23.

(3) Subject to subsection (5) a decision to revoke an employment permit under this section shall, if such decision has not been submitted to the Minister for review under

section 23, in accordance with that section, take effect on the expiration of the period mentioned in subsection (2)(c).

(4) Where such a decision is submitted to the Minister for review under section 23, in accordance with that section, the revocation of the employment permit concerned shall, subject to subsection (5), not take effect until the review is determined (and the decision is confirmed on that review) or the submission of the decision for review is withdrawn.

(5) Where, in the opinion of the Minister, the circumstances concerning the revocation of an employment permit are such that, having regard to the public interest, it is appropriate that the decision to revoke the permit should take effect immediately and they state that opinion in the notification of the decision under subsection (2), then the revocation shall take effect immediately on that notification.

#### Explanatory note

This section provides for revocation of an employment permit in certain circumstances and for a review of that revocation. *It has been amended to allow for the revocation of an employment permit where the foreign national has not taken up the employment within a prescribed period.*



## Head 23 – Review of revocation

**23.**—(1) A decision of the Minister to revoke an employment permit, may, in accordance with regulations under section 39(3), be submitted by the holder of the permit, the employer or the connected person to the Minister for review under this section.

(2) Such a submission of a decision for review shall be made *within a period to be prescribed* from the date the decision is notified under section 22 to the person.

(3) A review under this section of a decision shall be carried out by an officer of the Minister appointed by the Minister for the purpose; the person so appointed—

- (a) shall not be the person who made the decision, and
- (b) shall be of a grade senior to the grade of the person who made the decision.

(4) The person so appointed, having afforded the person who submitted the decision for review an opportunity to make representations in writing in relation to the matter, may—

- (a) confirm the decision (and, if the person does so, shall notify in writing the second-mentioned person of the reasons for the confirmation), or
- (b) cancel the decision.

(5) If a decision to revoke an employment permit—

- (a) has, by virtue of section 22(5), taken effect on the notification of the decision to the holder, and
- (b) is, on a review under this section, cancelled,

then, in determining the period for which the employment permit shall remain in force, the period for which the permit ceased to be in force by virtue of section 22(5) shall be disregarded.

### Explanatory note

The purpose is to reinstate Section 17 of the Employment Permits Act 2006 as amended. The section provides for the process of revocation.

## **Head 24 – Prohibition on Forgery, fraudulent alteration or use**

**24.**—(1) 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.

(2) A person who contravenes subsection (1) is guilty of an offence.

### Explanatory note

The purpose is to reinstate Section 18 of the Employment Permits Act 2006 as amended. The section prohibits and creates an offence for forgery or fraudulent alteration.

## Head 25 – Prohibition on certain use

**25.**—(1) Where an employment permit has been granted the employer or the connected person shall not purport to—

- (a) transfer the employment permit to another person,
- (b) use the employment permit to employ a foreign national other than the foreign national to whom it has been granted, or
- (c) use the employment permit in respect of an employment other than the employment in respect of which it has been granted.

(2) The holder of an employment permit shall not purport to—

- (a) transfer the employment permit to another foreign national,
- (b) allow another foreign national to use the employment permit to enter into the service of an employer in the State or be in employment in the State, or
- (c) use the employment permit to enter into a contract of employment in respect of an employment *other than the employment in respect of which it has been granted, unless that contract results from a promotion which uses the same qualifications or experience and is between the foreign national and the same employer as the original contract was.*

(3) A person who contravenes subsection (1) or (2) is guilty of an offence.

### Explanatory note

This section 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. *It has been amended to allow for promotion and internal transfer in the same company.*

## Head 26 – Renewal of permit

**26.**—(1) Subject to subsection (1A), the Minister may from time to time, renew an employment permit in accordance with this section.

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

(a) section 4(2)(c) in respect of an employment referred to in section 4(2)(c)(ii), and

(b) section 4(2)(h),

shall not be renewed.

(2) An application for the renewal of an employment permit shall be made either—

(a) within such period before the expiry of the period for which it has been granted (or for which it has last been renewed under this section) as may be prescribed, or

(b) within such period after the expiry of that period as may be prescribed.

(3) An application for the renewal of an employment permit—

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

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

(i) in accordance with section 9(2)(a), in respect of an employment referred to in subsection (6) shall be made by the contractor concerned,

(ii) in accordance with section 9(2)(b), in respect of an employment referred to in subsection (5) shall be made by the connected person concerned.

(4) The period for which an employment permit may be renewed shall, subject to subsections (5), (6), (15)(b), (16) and (17), not exceed *a prescribed period*.

(5) In the case of the renewal of an employment permit granted in respect of an employment referred to in section 4(2)(c)(i), where the Minister is satisfied that the duties to be carried out for the connected person will not be completed on the date of the expiration of the permit that is the subject of the application for renewal, the Minister may, subject to subsection (7), renew the permit in accordance with this section, for the period referred to in subsection (4) or where the remaining period in which those duties are to be completed is less than the period referred to in subsection (4), for the lesser period.

(6) In the case of the renewal of an employment permit granted in respect of the purpose referred to in section 3A(2)(e), where the Minister 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, the Minister may, subject to subsection (7), renew the permit, in accordance with this section, for the period referred to in subsection (4) or where the remaining period in which those duties are to be completed is less than the period referred to in subsection (4), for the lesser period.

(7) The period for which an employment permit referred to in subsections (5) and (6) shall be in force whether granted or renewed, shall not exceed *a prescribed period* from the date on which it was first granted.

(8) The person making the application for the renewal of an employment permit shall—

- (a) provide, with the application for renewal, information, documents and evidence as may be specified in regulations under section 39 in respect of the renewal of an employment permit, and
- (b) without prejudice to the generality of paragraph (a), in the case of an application for the renewal of an employment permit referred to in subsection (5) or, as the case may be, subsection (6), provide, with the application for renewal, information, documents and evidence as may be specified in regulations under section 39, in respect of the payment of the additional payment referred to in section 6(2) or 6(3) or, as the case may be, section 7(2) or 7(3), during the period for which the employment permit, that is the subject of the application for renewal, has been granted.

(9) An application for a renewal of an employment permit shall be accompanied by the prescribed fee.

(10) The applicant for a renewal of an employment permit shall furnish to the Minister—

- (a) such information (being information of a similar nature to that referred to in section 11) as the Minister specifies in a direction in writing given by him or her for the purposes of this subsection, and
- (b) if the Minister requests such a statement or evidence, a statement or evidence, in such form as the Minister specifies, confirming that the applicant has complied with the terms of the employment permit and the provisions of this Act during the period ending on the making of the application for renewal.

(11) The Minister shall publish, in such manner as they consider appropriate, any direction given under *subsection (10)(a)*.

(12) Sections 14, 21 and 18 shall, with the modifications specified in *subsection (13)*, apply to the grant of, or the refusal to grant, a renewal of an employment permit as they apply to the grant of, or the refusal to grant, an employment permit.

(13) The modifications mentioned in *subsection (12)* are—

(a) in respect of section 14, construing references to—

- (i) the date of the application for an employment permit as references to the date of the application for the renewal of an employment permit, and
- (ii) the person who made the offer of employment as references to the employer of the foreign national in respect of whom the application for the renewal of an employment permit is made,

(b) in Section 18 the substitution of references to a decision of the Minister to refuse to grant a renewal of an employment permit for references to a decision of the Minister to refuse to grant an employment permit, and

(c) any other necessary modifications.

(14) Notwithstanding the application of Section 23 to the renewal of an employment permit, the Minister may, notwithstanding section 27, renew an employment permit in respect of an employment that—

- (a) at the date of the grant of such permit was an employment, specified in regulations under section 19, in respect of which an employment permit may have been granted or fell within a category of employment specified in regulations made under section 19 for which an employment permit may have been granted, and
- (b) at the date of the application for the renewal, is an employment, or falls within a category of employment, specified in regulations made under section 19 as an employment or category of employment for which an employment permit shall not be granted.

(15) Where an application is made for the renewal of an employment permit granted in respect of the purpose specified in paragraph (b) or (c) of section 4(2) and section 14(2) applied in respect of such grant and, on the date the application for such renewal was made, 50 per cent or more of the employees of the employer or, as the case may be, the connected person, are not nationals referred to in section 14(2), the Minister shall not grant the renewal of the permit concerned unless—

- (a) an enterprise development agency has made a recommendation referred to in

section 5 in respect of that application, and

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

and where the employment permit concerned is renewed, the period for which the employment permit is renewed shall not exceed *a period to be prescribed*.

(16) Where a subsequent application is made for the renewal of an employment permit that was last renewed in accordance with subsection (11)(b), the Minister shall not renew the employment permit unless 50 per cent or more of the employees of the employer, or, as the case may be, the connected person, are nationals referred to in section 14(2) and where, pursuant to that subsequent application, the employment permit concerned is renewed, the period for which it is renewed shall not exceed *a period to be prescribed*.

(17) Notwithstanding the application, under subsection (8), of section 14 to the renewal of an employment permit, where—

- (a) an application is made to renew an employment permit that was granted for a purpose referred to in paragraph section 4(2),
- (b) on the day the application to renew the employment permit is made the holder in respect of whom that application is made is the sole employee of the employer concerned, and
- (c) at the time the application to grant the employment permit was made, section 14(3) applied in respect of the grant of that employment permit,

section 14 shall not apply to that application to renew that employment permit.

(18) Where, on or after the coming into operation of this Act, an application is made to renew an employment permit that was in force immediately before those provisions came into operation, and—

- (a) where that employment permit is renewed, it shall be renewed in respect of a purpose referred to in section 4(2) and the Minister shall determine the purpose for which that employment permit is to be renewed having had regard to the employment in respect of which the employment permit that is the subject of the renewal had been granted and where appropriate, the foreign national concerned, and
- (b) in the case of an employment permit that the Minister has determined shall be renewed for the purpose referred to in section 4(2)(b), but the

remuneration to be paid in respect of the employment that is the subject of the application for renewal is less than the remuneration specified in regulations under section 19 for that employment or the category of employment into which the employment falls, such lesser remuneration shall not, notwithstanding section 27(7)(d), operate to prevent the Minister from—

- (i) renewing that employment permit in respect of such purpose, or
- (ii) renewing that employment permit pursuant to any subsequent application for renewal.

#### Explanatory note

This section provides for the renewal of employment permits, including specific requirements for different purposes, and in the case of enterprise development recommendations and the application of section 15. It sets out who may apply for renewal, allows for the prescription of documents and information, exempts renewals from the Labour Market Needs Test and the ineligible list, and provides for a renewal window and for the prescription of fees.

It also provides for transitions as necessary.



## Head 27 – Refusal to renew employment permit

27—(1) The Minister may refuse to renew an employment permit if—

- (a) the applicant for the permit has failed to provide any information required by or under this Act in respect of the application for the permit or has failed to provide any information, documents or evidence required by or under this Act in respect of the application within the period specified in regulations under section 39,
- (b) the applicant has failed to furnish the prescribed fee with the application,
- (d) in the opinion of the Minister, the renewal of the permit would be manifestly inconsistent with economic policy for the time being of the Government,
- (f) in the opinion of the Minister, it is in the public interest to do so,
- (g) a material misrepresentation in respect of the initial application or the renewal application has been made by the applicant,
- (h) a forged or fraudulent document has been submitted in respect of the initial or the renewal application,
- (i) the foreign national in respect of whom the application is made, at the time the application is made, is present in the State without the permission of the Minister for Justice and Equality, or
- (j) the foreign national has been convicted of an offence under this Act, the Immigration Act 2004 or an enactment specified in Schedule 1, during the period of 5 years ending on the date of the application,

(2) The Minister may refuse to renew an employment permit where the application is in respect of an employment that, having regard to the different purposes referred to in section 4(2), does not fall within the purpose in respect of which the application was made or is an employment that is specified in regulations under section 19 in respect of a different purpose.

(3) The Minister may refuse to grant an employment permit if, in the opinion of the Minister, the connected person or the foreign employer, or, as the case may be, the contractor, has not, or both of them have not, made appropriate arrangements—

- (h) to provide appropriate accommodation and board (or either of them) for the foreign national during the period in which he or she is in the State to carry out duties for the connected person, or
- (ii) to provide appropriate health insurance, in respect of the foreign national should he or she require medical treatment for illness or injury during the period for which he or she will be in the State pursuant to the employment permit.

- (4) The Minister may refuse to renew an employment permit if the Minister is satisfied that the health insurance provided by the person referred to in paragraph (b)(iii)(II) of section 1A(1) does not have the same, or similar, effect as the health insurance provided by a health insurer.
- (5) The Minister may refuse to renew the employment permit if he or she is satisfied that the carrying out of the duties by the foreign national is not appropriate to the requirements of the connected person.

- (6) The Minister may refuse to renew an employment permit granted for the purpose specified in section 4(2)(g) where the Minister is satisfied that—

(i) the exchange agreement concerned does not apply to the foreign national in respect of whom the application is made, or, without prejudice to subsection (7)(d), the employment *or duties* in respect of which the application is made, or

(ii) without prejudice to subsection (7)(d), the employment *or duties* in respect of which the application is made does not come within the exchange agreement.

- (7) the Minister may refuse to renew an employment permit if—

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

(i) employed in the employment specified, in accordance with section 13(2), in the employment permit, *or in an employment with the same employer achieved through promotion or internal transfer which utilizes the same qualifications or skills as the original specified employment,*

(ii) employed by the person referred to in section 12(2)(i), or, as the case may be, the contractor referred to in section 12(2)(ii), or

(iii) employed by the foreign employer or is not carrying out duties for the connected person referred to in section 12(2)(iii),

- (b) in the opinion of the Minister, the remuneration paid to the foreign national, during the period for which the employment permit has been in force, is less than the remuneration stated, pursuant to section 13(2), in the employment permit or the deductions referred to in section 13(2), and stated, pursuant to that section, in the employment permit, were different to the deductions made by the employer,

- (c) 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 their employment,

- (d) without prejudice to the generality of the foregoing, the granting of the application to renew the permit would contravene regulations under section 19 in so far as those regulations make provision for, pursuant to section 19(2), the renewal of an employment permit.

*(8) Notwithstanding (7)(b) where the permission of the Minister has been, at the time that the variation takes effect, notified to and granted for a change to the remuneration to be paid to the foreign national, for a prescribed reason, the employment permit may be renewed.*

(9) Where the Minister refuses to renew an employment permit, the Minister shall notify, in writing, the applicant of the decision and the reasons for it.

(10) Where an application for the renewal of an employment permit is refused or withdrawn, the Minister shall return to *the person who paid the fee* or a person referred to in subsection (11) such portion, as may be prescribed, of the fee that has been submitted in respect of the application.

(11) *The person who paid the fee* referred to in subsection (10) may in the application made by him or her nominate a person to whom the portion of the fee is to be returned.

#### Explanatory note

*This section provides for the refusal of a renewal application. Renewals are subject to fewer refusal reasons – in addition to provision of required information and general refusal reasons relating to fraud, economic policy and the public interest, it provides employment, remuneration, and immigration status to be considered. The section also provides for refunds in case of withdrawal or refusal.*

## **Head 28– Redundancy of critical skills employment permit holder**

**28.-** (1) This section applies to a foreign national to whom an employment permit in respect of the purpose referred to in section 4(2)(a) has been granted and who is dismissed by reason of redundancy from the employment concerned during the period for which the employment permit is in force.

(2) Without prejudice to section 34, a foreign national to whom this section applies shall notify the Minister of the date of dismissal within a prescribed period of that date of dismissal and the notification shall be in such form as may be specified in regulations under section 39 and shall include the information and documents specified in section 30.

(3) Where the Minister is satisfied that the foreign national was dismissed by reason of redundancy from the employment for which the employment permit referred to in subsection (1) was granted, an application for an employment permit may be made under, and in accordance with the requirements of, section 9 in respect of a foreign national to whom this section applies, within 6 months of the date of dismissal of that foreign national, and such application shall be for an employment permit in respect of the purpose referred to in section 4(2)(a) for—

- (a) an employment that is the same type of employment for which the employment permit referred to in subsection (1) was granted, or
- (b) an employment for a different employment to that for which the employment permit referred to in subsection (1) was granted that is specified in regulations under section 19, in respect of the purpose referred to in subsection (1), as an employment for which an employment permit may be granted.

(4) Where—

- (a) on the date an application referred to in subsection (3) is made, the type of employment referred to in subsection (3)(a)—
  - (i) is no longer specified in regulations under section 19 as an employment, or no longer falls within a category of employment specified in those regulations, for which an employment permit may be granted in respect of the purpose referred to in subsection (1), or
  - (ii) is specified in regulations under section 19 as an employment, or falls within a category of employment, in respect of which an employment permit shall not be granted,

and

- (b) the Minister is satisfied that the dismissal by the employer of the foreign

national from the employment in respect of which the employment permit referred to in subsection (1) was granted, was a dismissal by reason of redundancy,

the application may be made for that employment by a foreign national to whom this section applies notwithstanding that the employment is no longer an employment, or falls within a category of employment, for which an employment permit may be granted or is an employment, or falls within a category of employment, specified in regulations under section 19 for which an employment permit shall not be granted.

(5) Notwithstanding section 17(17), the Minister may, subject to subsection (6), grant, under section 12, an employment permit for the employment referred to in subsection (4) pursuant to an application referred to in subsection (4) that is made within the period referred to in subsection (3) and for the avoidance of doubt—

- (a) section 17(17) shall apply in respect of any other provision or requirement, specified in regulations under section 19 that is required to be satisfied, and
- (b) section 19 shall, in respect of such grant under section 12, apply in respect of any other provision or requirement specified in regulations under section 19 that is required to be satisfied.

(6) Without prejudice to subsection (3) or (4), where an application referred to in subsection (3) or (4) is made by a foreign national who has made a notification to the Minister under this section, the Minister shall not grant the employment permit concerned unless the Minister is satisfied that the foreign national was dismissed by reason of redundancy from the employment in respect of which the employment permit referred to in subsection (1) was granted.

(7) Having regard to the consideration, under section 16, of an application referred to in subsection (4)—

- (a) the provisions of any regulations referred to in section 16(3), other than the provisions of such regulations referred to in subsection (4), shall continue to apply in relation to the application concerned, and
- (b) section 16(4) shall apply in respect of a provision or requirement of regulations under section 19, other than the provision referred to in subsection (4).

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

(9) Without prejudice to section 30, a foreign national who makes an application referred to in subsection (3) or (4) shall provide the Minister with any information or documents that the Minister may require to be satisfied that the dismissal of the foreign national was a dismissal by reason of redundancy.

### Explanatory note

This section provides for the case of a Critical Skills Employment Permit holder who is made redundant. It allows a prescribed period for a job search, subject to certain conditions, and waives the application of the ineligible list and any change to the Critical Skills List where this arises.

## Head 29 – Redundancy of General Employment Permit holder

**29.-** (1) This section applies to a foreign national to whom an employment permit in respect of the purpose referred to in section 4(2)(b) has been granted and who is dismissed by reason of redundancy from the employment concerned during the period for which the employment permit is in force.

(2) Without prejudice to section 34, a foreign national to whom this section applies shall notify the Minister of the date of dismissal within a prescribed period of that date of dismissal and the notification shall be in such form as may be specified in regulations under section 39 and include the information and documents specified in section 30.

(3) Where the Minister is satisfied that the foreign national was dismissed by reason of redundancy from the employment for which the employment permit referred to in subsection (1) was granted, an application for an employment permit may be made under, and in accordance with the requirements of, section 9 in respect of a foreign national to whom this section applies within 6 months of the date of dismissal of that foreign national and such application shall be for an employment permit in respect of the purpose referred to in section 4(2)(b) 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—
  - (i) is specified in regulations under section 19, in respect of the purpose referred to in subsection (1), as an employment for which an employment permit may be granted, or
  - (ii) is not an employment that is specified in such regulations as an employment for which an employment permit shall not be granted or falls within a category of employment for which an employment permit shall not be granted.

(4) Where—

- (a) at the time an application referred to in subsection (3) is made the type of employment referred to in subsection (3)(a) is specified in regulations under section 19 as an employment, or falls within a category of employment, in respect of which an employment permit shall not be granted, and
- (b) the Minister is satisfied that the dismissal by the employer of the foreign national from the employment in respect of which the employment permit referred to in

subsection (1) was granted was a dismissal by reason of redundancy,

the application may be made in respect of that employment by a foreign national to whom this section applies notwithstanding that the employment is an employment, or falls within a category of employment, that is specified in regulations under section 19 as an employment, or category of employment, for which an employment permit shall not be granted.

(5) Notwithstanding section 17(17), the Minister may, subject to subsection (6), grant, under section 12, an employment permit for an employment referred to in subsection (4) pursuant to an application referred to in subsection (4) that is made within the period referred to in subsection (3) and for the avoidance of doubt—

- (a) section 17(17) shall apply to any other provision or requirement specified in regulations under section 19, that is required to be satisfied, and
- (b) section 19 shall, in respect of such grant under section 12, apply in respect of any other provision or requirement specified in regulations under section 19 that is required to be satisfied.

(6) Without prejudice to subsection (3) or (4), where an application referred to in subsection (3) or (4) is made by a foreign national who has made a notification to the Minister under this section, the Minister shall not grant the employment permit concerned unless the Minister is satisfied that the foreign national was dismissed by reason of redundancy from the employment in respect of which the employment permit referred to in subsection (1) was granted.

(7) Having regard to the consideration, under section 16, of an application referred to in subsection (4)—

- (a) the provisions of any regulations referred to in section 16(3), other than the provisions of such regulations referred to in subsection (4), shall continue to apply in relation to the application concerned, and
- (b) section 16(4) shall apply in respect of a provision or requirement of regulations under section 19, other than the provision referred to in subsection (4).

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

(9) Without prejudice to section 30, a foreign national who makes an application referred to in subsection (3) or (4) shall provide the Minister with any information or documents that the Minister may require to be satisfied that the dismissal of the foreign national was a dismissal by reason of redundancy.



### Explanatory note

This section provides for redundancy in the case of a General Employment Permit holder, allowing a prescribed period for job search, subject to certain conditions. It waives the application of the ineligible list for the occupation, where this arises.

### **Head 30 – Information, documents, supplementary provisions relating to redundancy**

30.- (1) The information and documents to be provided to the Minister with the notification referred to in section 28(2) and 29(2) are—

- (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 39 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 surrendered the employment permit in accordance with section 34.

(2) Where—

- (a) an employment permit is in force immediately before the coming into operation of this Act,
- (b) following the coming into operation of those sections, a foreign national to whom such permit was granted is dismissed by reason of redundancy from the employment in respect of which the employment permit was granted, and
- (c) the Minister is satisfied that—
  - (i) the dismissal is a dismissal by reason of redundancy, and
  - (ii) having regard to the employment in respect of which the employment permit referred to in paragraph (a) has been granted, that employment permit would, had it been granted after the coming into operation of this Act

the foreign national to whom the employment permit referred to in paragraph (a) was granted may be treated, for the purposes of section 28 or as the case may be section 29, as a foreign national to whom section 28 or, as the case may be, section 29 applies.

#### Explanatory note

This section provides for information and documents in case of dismissal by redundancy, and transitions as necessary.

### **Head 31 – Order under sections 3 and 4 of Immigration Act 1999**

**31.**—(1) If an order under section 3 or 4 of the Immigration Act 1999 is made in relation to a foreign national in respect of whom an employment permit has been granted, the permit shall, subject to subsection (2), cease to be in force.

(2) If the order concerned under section 3 or 4 of the Immigration Act 1999 is revoked or otherwise ceases to be in force, the employment permit referred to in subsection (1) shall, on that revocation or cesser, be revived in force.

(3) If an employment permit is so revived in force, in determining the period for which the permit shall remain in force the period for which the permit ceased to be in force by virtue of subsection (1) shall be disregarded

#### Explanatory note

The purpose is to reinstate Section 21 of the Employment Permits Act 2006 as amended. The section allows for revocation of permit (and reversal of same) where an order is made by the Minister for Justice and Equality in relation to a foreign national.

## Head 32 – Authorised officers

32.—(1) The Minister may appoint in writing such and so many of their officers to be authorised officers for the purposes of all or any of the provisions of this Act and such appointment may be specified to be for a fixed period.

(2) Every authorised officer appointed under this section shall be furnished with a warrant of appointment and shall, when exercising any power conferred on them by this section, if requested by a person affected, produce the warrant of appointment or a copy of it to that person.

(3) An appointment under this section as an authorised officer shall cease—

- (a) if the Minister revokes the appointment,
- (b) if the appointment is for a fixed period, on the expiry of that period, or
- (c) if the person appointed ceases to be an officer of the Minister.

(4) An authorised officer may, for the purpose of obtaining any information which may be required in relation to a matter under investigation under this Act—

- (a) at all reasonable times enter any premises, place or vehicle, on, at or in which there are grounds to believe that any trade or business or any activity in connection with a trade or business is being, or has been, carried on, or that records relating to such trade, business or activity are kept, and search and inspect the premises, place or vehicle and any records that are on, at or in such premises, place or vehicle,
- (b) secure for later inspection any, or any part of any, premises or place or any vehicle on, at or in which such records are kept or there are reasonable grounds for believing that such records are kept,
- (c) require any person who carries on such trade, business or activity or any person employed in respect of such trade, business or activity to produce to him or her such records and where such records are kept in a non-legible form to reproduce them in a legible form or to give to him or her any information as the authorised officer may reasonably require in relation to any entries in such records,
- (d) inspect and take copies of or extracts from any such records, files, papers or electronic information system on, at or in the premises, place or vehicle, including, in the case of information in a non-legible form, copies of or extracts from such information in a permanent legible form,
- (e) remove and retain such records for such periods as may be reasonable for future examination, subject to a warrant being issued for that purpose by the District Court,
- (f) require any such person to give to the authorised officer any information which the authorised officer may reasonably require in respect of such trade, business or activity

or in respect of the persons carrying on such trade, business or activity or employed in connection with such trade, business or activity,

- (g) require any such person to give to the authorised officer any other information which the authorised officer may reasonably require in respect of such trade, business or activity,
- (h) require any person by or on whose behalf data equipment is or has been used or any person having charge of, or otherwise concerned with the operation of the data equipment or any associated apparatus or material, to afford the authorised officer all reasonable assistance in relation to it and assist in the retrieval of information connected with the operation of such data equipment, apparatus or material,
- (i) summon, at any reasonable time, any other person employed in connection with such trade, business or activity to give to the authorised officer any information which the authorised officer may reasonably require in relation to such trade, business or activity and to produce to the authorised officer any records which are in the control of that other person,
- (j) have photographs taken of anything on, at or in the premises, place or vehicle and remove the photographs from the place, and
- (k) inspect any vehicle relating to such trade, business or activity.

(5) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling unless they have obtained a warrant from the District Court under subsection (8) authorising such entry.

(6) Where an authorised officer, in the exercise of their powers under this section, is prevented from entering any premises, place or vehicle, an application may be made for a warrant under subsection (8) authorising such entry.

(7) An authorised officer appointed under this section, when exercising any powers conferred on an authorised officer by this Act, may be accompanied by such other authorised officers or members of the Garda Síochána or both as they consider necessary.

(8) Without prejudice to the powers conferred on an authorised officer by or under any provision of this section, if a judge of the District Court is satisfied on the sworn information of an authorised officer that there are reasonable grounds for suspecting that there is information required by an authorised officer under this section held on or at any, or any part of any, premises or place or in any vehicle, the judge may issue a warrant authorising an authorised officer, accompanied by such other authorised officers and members of the Garda Síochána as provided for in subsection (7), at any time or times within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter the premises, place or vehicle, if need be by reasonable force, and exercise all or any of the powers conferred on an authorised officer under this section.

(9) A person shall comply with any request or requirement of an authorised officer under this Act.

(10) 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,
- is guilty of an offence.

Explanatory note

The purpose is to reinstate Section 22 of the Employment Permits Act 2006 as amended. The section provides for authorised officers for the purposes of this Act and establishes an offence in relation to non-compliance with such officers.

### **Head 33 – Prohibition on deduction, retention of documents**

**33.**—(1) The employer shall not make any deductions from the remuneration of, or seek to recover from, the holder of the employment permit concerned any charge, fee or expense arising out of or concerning one or more of the following:

- (a) the application for the employment permit or a renewal of the permit under section 26 or any matter relating to or concerning such an application or the grant or renewal of the permit;
- (b) the recruitment of the holder for the employment in respect of which the application was made; or
- (c) any amount previously paid to the holder in respect of travelling expenses incurred by the holder in connection with taking up the employment in the State.

(2) Neither a person referred to in subsection (1) nor a person acting on their behalf shall keep any personal document belonging to a holder referred to in that subsection.

(3) A connected person shall not seek to recover from the holder of the employment permit any charge, fee or expense arising out of the application for the employment permit or the renewal of the permit under section 26 or any matter relating to or concerning such an application or the grant or renewal of the permit.

(4) A person who contravenes subsection (1), (2) or (3) is guilty of an offence.

(5) In this section “personal document” includes a passport, a driving licence, an identity card, a document relating to any account held with a financial institution, a document relating to the skills, qualifications or experience of the foreign national and travel documents.

#### Explanatory note

The purpose is to reinstate Section 23 of the Employment Permits Act 2006 as amended. The section prohibits deductions relating to the grant of a permit, and the holding of personal documents of the foreign national and establishes offence for such cases.

## Head 34 – Surrender of employment permit

**34.**—(1) If the employment of a foreign national pursuant to an employment permit is terminated by the employer or the holder of the permit or otherwise, for whatever reason, ceases, there shall be surrendered to the Minister, within a *period to be prescribed* from the date of termination or cessation—

(a) by the holder — the original of the permit, and

(b) by the employer — the copy of the permit.

(2) In the case of an employment permit granted for the purpose referred to in section 4(2)(c), if—

(a) the employment of the foreign national is terminated by the foreign employer or the holder of the permit, or

(b) the foreign national ceases, for whatever reason, to carry out duties for, or participate in a training programme provided by, the connected person,

there shall be surrendered to the Minister within *the prescribed period* from the date of termination or cessation—

(i) by the holder — the original of the permit, and

(ii) by the connected person — the copy of the permit.

(3) A person who fails to comply with subsection (1) or (2) is guilty of an offence.

(4) It shall be a defence for a person charged with an offence under subsection (3) to show that they took all reasonable steps to surrender the original or, as the case may be, copy of the employment permit concerned to the Minister *within the prescribed period* from the date of cessation or termination of the employment concerned.

### Explanatory note

The purpose is to reinstate Section 24 of the Employment Permits Act 2006 as amended. The section requires the surrender of an employment permit on the cessation of the employment *and is amended to prescribe the period in which the permit must be returned.*



## **Head 35 – Provision of false or misleading information**

**35.**—A person who furnishes to the Minister, on an application under section 9 or 26, information that is false or misleading in a material respect knowing that it is so false or misleading or being reckless as to whether it is so false or misleading is guilty of an offence.

### Explanatory note

The purpose is to reinstate Section 25 of the Employment Permits Act 2006 as amended. The section establishes an offence relating to the provision of misleading information.

## Head 36 – Prohibition on penalisation

**36.**—(1) In this section “penalisation” includes any act or omission by an employer or a person acting on behalf of an employer that affects, to their or her detriment, an employee with respect to any term or condition of their or her employment.

(2) Without prejudice to the generality of subsection (1), “penalisation” in this section includes—

- (a) suspension, lay-off or dismissal (including a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2005), or the threat of suspension, lay-off or dismissal,
- (b) demotion or loss of opportunity for promotion,
- (c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- (d) imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty), and
- (e) coercion or intimidation.

(3) 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 or this Act, or
- (c) giving notice of their or her intention to do any of the things referred to in the preceding paragraphs.

(4) **Schedule 2** has effect in relation to an alleged contravention of subsection (3) and matters consequential thereon and includes amendments of other enactments.

(5) If a penalisation of an employee, in contravention of subsection (3), constitutes a dismissal of the employee within the meaning of the Unfair Dismissals Acts 1977 to 2005, relief may not be granted to the employee in respect of that penalisation both under **Schedule 2** and under those Acts.

### Explanatory note

The purpose is to reinstate Section 26 of the Employment Permits Act 2006 as amended, which prohibits penalisation.

## Head 37 – Retention of records

37.—(1) The employer shall keep, in relation to the foreign national to whom an employment permit has been granted, a record of the employment concerned, the duration of the employment and particulars of the permit and that record shall be kept for the period specified in subsection (5).

(2) The employer shall—

- (a) keep and have available for inspection by an authorised officer exercising their powers under this Act such books and records, including accounts, as may be prescribed concerning the employment of the foreign national to whom the employment permit concerned has been granted at the premises or place of business of that person in or at which the employment is carried out in the State, and
- (b) furnish, when requested by the Minister to do so, information to the Minister concerning the books and records referred to in paragraph (a).

(3) The records that may be prescribed for the purposes of subsection (2)(a) include—

- (a) records concerning the remuneration paid during a specified period to the relevant foreign national,
- (b) records concerning the trade or business to which the employment referred to in that subsection relates, and
- (c) if one or more foreign nationals are employed by the employer concerned pursuant to an employment permit, records of the number for the time being, if any, of those foreign nationals who are nationals of—
  - (i) a Member State of the EEA,
  - (ii) a *UK national or*
  - (iii) a state other than a Member State of the European Union or a Member State of the EEA.

(4) The period referred to in subsection (1) is—

- (a) subject to paragraph (b), 5 years, or
- (b) if the relevant foreign national remains in the employment of the employer for a period exceeding 5 years from the date of the grant of the permit, a period equal to the duration of the period for which the foreign national remains in such employment.

(5) A connected person shall keep, in relation to the foreign national to whom an employment permit for the purpose referred to in section 4(2)(c) has been granted,

a record of the employment concerned, a record of the duties carried out by the foreign national or the training programme concerned, the duration of the employment and particulars of the permit and that record shall be kept for the period specified in subsection (4).

(6) Where the connected person makes, pursuant to section 4(2)(c), the payment for board and accommodation, or either of them, or health insurance, the connected person shall—

- (a) keep and have available for inspection by an authorised officer exercising their powers under this Act the records, specified in subsection (7) in respect of the foreign national to whom the employment permit referred to in subsection (5) has been granted at the premises or place of business of that connected person in or at which the duties or training programme is carried out in the State, and
- (b) furnish, when requested by the Minister to do so, information to the Minister concerning the records referred to in paragraph (a).

(7) The records referred to in subsection (6) are—

- (a) records relating to the payment for—
  - (i) board and accommodation, or either of them, and
  - (ii) health insurance, and
- (b) if one or more foreign nationals are, pursuant to an employment permit granted for the purpose referred to in section 4(2)(c), carrying out duties for, or participating in a training programme provided by, the connected person, records of the number for the time being, if any, of those foreign nationals who are nationals of a Member State referred to in subsection (4)(c)(i) or (ii), or a state referred to in subsection (4)(c)(iii).

(9) A person who fails to comply with subsection (1), (3), (5) or (6) is guilty of an offence.

#### Explanatory note

The purpose is to reinstate Section 27 of the Employment Permits Act 2006 as amended.

This section provides for record keeping by employers and *it now includes UK nationals for the purposes of record keeping.*

## Head 38 – Register of employment permits

**38.**—(1)The Minister shall establish and maintain a register of employment permits granted under this Act and shall cause to be entered in such register—

(a) the name of—

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

(ii) the employer or—

(I) in the case of an employment permit granted in respect of the purpose referred to in section 4(2)(c), the connected person and the foreign employer, or

(II) in the case of an employment permit granted in respect of the purpose referred to in section 4(2)(d), the contractor and the relevant person,

(b) the employment or economic sector in respect of which each employment permit has been granted,

(c) the address of—

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

(ii) the employer or—

(I) in the case of an employment permit granted in respect of the purpose referred to in section 4(2)(c), the connected person and the foreign employer, or

(II) in the case of an employment permit granted in respect of the purpose referred to in section 4(2)(d), the contractor and the relevant person,

and

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

(d) the duration of each employment permit and its commencement and expiry dates,

(e) in the case of a renewal of an employment permit under section 26, the fact of its

renewal, the period for which it has been renewed and the commencement and expiry dates of that period,

(f) in the case of a revocation of an employment permit under section 22, the fact of its being revoked, the date and reason for its revocation and, if a review under section 23 occurs, the fact of the decision being reviewed and the outcome of the review, and

(g) if the employment permit is surrendered, the date and reason for such surrender.

*(2) Any register, kept under any former enactment relating to employment permits, shall be deemed a register to be kept under the corresponding provision of this Act.*

#### Explanatory note

The purpose is to reinstate Section 28 of the EP Act 2006 as amended. The section provides for register of permits, and information that shall be recorded. *A savings clause has been inserted.*

## Head 39 – Regulations

**39.**—(1) The Minister shall make regulations providing for the procedure relating to the making of an application for an employment permit or the renewal of an employment permit and the grant or renewal of an employment permit on foot of such an application and may, when making the regulations, make provision for the purposes specified for which employment permits may be granted and the different classes of employment permit provided for in regulations in respect of those purposes.

(2) Without prejudice to the generality of subsection (1), regulations under this section may make provision for all or any of the following:

- (a) the form in which an application for an employment permit shall be made and the form of an employment permit;
- (b) the form in which an application for the renewal of an employment permit shall be made and the form of an employment permit as renewed;
- (c) the production to the Minister, with an application under section 9, of information and documents—
  - (i) as the Minister may, without prejudice to the requirement under section 11(a), specify, in respect of the employment concerned and the terms, conditions and the duration of it,
  - (ii) as the Minister may, without prejudice to the requirement under section 11(c), specify, in respect of the qualifications, skills, knowledge and experience, of the foreign national in respect of whom the application is made,
  - (iii) as the Minister may, without prejudice to the requirement under section 11(c), specify, in respect of the advice provided on the sporting, cultural *or specified skill possessed by the foreign national and its benefit to social or economic development in the State*
  - (iv) as the Minister may, without prejudice to the requirement under section 11(e), specify, in respect of the remuneration that is proposed to be paid to the foreign national and deductions to be made from it,
  - (v) as the Minister may, without prejudice to the requirement under section 11(f), specify, concerning—
    - (I) any permission given to the foreign national in respect of whom

the application is made by the Minister for Justice and Equality to land in the State or to be in the State, and

(II) any application, made before the date on which the application under section 9 is made, to the Minister for Justice and Equality for which the foreign national has sought permission to land in the State or to be in the State,

(III) *any permission granted by the Minister for Foreign Affairs and Trade in relation to the foreign national's presence in the State*

(vi) as the Minister may, without prejudice to the requirement under section 11(f), specify, concerning the employment in the State of the foreign national in respect of whom the application is made, at the time of the application or at any other time,

(vii) as the Minister may specify concerning the identity of the foreign national in respect of whom the application is made and without prejudice to the generality of the foregoing may include the production to the Minister of a copy of the passport of that foreign national and in respect of which the expiry date of that passport is not less than a period as the Minister may specify under paragraph (j),

(viii) as the Minister may specify relating to the connection between affiliated companies involved in the employment, pursuant to an employment permit, of a foreign national

(ix) as the Minister may, without prejudice to the requirement under section 11(i), specify, in respect of the requirement under section 9(7) in relation to—

(I) the employment of any person employed in the employment that is the subject of the application in the period referred to in section 9(7), and

(II) the dismissal by reason of redundancy within that period of any person employed in the employment that is the subject of the application,

and

(x) as the Minister may specify in respect of—

(I) without prejudice to subsection (1), the making of an application under section 9,



- (II) without prejudice to the requirement under section 11, any matter specified in paragraphs (a) to (i) of section 11,
- (III) the requirement under section 14 for the employees referred to in that section to be nationals of the states referred to in that section and the matters specified in section 14(3),
- (IV) without prejudice to the generality of subsection (1), a purpose specified in section 4(2), and
- (V) any other requirement under this Act that, in respect of the grant of an employment permit, is required to be satisfied;

(d) the production to the Minister, with an application under section 26 to renew an employment permit, of information and documents—

- (i) as the Minister may specify, in respect of the employment that is the subject of such application and the terms and conditions of that employment,
- (ii) as the Minister may specify, in respect of the qualifications, skills and knowledge, of the foreign national in respect of whom the application is made,
- (iii) as the Minister may specify, in respect of—
  - (I) the remuneration that is proposed to be paid to the foreign national on and after such renewal and deductions to be made from such remuneration, and
  - (II) the remuneration paid to the foreign national in respect of whom such application is made, for all or part of the period commencing on the date on which the employment permit was granted and ending on the date on which such application was made,
- (iv) as the Minister may specify that have been issued by the Revenue Commissioners in relation to the remuneration paid to, and tax paid in respect of such remuneration by, the foreign national in respect of whom such application is made,
- (v) as the Minister may specify concerning the permission given by the Minister for Justice and Equality to the foreign national in respect of whom such application is made to land in the State or to be in the State during the period for which the employment permit has been in force,

- (vi) as the Minister may specify concerning the identity of the foreign national in respect of whom such application is made and without prejudice to the generality of the foregoing may include the production to the Minister of a copy of the passport of that foreign national and in respect of which the expiry date of that passport is not less than a period as the Minister may specify under paragraph (j), and
- (vii) as the Minister may specify in respect of—
  - (I) without prejudice to the generality of subsection (1), the making of an application to renew an employment permit under section 26,
  - (II) without prejudice to the generality of subsection (1), the requirements under section 14, referred to in paragraph (2) (c)(x)(III), in relation to an application for the renewal of an employment permit,
  - (III) without prejudice to the generality of subsection (1), a purpose referred to in section 4(2), and
  - (IV) any other requirement under this Act that, in respect of the renewal of an employment permit, is required to be satisfied;
- (viii) *as the Minister may specify in relation to the provision of any benefit to the foreign national that may be prescribed in specified circumstances,*
- (ix) *as the Minister may specify in relation to the development of process innovation and knowledge transfer practices that may be prescribed in specified circumstances*
- (e) the production to the Minister, with an application under section 9 of documents and evidence to verify such documents—
  - (i) demonstrating that the person who makes the offer of employment or as the case may be the contractor or connected person, is registered with the Revenue Commissioners,
  - (ii) where the person who makes the offer of employment is a company within the meaning of the Companies Acts, relating to the registration of the company pursuant to the Companies Acts,
  - (iii) relating to the registration of the business name, pursuant to the Act of 1963, of the person who makes the offer of employment where that person has a registered business name, and
  - (iv) where the person who makes the offer of employment is—

- (I) a limited partnership under the Limited Partnerships Act 1907, documents and such evidence relating to the registration of the limited partnership under that Act,
- (II) an industrial and provident society, documents and such evidence relating to the registration of the society under the Industrial and Provident Societies Acts 1893 to 1978,
- (III) a friendly society, documents and such evidence relating to the registration of the society under the Friendly Societies Acts 1896 to 1977, and
- (IV) a trade union, documents and such evidence relating to the registration of the trade union under the Trade Union Acts 1871 to 1990;

(f) the production to the Minister with an application for a renewal of an employment permit under section 26 of documents and evidence referred to in paragraph (4);

(g) without prejudice to paragraph (2), in the case of an application for an employment permit for the purposes referred to in paragraphs (c) and (d) of section 4(2), the production to the Minister, with an application under section 9, of information and documents as the Minister may specify in respect of—

- (i) the remuneration paid to the foreign national concerned,
- (ii) the currencies and exchange rate to be used in the description of the amount of such remuneration and in any computation and statement of remuneration,
- (iii) the translations of any information or document relating to such remuneration,
- (iv) the payment to the foreign national of the additional payment referred to in sections 6(2), 6(3), 7(2) and 7(3), and
- (v) the arrangements for making the additional payment referred to in subparagraph (iv),

and, without prejudice to paragraph (a), the Minister may specify the form in which such information is to be provided to the Minister;

(h) without prejudice to paragraph (3), in the case of an application for the renewal of an employment permit for the purposes referred to in paragraphs (c) and (d) of section 4(2), the production to the Minister, with an application under section 26, of—

- (i) information and documents as the Minister may specify in respect of—

- (I) the remuneration that is proposed to be paid to the foreign national on and after such renewal and deductions to be made from such remuneration, and
- (II) the remuneration paid to the foreign national in respect of whom such application is made, for all or part of the period commencing on the date on which the employment permit was granted and ending on the date on which such application was made,
- (ii) documents, as the Minister may specify, issued by the Revenue Commissioners in relation to the remuneration paid to, and tax paid in respect of such remuneration by, the foreign national in respect of whom such application is made,
- (iii) documents, as the Minister may specify, issued by the Revenue Commissioners in relation to the remuneration and tax paid by the connected person, the foreign employer, and contractor,
- (iv) information and documents as the Minister may specify in respect of the currencies and exchange rate to be used in the description of the amount of such remuneration and in any computation and statement of remuneration, and
- (v) information and documents as the Minister may specify in respect of the translations of any information or document relating to such remuneration,

and without prejudice to paragraph (b), the form in which such information is to be provided to the Minister;

(i) the form of the notification referred to in sections 28 and 29 and the information and documents the Minister may require to be satisfied—

- (i) that, for the purposes of sections 28 and 29, the dismissal by an employer of a foreign national referred to in section 28 or 29 is a dismissal by reason of redundancy, and

- (ii) the date on which the redundancy takes effect;

(j) the specification of the minimum period for which a passport referred to in paragraphs (c) and (d) shall be in force on the date of an application for the grant, or renewal, of an employment permit;

(k) the period within which any information or documents, including additional

information or documents requested by the Minister relating to the grant or renewal of an employment permit, shall be furnished to the Minister; and

(1) the production to the Minister, within a specified period, of such evidence as may reasonably be required in order to verify any information or documents previously furnished to the Minister in respect of an application for the grant or renewal of an employment permit.

(3) Without prejudice to the generality of subsections (1) and (2), regulations under this section may provide for the production, with an application for the grant or renewal of an employment permit, to the Minister of—

(a) in the case of an application for the grant or renewal of an employment permit for the purpose referred to in section 4(2)(d), information and documents in respect of the contract service agreement concerned,

(b) in the case of an application for the grant or renewal of an employment permit for the purposes referred to in paragraphs (c) and (d) of section 4(2), information and documents relating to—

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

(ii) the arrangements made by a connected person, foreign employer and a contractor for accommodation, board and health insurance referred to in section 1A(1)(b)(iii) provided for the foreign nationals,

and

(c) evidence as the Minister may reasonably require in order to verify such information or documents.

(4) Regulations under this section may provide for the production, with an application for the grant or renewal of an employment permit, to the Minister of—

(a) the nature of the dependence of a foreign national, in respect of whom an application for an employment permit referred to in section 4(2)(j) is made, on the holder of an employment permit granted for the purpose referred to in section 4(2)(a) or, as the case may be, the research project researcher concerned, which may include copies of birth certificates or other documents providing evidence of the nature of such dependence,

(b) the identity of the primary permit holder or research project researcher

(c) the grant to a foreign national, to whom the applicant foreign national claims dependence, and who is the primary permit holder, of the employment permit for

the purpose referred to in section 4(2)(a),

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

(e) the verification—

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

(ii) by the employer of a research project researcher of the employment of the research project researcher.

(5) Without prejudice to the generality of subsections (1) and (2), regulations under this section may provide for the production to the Minister, with an application under section 9, of information, documents and evidence to verify such information and documents as the Minister may require to be satisfied—

(a) that the exchange agreement applies to the foreign national in respect of an application for the grant of an employment permit for the purpose referred to in section 4(2)(f), and

(b) that, in respect of the purpose referred to in section 4(2)(h)—

(i) the third level institution outside the State confirms—

(I) that the foreign national is enrolled as a full-time student at that institution and the name and description of the course of study in which the foreign national is enrolled,

(II) the qualifications or skills with which the course of study is wholly or substantially concerned,

(III) that the employment in respect of which the application is made is wholly or substantially concerned with the course of study on which the foreign national is enrolled,

(IV) the requirement referred to in section 4(2)(h)(iii), and

(V) that the foreign national is required to return to that institution at the end of *the prescribed period* in order to complete that course of study,

and

(ii) the person who has made the offer of employment concerned confirms that—

(I) the employment is for a period not exceeding *the prescribed period, and*

(II) the employment is wholly or substantially concerned with the skills or qualifications referred to in section 4(2)(h).

(6) The Minister may, in respect of the notification referred to in section 12(8), make regulations under this section specifying—

(a) the information and documents to be provided to the Minister that relate to the transfer, and the change of name, that arises pursuant to such transfer, of—

(i) the employer or connected person specified in an employment permit referred to in that section, or

(j) the relevant person,

(b) the form in which the notification under section 12(8) is to be made, and

(c) the procedure for the making of that notification.

(7) Without prejudice to subsections (1) and (2), in regulations under this section the Minister may provide for the production to the Minister, with an application for the grant or renewal of an employment permit, of information, documents and evidence to verify such information and documents concerning—

(a) compliance by a person who makes an offer of employment with an enactment, as the Minister may specify in the regulations, with which compliance is required by such person in order to carry on their business,

(b) compliance by a contractor, relevant person or connected person with an enactment, as the Minister may specify in the regulations, with which compliance is required by such contractor, relevant person or connected person in order to carry on their business,

(c) compliance by a person who makes an offer of employment with a requirement, as the Minister may specify in the regulations, with which compliance is required by such person in order to carry on their business, and

(d) without prejudice to paragraphs (a) and (b), compliance by a person who made the offer of employment, a contractor or connected person with the Act of

1997 that is in addition to the documents and evidence that may be specified in regulations under subsections (2) (i)(i) and (2)(h),

and the Minister may make different provision for different cases and different classes of cases and different circumstances and different classes of circumstances.

(8) In regulations under this section the Minister may provide for the procedure for the payment of any fee that is to accompany an application for the grant or renewal of an employment permit.

(9) The Minister may make regulations providing for the procedures in relation to the submission of a decision for review under section 18 or 23 and the carrying out of such a review and, without prejudice to the generality of the foregoing, such regulations may make provision for all or any of the following:

- (a) the form in which such a submission is to be made;
- (b) the furnishing of specified information to the person carrying out the review for the purposes of the review;
- (c) the furnishing of such additional information as that person thinks appropriate for the purposes of the review;
- (d) the period within which any such information, including any additional such information requested by that person, shall be furnished; and
- (e) the production to that person, within a specified period, of such evidence as they may reasonably require in order to verify any information or particulars previously furnished to them for the purposes of the review.

(10) Regulations under this section may make provision for the making of an application under section 9 or 26 by electronic means (within the meaning of the Electronic Commerce Act 2000).

#### Explanatory note

This section provides for regulations prescribing the process of application for an employment permit, and the requirement for information and documents relating to any aspect of it.

*Additions to this section are: the provision of information and documents advising on a grant on an exceptional basis of a Special Circumstances Employment Permit, information and documents relating to the permission granted by the Minister for Foreign Affairs and Trade to a foreign national to visit and work in the State, information and documents on the connections between affiliated companies involved in an*



*application for an employment permit, and the production of information and documents in relation to benefits like training, and the introduction of knowledge transfer and innovation processes*

## **Head 40 – Further provisions in relation to Regulations**

**40.**—(1) The Minister may make regulations in relation to any matter referred to in this Act as prescribed or to be prescribed.

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

(2) Regulations under this Act may contain such incidental, supplementary, consequential and transitional provisions as the Minister considers necessary for the purposes or in consequence of, or to give full effect to, such regulations.

(3) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling such regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

### Explanatory note

The purpose is to reinstate Section 30 of the Employment Permits Act 2006 as amended. The section provides for the making of Regulations, and the laying of such regulations before the Oireachtas.

## Head 41 – Service of notices

**41.**—(1) A notice or document that is required to be served, issued or given under this Act shall be addressed to the person concerned by name and may be served on or issued or given to the person in one of the following ways:

- (a) by delivering it to the person;
- (b) by leaving it at the address at which the person ordinarily resides or, in a case where an address for service has been furnished, at that address;
- (c) by sending it by *post* to the address at which that person ordinarily resides or, in a case in which an address for service has been furnished, to that address; or
- (d) by such other means as may be prescribed.

(2) For the purposes of this section, a company within the meaning of the Companies Acts shall be deemed to be ordinarily resident at its registered office and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

### Explanatory note

The purpose is to reinstate Section 31 of the Employment Permits Act 2006 as amended. This section provides for the delivery of notices and *has been amended to allow the use of any type of post.*

## Head 42 – Penalties and proceedings

**42.**—(1) A person guilty of an offence relating to the prohibition on certain use of an employment permit, forgery and fraud, the prohibition on deduction, or the provision of misleading information is liable—

- (a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both.

(2) A person guilty of an offence in relation to the obstruction of an authorized officer, the surrender of a permit, or the failure to keep records is liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both.

(3) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act may be brought within 24 months from the date of the offence.

(4) Summary proceedings for an offence under this Act may be brought and prosecuted by the Minister.

### Explanatory note

The purpose is to reinstate Section 32 of the Employment Permits Act 2006 as amended. This section provides for penalties where a party to the employment permit has used the permit for an employment or allowed it to be used by a foreign national to whom it was not granted, or where forgery or fraudulent alteration is deployed, or where there is a deduction from remuneration or retention of personal documents or where misleading information is supplied. The section allows the Minister bring proceedings in such circumstances.

## **Head 43 – Offences by body corporate**

**43.**—(1) Where an offence under this Act 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 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 they were guilty of the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with their functions of management as if they were a director or manager of the body corporate.

### Explanatory note

The purpose is to reinstate Section 33 of the Employment Permits Act 2006 as amended. The section provides for the offence to apply to a body corporate and to a natural person with governance authority where appropriate.

## **Head 44 – Presumption of employment**

**44.**—In proceedings for an offence under section 2(3), where evidence is given by—

- (a) a member of the Garda Síochána,
- (b) an immigration officer (within the meaning of the Immigration Act 2004), or
- (c) an authorised officer under section 32,

that they observed a person doing an act in a particular place, being an act the doing of which, in the circumstances concerned, is consistent with that person's having been employed to do that act in that place, then it shall be presumed, until the contrary is shown, that that person was employed to do that act in that place.

### Explanatory note

The purpose is to reinstate Section 34 of the Employment Permits Act 2006 as amended. The section provides for presumption of employment unless otherwise proven.

## Head 45 – Evidence through *video* link

**45.**—(1) In any proceedings for an offence under this Act, a person, other than the accused, may, with the leave of the court, give evidence through a *live video* link if the person is outside the State.

(2) In any proceedings referred to in subsection (1) in any circuit or district court district where the court is satisfied that leave should be granted for evidence to be given through a *live video* link pursuant to that subsection but the necessary facilities for doing so are not available in that circuit or district, the court may by order transfer the proceedings to a circuit or district court district where such facilities are available and, where such an order is made, the jurisdiction of the court to which the proceedings have been transferred may be exercised—

- (a) in the case of the Circuit Court, by the judge of the circuit concerned, and
- (b) in the case of the District Court, by the judge of that court for the time being assigned to the district court district concerned.

(3) A person who, in giving evidence under subsection (1) from outside the State, makes a statement material in the proceedings which the person knows to be false or does not believe to be true shall be guilty of perjury.

(4) Proceedings for an offence referred to in subsection (4) may be taken, and the offence may, for the purposes of the jurisdiction of the court, be treated as having been committed, in any place in the State.

(5) This section is without prejudice to any other enactment providing for the giving of evidence through a *live video* link.

### Explanatory note

The purpose is to reinstate Section 35 of the Employment Permits Act 2006 as amended, to provide for giving evidence from outside the State. *The word video has been substituted for television, to allow for technological changes.*

## **Head 46 – Delegation of functions**

**46.**—(1) The Minister may, with the consent of the Minister of the Government concerned, delegate the performance of functions under any or all of sections 11 to 18, 22, 23 and 26 in a specified class of cases to an officer, of a specified class, of another Minister of the Government.

(2) Functions so delegated shall be performable by such an officer accordingly.

(3) If such a delegation is made of functions under section 18 or 23, the reference in that section to an officer of the Minister appointed by the Minister for the purpose of carrying out the review shall, in relation to any performance of the function the subject of the delegation, be construed as a reference to the officer of the Minister of the Government concerned appointed by the Minister for Business, Enterprise and Innovation for the purpose of carrying out the review.

(4) Subsection (1) shall not be construed as affecting the application to this Act of the general law concerning the imputing of acts of an officer of a Minister of the Government to the Minister of the Government.

(5) In this section “specified” means specified in the delegation concerned.

### Explanatory note

The purpose is to reinstate Section 36 of the Employment Permits Act 2006 as amended. This section provides for delegation to an officer of another Minister. Changes may be required to facilitate co-operation with the Department of Employment Affairs and Social Protection.



## Head 47 – Data exchange

47.—(1) Information held by the Minister for the purposes of this Act may be supplied by the Minister to each of the following, namely:

- (a) the Minister for Employment Affairs and Social Protection;
- (b) the Garda Síochána;
- (c) the Minister for Justice and Equality;
- (d) the Revenue Commissioners, and
- (e) *the Minister for Foreign Affairs and Trade*

if such supply is reasonably necessary for the purpose of the performance by the Minister of the Government referred to in paragraph (a) or (b) or, as the case may be, the Revenue Commissioners or the Garda Síochána of functions under any enactment.

(2) Information held by—

- (a) the Minister for Employment Affairs and Social Protection,
- (b) the Garda Síochána
- (c) the Minister for Justice and Equality
- (d) the Revenue Commissioners, or
- (e) *the Minister for Foreign Affairs and Trade*

may, notwithstanding any other enactment, be supplied by that Minister of the Government or, as the case may be, the Revenue Commissioners or the Garda Síochána to the Minister if such supply is reasonably necessary for the purpose of the performance by the Minister of functions under this Act.

### Explanatory note

This section provides for data exchange with specified bodies – *the section has been amended to include the Minister for Foreign Affairs and Trade, who may hold information relating to free trade agreements to be scheduled under the Exchange Agreement Employment Permit, or who may hold information relating to Working Holiday Authorisations which are administered by his Department.*

## Head 48 – Transitional provisions and savings

### Savings and transitional provisions in Employment Permits (Consolidation) Act 202-

48. (1) An employment permit that is in force immediately before the coming into operation of this section shall, after such coming into operation, continue in force, for the period for which it was granted or last renewed and this Act shall apply to such permits.
- (2) An employment permit continued in force under *subsection (1)* may be revoked and renewed under this Act.
- (3) Where, before the coming into operation of this section an application has been made for the grant of an employment permit but a decision in respect of the application has not been made by the Minister, then the application (other than an application referred to in *subsection (6)*) shall be treated as if it were an application for an employment permit under this Act and shall be dealt with accordingly.
- (4) Where, by virtue of section 10(1) of the Act of 2006, section 10 of that Act does not apply to an employment permit for which an application is made before the coming into operation of this section and a decision in respect of the application has not been made by the Minister, then the application shall be treated as if it were an application for an employment permit under this Act and shall be dealt with accordingly.
- (5) Where evidence has been given through a live video link in accordance with section 35 of the Act of 2006 and has been video recorded in accordance with section 35(2) of the Act of 2006, the repeal of the Act of 2006 shall not affect the validity of such video recording in respect of the proceedings concerned where such proceedings have not been finally determined before the coming into operation of *this Act*

#### Explanatory note

This section provides for transitions and savings. There may be additional transitions.

## **Head 49- Expenses**

**49.**-The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

### Explanatory note

The purpose is to reinstate Section 40 of the Employment Permits Act 2006, to provide for payment of expenses incurred in administration of this Act.

## **Head 50 – Short title, collective citation, construction and commencement**

**50.**—(1) This Act may be cited as the Employment Permits Act 20--.

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

### Explanatory note

This section provides for the Act's title and commencement.

## **Head 51 – Repeals and revocations**

**51-** (1) The Acts of the Oireachtas specified in Schedule 2 are repealed [to the extent specified in the third column of that Part.]

(2) The statutory instruments specified in Schedule 2 are revoked [to the extent specified in the third column of that Part.]

### Explanatory note

This section provides for the repeal of previous Employment Permits Acts and associated secondary legislation, to be listed in a Schedule