

Submission 17

When making your submission please provide the following information:

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c. Briefly describe the main activity and characteristics of the organisation making the submission.

Third Level Education Institution

Question 1

What are your views on the role, relevance and value of the 50:50 rule and LMNT and which are provided for in primary legislation?

Answer: While Trinity College Dublin acknowledges the value of the 50:50 rule and LMNT, the latter may prevent the University from hiring the best academics to continue contributing to the quality of Third Level Education in Ireland, by having to meet the "90-day rule" when it comes to applying for a General Employment Permit on behalf of a non-EEA academic.

As a University of international reputation, Trinity College Dublin prides itself and endeavours to hire the best academics on the market. We believe that this reputation is one of the motivators for non-EEA candidates to apply for open academic positions. When opening a competition internationally for an academic post, Trinity College must ensure that enough time is given for interested candidates to submit their applications, which will then be assessed by the interview panel members and enough time for shortlisted international candidates to prepare and make necessary travel arrangements (in some cases, Visa applications are required prior to their trip). We must also ensure that all members of the interview panel are available for such interviews at the same time. External panel members should also be considered. Once the interviews take place, all candidates must be contacted and given feedback from them. If the successful candidate is a non-EEA national living abroad, more time will be required before the offer of employment is accepted and we can proceed with the Employment Permit application, in the case of a General Employment Permit scenario. It's not unusual for Universities to only allow staff to give their notice period in certain months of the year (i.e.: January, March, June and September only). This also adds up to the time it may

take before Trinity College is able to submit an employment permit application. In summary, an entry level Academic recruitment process can take, in the best cases, between 8 – 12 weeks.

Trinity College Dublin has welcomed the recent inclusion of Academics in the HSEOL and acknowledges the positive impact this has made in enabling the University to attract top quality candidates from around the world however, for some Academic posts, the best candidate will not meet the HSEOL requirements and a General Employment Permit will be required.

When considering the timeframe above, the 90-day rule can have an undesirable impact in Trinity College and other Third Level Education Institutions employment permit applications. Trinity College Dublin trusts that an extended period for General Employment Permit applications for Academics would help avoiding Universities losing excellent international candidates. We trust that a 120-day timeframe would be extremely beneficial in such cases.

Question 2.1

An improving domestic and EEA labour market has an impact on job seekers choices. What are your views on making the employment permit regime less restrictive where the labour market is tightening or at full employment?

Answer: That would certainly be welcomed in sectors, as above described, where the labour market is tightening or at full employment.

It should however, be an exceptional and temporary solution, with salary thresholds and even perhaps a limit on permits issued to one particular employer, provided the 50:50 rule is met at all times.

Question 2.2

While EU-level analysis shows that Ireland is ahead of most EU member states in terms of linking market intelligence to labour migration policy, can the review of lists process described above be improved upon? How?

Question 2.3

Should a business case for removing an employment from the ineligible list require that evidence must be provided by the relevant lead Department of efforts by the sector to (a) develop industry led models for improving the skills and productivity of the workforce; (b) to maximise opportunities for unemployed people; and (c) to address attraction and retention issues?

Answer: Yes. Such decisions may have a big impact on companies and workers, therefore, every effort to minimize or avoid such impact must be made and decisions be based on facts.

Question 3.1

This principle is primarily focused on the *Critical Skills Employment Permit* which is designed to attract highly skilled and experienced personnel who can seamlessly fill

short term skills gaps in the domestic labour market. Do you have you any observations on this principle, permit type and remuneration threshold?

Answer: As per the Haddington Road Agreement, newly appointed Academics to the Public Sector may start at €37,528 per annum which, although above the current CSEP, must be considered when reviewing the salary thresholds for this type of permit.

Question 4.1

Should the employment permits system give preference to sectors, occupations or occupations within sectors?

Answer: Third Level Education is an extremely important sector in Ireland and with Universities trading in a global marketplace, reputation and quality of education are deciding factors to students and staff. Ensuring that the best professionals in their fields are employed in this sector will continue to picture Ireland as a strong contender in a very competitive market.

Question 4.2

Should submissions for removal of occupations from the ineligible list include uptodate CSO data on GDP and employment growth for relevant sectors?

Answer: Yes.

Question 5.1

How can we ensure judicious use of the employment permit regime in respect of low skilled workers? For example, where employments are removed from the ineligible list should they be subject to a maximum quota? If yes, what factors should be taken into account in determining an appropriate quota on an evidential basis?

Answer: Yes, where employments are removed from the ineligible list, a quota should be introduced and in some cases, as outlined in question 2.1, the removal may be on an exceptional and temporary basis.

The 50:50 rule could be regarded as one basis for quotas, where employers should not break it, unless in the circumstances outlined in the LMNT provisions.

Question 8.1

What is your view and would you recommend amendments to the 2006 Act as amended to provide for more flexibility in the medium-longer term?

Answer: As outlined in our answer to Question 1, Trinity College Dublin as well as other Third Level Education Institutions experience greater difficulties in complying with the 90-day rule when it comes to General Employment Permit applications in respect of an Academic candidate.

The logistics involved in running such type of recruitment are complex and demanding, which lead to longer timeframes required between the opening of a recruitment

campaign and the submission of an GEP application, in cases where the successful candidate is a non-EEA national.

Such campaigns may, at best, take 8 – 12 weeks and only then, we would be able to compile and submit an application to the Department.

An extension from 90 to 120 days' timeframe for submission of GEP applications would greatly improve the prospects of successfully attracting highly skilled academics that yet do not meet the requirements for a CSEP and continue to make Ireland the country of choice for students and professionals that will contribute both socially and economically to the State.

Question 8.2

Do you have any views on the EPOS and any recommendations to improve?

Answer: Since its implementation, Trinity College Dublin has availed of the EPOS for a number of applications and we are happy with the platform. The proposed service enhancements as outlined above will be certainly welcomed.

If we could make a suggestion, it would be for the list of documents required for each permit to be visible prior to the completion of the application, as to allow the applicant to gather all necessary documents prior or while the application is being completed.



Consultation on Proposed Guiding Principles to frame the State's Economic Migration Policy

What are your views on the role, relevance and value of the 50:50 rule and LMNT and which are provided for in primary legislation?

The State's Employment Permits System should help meet, in the short term, the sustainable demand for skills and labour in key growth sector in the Irish economy without disrupting the Irish Labour market.

Recruiting Healthcare Assistants in Ireland – Barriers

- Numbers of HCA's being trained are not a true reflection of the numbers available for work
- Not all Candidates who have trained are
 - a. Interested in becoming carers; or
 - b. They start their career in Nursing Homes with a view to moving to other acute opportunities as they arrive
- Candidates choosing to restrict the hours they are available for work based on social welfare payments
- Competition for pay rates within many other sectors, for example Hotel and Catering, Retail.
- Candidates going onto further studies
- As a result, the true figures of HCA's available for work and the required numbers do not reflect the true issue that is now faced by the wider Healthcare Sector and Nursing Home Sector.

An improving domestic and EEA labour market has an impact on job seekers choices. What are your views on making the employment permit regime less restrictive where the labour market is tightening or at full employment?

Having high quality nursing home care available to those who need it is an essential part of a well-functioning health service that delivers the care people need in a way that is affordable, accessible, and of the highest standard. Reduced nursing home capacity directly impacts on persons assessed as requiring such care and has an impact on the wider health service particularly our Acute Hospitals, including delayed discharge persons unnecessarily on trolleys in A&E and increased waiting lists. The cost of nursing home care is 1/7th the cost of acute care. Adequately resourced nursing home care will alleviate the acute hospital crisis, in a cost effective manner.

Some of the major challenges and issues which must be taken into consideration which are highlighted and expanded upon within this submission

- Aging demographics – increased nursing home population

- Increasing Resident dependency levels – increased staffing levels
- National employment rate
- Staff shortages – suitably qualified and motivated Health Care Assistants / competition from retail & hospitality sectors
- Staff moving to other areas most notably the HSE
- Low pay rates due to Nursing Home Support Scheme (Fair Deal) perpetuated on by NTPF in setting the fees.
- Public Sector pay increases
- Recruiting from Ireland and the EU – lack of suitably qualified and interested candidates, language barriers.
- Expansion and new builds – delays in openings due to lack of suitable health care staff
- Impact on national healthcare, most notably bed availability in acute hospitals

In the Nursing Homes Ireland 2015 survey of residents in private and voluntary Nursing Home 54% of residents were in the high and maximum dependency category. Since then in the latest survey 2014/2015 (Annual private Nursing Home Survey 2014/2015) over 65% of residents in Private and Voluntary Nursing Home care are of high or maximum dependency, a 20% increase in 5 years.

This increased figure alone shows a large increase in dependency which will of course have an increased need for additional Healthcare Assistants and Nurses.

There are currently 16,000 HCAs employed in the private and voluntary Nursing Home Sector in Ireland. NHI Workforce Survey 2017 suggests that Nursing Homes will have to recruit an additional 0.18 of a HCA per bed meaning in 2018, 4,266 HCA will be required due to turnover rates and increasing Nursing Home population. This will increase by 1,000 totalling 5,214 in 2019.

The ERSI “Projections of Demand for Healthcare in Ireland 2015-2030”, published 26th October 2017 states that residents in long term care will increase by between 40 - 54%. This increase will have a knock on effect on staffing levels resulting in the need to recruit an additional 7,000 Health Care Assistants.

The unemployment rate in Ireland is recorded at 6.1 percent in January of 2018, down 0.1 percent from the previous month and down from 7.4 percent a year earlier. The number of unemployed persons fell to 143.7 thousand, a decrease 28.6 thousand compared to January 2017. Unemployment Rate in Ireland averaged 10.90 percent from 1983 until 2016, reaching an all-time high of 17.30 percent in December of 1985 and a record low of 3.70 percent in December of 2000. Unemployment Rate in Ireland is reported by the Central Statistics Office Ireland. The rate of unemployment at the time of NHIs previous submission was 6.4 percent.

There has been a decrease of 0.3 percent in unemployment in 7 months, and the Nursing Home Sector and Health Service is facing crisis point in recruiting Healthcare Assistants. The Department of Public Expenditure and Reform Staff Paper on “Nursing Homes Support Scheme Trends and Figures”, published in October 2017, highlights the impact of near full employment stating that “with the general economy approaching full employment, recruitment in the private nursing home sector is becoming more challenging”

The latest Central Bank Quarterly Bulletin, published April 2018, projects the unemployment rate will average 5.6 per cent this year, declining to 4.8 per cent in 2019.

In order to have a well-functioning health service, providing affordable and accessible care of the highest standard, it is imperative that the employment permit regime responds immediately in a constructive fashion, ensuring more flexibility in granting and applying for employment permits.

[While EU-Level analysis shows that Ireland is ahead of most EU member states in terms of linking market intelligence to labour migration policy, can the review of lists process described above be improved upon? How?](#)

The Department’s review of the highly skilled and ineligible lists takes into consideration the figures from the CSO and formalised evidence based processes such as:

- EGFSN / NSC National Skills Bulletin and Vacancy Overview Report
- Various EGFSN sectoral reports
- Public Consultation
- Engagement with Employer Engagement Services (D/EASP), Skills and Labour Market Research Unit (SLMRU in SOLAS), various Govt Departments and Skills & Education Policy unit in DBEI.
- Health Service Capacity Review 2018
- ERSI: Projections of demand for healthcare in Ireland, 2015-2030: First report from the Hippocrates Model
- National Strategic Framework for Health Workforce Planning

The process could be improved by engaging by sector for example dealing with the private and voluntary Nursing Home Sector separately to the Hospital sector and acknowledging the differences in resourcing.

Should a business case for removing an employment from the ineligible list require that evidence must be provided by the relevant lead Department of efforts by the sector to

- (a) Develop industry led models for improving the skills and productivity of the workforce;
 - (b) To maximise opportunities for unemployed people; and
 - (c) To address attraction and retention issues
- A) At all stages of an economic cycle, it is imperative that every opportunity is afforded to Irish and other EEA nationals in the first instance, thus ensuring an uninterrupted flow of labour and skills from the domestic and EEA economies.

Nursing Homes Ireland and our members have worked with the Employer Engagement Programmes within the Department of Social Protection in order to maximise opportunities for unemployed people developing training programmes to improve the skills and productivity of the workforce.

- B) Our members have assisted the Employer Engagement Programme by developing and providing an agreed ideal candidate profile. In addition 8 member Nursing Homes, each with a minimum of 5 vacancies, have participated in a pilot scheme to fill these positions. This scheme began in December 2017 and to date not one Candidate has been put forward for interview.

In trying to address the shortage of suitably qualified healthcare assistants, Nursing Homes Ireland has partnered with the Intreo Section within the Department of Social Protection. NHI and our members have attended careers fairs nationwide including two in Dublin Castle, with little success.

Case Study

In 2017 one of our Group Members conducted an analysis of their recruitment function. This audit showed that of the candidates who applied for health care positions and were invited to interview only 50% attended the interview. Of that 50%, 50% were deemed suitable and were offered positions. 50% of that number accepted the offer of employment. Therefore only 12.5% of potentially suitable candidates accepted offers of employment.

- C) In Ireland, the Nursing Home Support Scheme (NHSS/Fair Deal) is the mechanism by which the state provides financial support to those requiring Nursing Home care. Since its introduction in 2009, increasing numbers of Nursing Home residents and their families have accessed the Fair Deal Scheme as a means of helping to fund the cost of Nursing Home care.

The latest published HSE figures for September 2017 inform at the end of that month 23,078 residents were financially supported by Nursing Home Support

Scheme (Fair Deal) funded Residents. The number of residents funded under the Fair Deal has increased steadily since 2009.

The annual budget for the Fair Deal scheme, managed by the Health Service Executive for 2018 is €961.7 million and increase of €21.7 million on the €940 million provided for in 2017. This is further evidence of the increasing popularity of the Fair Deal scheme and its vital role in funding the cost of Nursing Home care. The increased budget for the Fair Deal Scheme has been in acknowledgement of our ageing population and to address demographic pressures and not increases to Nursing Home providers despite increased operating costs.

€12m of the additional 21.7m under the Fair Deal scheme is allocated for 2018 Pay Rate Funding (increase in pay rates under Lansdowne Road). This is an acknowledgement of increased staff costs in the nursing home sector

The increased salary costs must be recognised for all providers – not just HSE

With the State, through the NTPF, enjoying a monopolistic purchaser and dominant position in negotiations with individual Nursing Homes, Nursing Homes operate within a constrained economic environment, where their income is fixed and they enjoy very little to no influence in how their income is set. This has significant implications in terms of the Nursing Homes operators' ability to manage and recover cost increases in their business and threatens the sustainability of current provision. To operate private and voluntary Nursing Homes must be able to source suitable staff at rates that the NTPF finds 'reasonable' in capping the Nursing Homes fees.

DKM Economic Consultants have carried out an Independent analysis of the Fair Deal and the current pricing model and found that its "operates in an ad hoc manner, lacks rationale, consistency and fairness". The report also went on to cite a lack of reference to efficient cost levels and return on efficient capital.

In light of the above the private and voluntary Nursing Home Sector are unable to compete with the main competitor due to the funding model. It is widely acknowledged that for Ireland to be able to meet the needs of its aging and increasing population, healthcare needs must be addressed at the most appropriate level of complexity and at least cost. The cost of nursing home care is 1/7th the cost of acute care. Adequately resource nursing home care will alleviate the acute hospital crisis, in a cost effective manner.

[This principle is primarily focused on the Critical Skills Employment Permit which is designed to attract highly skilled and experienced personnel who can seamlessly fill short term skills gaps in the domestic labour market. Do you have any observations on this principle, permit type and remuneration threshold?](#)

Proposed changes to employment permit rules and the benefit to Ireland of these changes

Nursing Homes Ireland Proposal

Candidates who apply for registration with NMBI to work as a registered nurse in Ireland would be given permission to arrive into and work in Ireland (once appropriately screened and recruited inc vetting) as a Pre-reg Nurse/Care Assistant while their registration is being processed – which can take a year or longer. This could be made available initially in a limited capacity which would allow only those looking to remain in Ireland, secure registration as a nurse and are prepared to work as a HCA in the interregnum in the same nursing home.

As a minimum NHI are requesting that this proposal is expedited, this will work to assist in both the Nursing crisis and the issues of recruiting Care Assistants. The nurse candidates are coming to Ireland in any event and this will assist the candidate, the residents and the sector through this period of induction and integration.

Additionally, suitably qualified health care professionals from Non-EU countries could get a work permit and permission to stay in Ireland based on the ongoing crisis in recruitment and retention of nurses and care assistants.

Advantages to this proposal

- It will assist to combat both the carer and nursing shortages
- Make Ireland a country of choice in the global English speaking nurse labour market
- Assist in easing the recruitment crisis in the health and social care sector
- Staff will be fully trained and orientated when registered with NMBI
- Level of English will improve over the period the candidate has been working with the nursing home
- Workforce plan and pipeline of staff will be easier to manage
- Continuity of care for residents
- Consistency for the Nursing home providers
- Staff settled in – on a human level a candidate will have time to learn the nuances of the nursing home but also of living in Ireland
- The Critical Skills Employment Permit has allowed the Private and Voluntary Nursing Home Sector to stabilise staffing and continue to provide a high standard of care
- Our turnover rate with Irish and EEA Nurses' was very high. Having Nurses' who are contracted to you for a period of 2 years has stabilised the business. It also allows the Nurses' time to settle into the role and become a valuable part of the team. Several Nurses' have been promoted in the last 2 years. This provides evidential basis for extending the 2 year time frame to the HCA role.

Removing Care Assistants from the Ineligible list for work permits to be undertaken initially on a temporary controlled basis for a period of 2 years. The scheme will be monitored and evaluated to assess its success and effects.

[Should the employment permits system give preference to sectors, occupations or occupations within sectors?](#)

It is understood and accepted practice that the first option for hiring Health Care Assistants is suitably qualified/experience and motivated candidates in Ireland and the EU however these labour markets are not fulfilling the criteria nor have the numbers of suitable, available, qualified and interested candidates.

Yes, the critical role played by the private and voluntary nursing home sector in supporting the health service demands that the Healthcare Assistant role be looked at separately to other occupations.

Impact on Services

In January 2016, September 2016 and additionally in January 2017 we undertook a survey of Members to ascertain what the requirements across the nursing home sector for nursing and care staff.

This highlighted that on average our member Nursing Homes are short of more than one in five nurses required and one in ten health care assistants, this figure has deteriorated since January 2016 in order for Nursing Homes to be appropriately staffed.

Nursing Homes have, in severe cases, closed beds and suspend admissions of residents while working towards bringing their staffing levels to an appropriate level, we have also had reports of extensions that cannot be opened due to lack of suitable care assistants nationally. This has a direct impact on our ability as a country to meet the care requirements of our ageing population and an immediate detrimental impact on the already stretched acute hospital sector.

Ireland has, relative to many of our European counterparts, one of the lowest numbers of long-term care beds per 1,000 of the population. The private nursing home sector is the majority provider of Specialist Dementia Care

In the 2009 survey of residents in Private and Voluntary Nursing Home 54% of residents were in the high and maximum dependency category

Since then in the latest survey 2014/2015 (Annual private Nursing Home Survey 2014/2015) over 65% of residents in Private and Voluntary Nursing Home care are of high or maximum dependency

This increased figure alone shows a large increase in dependency which places demands on increased need for additional Health Care Assistants and Nurses.

Additionally nursing and care staff will be required to staff the increase in beds that are required to meet the care requirements of our ageing demographic – both in the nursing home sector and also the home care sector. Nursing Homes are constantly challenged for the most part to staff the current requirements due to the ongoing shortages of fully trained

and interested staff; the situation has deteriorated over the last number of years. With increased dependency of nursing home residents together with the additional bed requirement staffing will continue to be a major issue into the future unless there is a change made in the current models that we are working with. The implications of inaction are stark.

Circa 75% of persons inappropriately delayed in our acute hospitals (delayed discharge) are awaiting long-term nursing care (HSE Performance Reports)

Impact of Inaction

As stated above in severe cases the lack of suitably qualified staff has forced Nursing Homes to close beds or cease admissions. . This has an immediate and direct impact on the health service as large numbers older persons inappropriately delayed in acute hospitals stretching our already under pressure hospitals. It restricts the choice an older person can make when deciding on a Nursing Home meaning they may not be cared for in the locality of their choice far away from family and friends.

Our sister organisations across UK and recruitment agencies that recruit in both Ireland and the UK, have highlighted the introduction of the IELTS (English language test) in the UK has resulted in a huge reduction of suitably qualified nurse candidates applying. The number of EU Nurses entering the nursing register in UK has dropped from 1,400 approx. per month, July 2016, to just 101 in December 2016 which has pushed the UK social care system into a full-blown crisis.

The BBC have recently reported the following issues in the UK which have deteriorated hugely, we need to take this as a salutary warning not to follow the same path,

“More than 900 adult social care workers a day quit their job in England last year, new figures reveal.

Service providers warn that growing staff shortages mean vulnerable people are receiving poorer levels of care.

In a letter to the prime minister, the chairman of the UK Homecare Association said the adult social care system - which applies to those over the age of 18 - has begun to collapse.”

Why is Removing Care Assistants from the Ineligible List an essential part of the Solution?

It is understood and accepted practice that the first option for hiring Health Care Assistants is suitably qualified/experience and motivated candidates in Ireland and the EU however these labour markets are not fulfilling the criteria nor have the numbers of suitable, available, qualified and interested candidates.

While there has been a very marginal easing in the challenges surrounding the recruitment of Nurses, what our survey and all available evidence points to is that sourcing suitably

qualified and interested Health Care Assistants has become more acute. If this issue is not appropriately addressed we are facing a crisis across the entire health and social care sector. Bed closures in Nursing Homes due to lack of staff will mean our hospitals will have to meet the demand to provide this specialist care, given the pressures facing hospitals this Healthcare Assistant crisis will be catastrophic for our older population and the public health service..

[Should submissions for removal of occupations from the ineligible list include up-to-date CSO data on GDP and employment growth for relevant sectors?](#)

Yes, this will ensure accountability and that an offer of employment is first made to people already in the local and EEA labour markets.

[Can you recommend any other verifiable data/evidence?](#)

Consultation with the private and voluntary nursing home sector is needed on an ongoing basis to monitor and assess the situation.

[Work is being led by DBEI to ensure sectors for future growth potential can be identified and anticipated. How do we factor some level of future proofing to ensure the regime can remain relevant in the fast moving, globalised and technically innovative enterprise environment?](#)

The employment permits system currently operates at occupational level with all employments organised using the Standard Occupational Classification system (SOC 2010), a system which classifies workers into occupational categories.

The ERSI “Projections of Demand for Healthcare in Ireland 2015-2030” published 26th October 2017, states that residents in long term care will increase by between 40 - 54%. This increase will have a knock on effect on staffing levels resulting in the need to recruit an additional 7,000 Health Care Assistants.

[Expansion and New Builds](#)

It is estimated that for every 1000 new beds made available in the sector 1,200 additional members of staff will be required to care for residents occupying these beds.

Continued monitoring of the ERSI reports and buildings should ensure that growth is monitored and anticipated.

[How can we ensure judicious use of the employment permit regime in respect of low skilled workers? For example, where employments are removed from ineligible list, should they be subject to a maximum quota? If yes, what factors should be taken into account in determining an appropriate quota on an evidential basis?](#)

As set out above the ERSI “Projections of Demand for Healthcare in Ireland 2015-2030” published in October 2017 states that residents in long term care will increase by between

40-54%. This increase will have a knock on effect on staffing levels resulting in the need to recruit an addition 7,000 Healthcare Assistants.

NHI expects that a free non quota model will allow supply and demand to balance and stop shortages as total demand is a complex mix dependant on many factors both with the sector and in other sectors as staff can be transient between sectors. These statics offer an opportunity to potentially place a maximum quota. These reports and consultation with the Sector would provide an accurate evidential basis.

[While a short-term gap may need to be met, what about the longer-term impact in cyclical sectors? Should time limits be applied in respect of permits granted to low skilled workers?](#)

As outlined above, proposed changes to employment permit rules and the benefit to Ireland of these changes

Proposal

Candidates who apply for registration with NMBI to work as a registered nurse in Ireland would be given permission to arrive into and work in Ireland (once appropriately screened and recruited inc. vetting) as a Pre-reg Nurse/Care Assistant while their registration is being processed – which can take a year or longer. This could be made available initially in a limited capacity which would allow only those looking to remain in Ireland, secure registration as a nurse and are prepared to work as a HCA in the interregnum in the same nursing home.

As a minimum NHI are requesting that this proposal is expedited, this will work to assist in both the Nursing crisis and the issues of recruiting Care Assistants. The nurse candidates are coming to Ireland in any event and this will assist the candidate, the residents and the sector through this period of induction.

Additionally, suitably qualified health care professionals from Non-EU countries could get a work permit and permission to stay in Ireland based on the ongoing crisis in recruitment and retention of nurses and care assistants.

Advantages to this proposal

- It will assist to combat both the carer and nursing shortages
- Assist in easing the recruitment crisis in the health and social care sector
- Staff will be fully trained and orientated when registered with NMBI
- Level of English will improve over the period the candidate has been working with the nursing home
- Workforce plan and pipeline of staff will be easier to manage
- Continuity of care for residents
- Consistency for the Nursing home providers

- Staff settled in – on a human level a candidate will have time to learn the nuances of the nursing home but also of living in Ireland

NHI Proposal

Removing Care Assistants from the Ineligible list for work permits to be undertaken initially on a temporary controlled basis for a period of 2 years. The scheme will be monitored and evaluated to assess its success and effects.

What are your views on the remuneration as provided for in the law?

Remuneration in the case of Critical Skills Employment Permit and General Employment Permit is comprised of basic salary, plus payment for health insurance. Payment for health insurance is an optional add on to basic salary.

Remuneration in the case of Contract for Services and Intra Company Transfer Employment Permits is comprised of basic salary set at a minimum of the National Minimum Wage, plus optional payments for health insurance and payment for or the monetary value of board and or accommodation.

It is proposed that the remuneration threshold of €30k for highly skilled with degree is not appropriate for the position of Healthcare Assistant. It is proposed that the category of Healthcare Assistant is placed on an exceptions list similar to recent graduates with a salary in line with the basic salary for recent graduates in Ireland. In Ireland, the Nursing Home Support Scheme (NHSS/Fair Deal) is the mechanism by which the state provides financial support to those requiring Nursing Home care. It is proposed that this salary would be at a rate the NTPF considers a “cost prudently incurred” by Nursing Homes in capping their fees.

Do you have any views on these permit types, in particular the timeframe for which these permits can issue and the remuneration thresholds?

The Critical Skills Employment Permit is issued for a period of two years. It is proposed that the permit would allow candidates a two year entry period. This would provide enough time to monitor and assess the effect of removal from the ineligible list.

What should the minimum threshold for low skilled workers in occupations removed from the ineligible list be set at?

It is proposed that the minimum threshold for low skilled workers in occupations removed from the ineligible list be set at the average graduate salary in Ireland. It is recommended that this salary would be inclusive of premium payments for public holidays and Sunday work. This rate should be a rate the NTPF finds “reasonable”.

How do we mitigate against unnecessary shocks to the labour market or deflationary pressure on wages?

Regular monitoring as outlined above as well as flexibility in reaching the minimum salary threshold, for example using benefits such as premium payments, Health Insurance and

additional annual leave days to meet the salary. With the state as the major funder of healthcare staff (directly or indirectly through private and voluntary organisations) the State will carry the cost of wage inflation.

[Low wage jobs may yield income below threshold for social transfers e.g. medical card, rent supplement, FIS \(from 2018, Working Family Payment\), and local authority housing. Should remuneration threshold be set at a level which ensures the migrant can meet their \(and family\) basic social care needs without recourse to the State's resources?](#)

It is proposed that the remuneration threshold be set at a level in line with the average Irish Graduate. It is further proposed that the employer be afforded flexibility in reaching the minimum salary threshold, for example using benefits such as premium payments. This would limit the need to avail of the State's resources. With the state as the major funder of healthcare staff (directly or indirectly through private and voluntary organisations) the State will carry the cost one way or the other.

[How can we ensure that a lower threshold would be deployed only in circumstances where there is evidence of a labour shortage? Should negotiation of the grant of employment permits at a lower remuneration threshold be led by representatives of the State that have expertise in the specific sector?](#)

It is proposed that a lower threshold should be deployed for sector specific labour shortages. Nursing Homes Ireland as the representative body for the private and voluntary sector have conducted extensive research into this area and are in a unique position to provide the State with proposals which will best support the sector to secure suitably qualified Healthcare Assistants, while ensuring that safe guards such as continuous monitoring of the situation are in place.

The National Strategic Framework for Health Workforce Planning group if expanded to include all representative of private and voluntary organisations providing social care could monitor and provide evidenced proposals which would benefit the sector and the candidates.

[Do you have any views on the arrangements in place to protect the employment rights of employment permit holders?](#)

The employment permit system ensures that the employment rights of migrants are observed and criteria are aimed at ensuring that migrant employees are treated in line with Irish labour laws.

It is proposed that as part of an induction into the workplace migrant workers are informed by their employer of their rights and provided with a list of independent organisations which can assist should difficulties arise.

[What is your view and would you recommend amendments to the 2006 Act as amended to provide for more flexibility in the medium-longer term?](#)

It is recommended that if there is a need for renewal of a permit, the process is clearly communicated to users and both the employer and the candidate are given at least two months' notice of a permit expiry.

[Do you have any views on the EPOS and any recommendations to improve?](#)

It is recommended that there is a nominated contact for any issues encountered when using the system. At present it can be difficult to remedy any errors.

An email system allowing the candidate to remedy any issues would ensure the process is completed in a timely manner. To date if there is a simple error on the application the permit is refused, the department holds €100 for processing and the permit has to be reapplied for; leading to extra cost and significant time delays.

Conclusions

It is understood and accepted practice that the first option for hiring Healthcare Assistants is suitably qualified/experience and motivated candidates in Ireland and the EU however these labour markets are not fulfilling the criteria and do not have the numbers of suitable, available, qualified and interested candidates.

Central Statistic Office data relating to unemployment has consistently shown the figures decreasing year on year. The Central Bank quarterly briefing has predicted full employment will be achieved by 2019, meaning there will be jobs available for anyone who wants one, however the wider health sector and especially the private and voluntary Nursing Home Sector are at a crisis point in the recruitment of suitably qualified HCA's.

It is clear that there are not enough suitably qualified or interested candidates in the pool of unemployed people in Ireland and the EEA, therefore, must look to other options. The impact of inaction, outlined in detail above, could be catastrophic to the wider health sector and the removal of HCA's from the ineligible list has been a solution put forward by Nursing Homes Ireland to State agencies on numerous occasions throughout the last two years.

Removing HCA's from the ineligible list would provide the wider health sector with a pool of candidates required to ensure a high standard of care is provided. It is recognised that the remuneration threshold for the Critical Skills Work Permit, would not be suitable for a low skilled occupation such as a HCA. Therefore, it is proposed that should HCA's be removed from the ineligible list the threshold should be more in line with the Graduate exception. It is important that this rate be at a rate the NTPF considers a "cost prudently incurred" by Nursing Homes in capping their fees.



The Private and Voluntary Nursing Home Sector represent a significant section of the wider Health sector and it is imperative that we are including in ongoing consultation on all issues which can affect this sector.

Name of individual firm or organisation

Nursing Homes Ireland

Contact Details

2051 Castledrive

Citywest

Dublin 24

Briefly describe the main activity and characteristics of the organisation making the submission

Nursing Homes Ireland is the representative organisation for the private and voluntary Nursing Homes sector. This sector, and the care our members provide, are intrinsic to healthcare delivery in Ireland. Nursing Homes provide care in a 'home from Home' to 24,433 people and directly employ 26,000 staff.

There are 577 (including HSE) Nursing Homes in Ireland provide approximately 30,000 long-term residential care beds across the Republic of Ireland. The Nursing Home Sector is an important element of the Health Service. The private and voluntary Nursing Home Sector is the main provider of long term residential care in Ireland.

Nursing Homes are labour intensive business and in many cases the main employer in a number of towns and villages throughout Ireland. The private and voluntary Nursing Home Sector, through its 437 homes:

- Provides care in a 'home from home' to over 23,000 people
- Provides direct employment to 26,000+ persons.
- Facilitates direct and indirect employment to approx. 44,000 persons
- It is a very significant employer, with these dedicated health and social care setting acting as economic dynamos with urban and rural communities.
- In many instances the private or voluntary nursing home is the largest employer with the community, playing a key role in supporting local goods and services providers.

- Provides diverse, wide-ranging employment that includes nurses, carers, caterers, admin staff, and ancillary workers. The 437 private and voluntary Nursing Homes also play a lead role engaging local health and social care professionals including GPs, therapists, dieticians, physiotherapists.

End



Response to the Consultation on Proposed Guiding Principles to Frame the State's Economic Migration Policy

Introduction

Ibec welcomes the opportunity to respond to the consultation on *Proposed Guiding Principles to Frame the State's Economic Migration Policy*. This submission does not set out to provide a response to the 20 questions posed in the consultation document but will address the key areas of focus.

In the main, the Irish employment permits system increasingly responds relatively well to labour market shortages and surpluses. The mix of permit types, criteria and duration have served us well over the last number of years drawing on market intelligence from the Expert Group for Future Skills Needs (EGFSN), the SOLAS Skills and Labour Market Research Unit (SLMRU) and general employer engagement. This is supported by EU-level analysis¹ which shows that Ireland leads most EU member states in terms of developing labour migration policy that is linked with labour market intelligence, connecting almost all employment permits to identified labour market gaps. However, as Ireland approaches full employment it is timely to review how the process is serving the dynamic skills and labour market needs today.

Ireland today

The Irish economy has experienced exceptional economic and employment growth in recent years. Despite Brexit related uncertainty, the fundamentals of the Irish economy are solid². Q1 2017 saw employment grow by 3.5 percent the fastest growth experienced since 2007. In the Private Sector specifically employment grew by 5.2 percent dominated by tourism, construction and manufacturing sectors. Unemployment is at 6.1 percent and as such we are likely to reach "full employment" by the end of 2018. Alongside this, many sectors of the economy have been experiencing skills shortages akin to those seen in 2006-2007.

Over the last few decades Ireland has seen a shift from a country with net emigration to net immigration and back again. During the Celtic Tiger years, we became highly dependent on migrants

¹ European Migration Network (2015). *Determining labour shortages and the need for labour migration from third countries in the EU: Synthesis report*.

² Ibec Quarterly Economic Outlook (2017, Q4).

and the growth they helped enable in the economy. Our pattern of migration between 2005 and 2009 saw more than 200,000 people move to Ireland from Central and Eastern Europe as the accession countries joined the EU. This relieved some of the labour market pressures as we reached full employment, particularly in the sectors experiencing severe skills shortages. During the economic downturn, many of these migrants returned home and we have not seen a real increase in inward migration since the recovery. This is mainly due to the economic upturn in Central and Eastern European economies and their falling unemployment rates as they reap the benefits of EU membership. It is also notable that the number of Irish returning from abroad has not grown significantly, despite the economic turnaround and actually fell in 2017. 2016 studies show that non-Irish nationals account for 18 percent of employees in Ireland.³

However, as we reach full employment, the ability to enable future growth potential depends on how well we address labour shortages and respond to shifts brought about by the changing economic conditions facing different sectors.

Other sources of labour supply

While almost at full employment (6.1 percent unemployed, January 2018) there are still 234,900 people on the live register that have been proposed as further sources of future labour supply. However, ESRI research⁴ has identified that this cohort fall into two main categories:

- People who are outside of the labour force – neither employed nor looking for work. This group are predominantly female, over 45 years of age with relatively low levels of education. Only a very small proportion of these are attached to the labour market classified as “seeking work but not immediately available” or “available for work but not seeking”.
- The unemployed who are predominately male and, relative to those outside the labour force, are younger and have higher levels of education.

This would therefore suggest limited potential to increase the workforce from the former group and as such growth in employment is unlikely to be filled primarily by reducing unemployment.

The education and training system is attempting to respond to these shortages through a broad mix of programmes such as apprenticeships, traineeships, Skillnets, Springboard, and in-work training.

³ European Migration Network, using data from the Quarterly National Household Survey. <http://emn.ie/index.jsp?p=128&n=138>

⁴ ESRI (December, 2015). *Greater skill utilisation and skilled migration needed to boost productivity in Ireland.*

Similarly, in addition to the forecasting work carried out by EGFSN and SLMRU, the Regional Skills Fora work to ensure skills gaps are identified and responded to quickly by fostering stronger local industry – education links.

Industry too, remains committed to enhancing our indigenous skills supply to meet labour market needs. This has been demonstrated through a range of collaborations between industry and education on various Skillnets, Springboard and Apprenticeship programmes and the two *ICT Skills Action Plans* aimed at building the domestic supply of high level ICT graduates. Each of these collaborations have delivered significant progress ranging from the increase in the number of students choosing higher level Leaving Certificate mathematics examinations to the volume of graduates from skills conversion programmes. Furthermore, these collaborations are constantly adapting and evolving to ensure they continue to meet current and future needs.

However, given the fast paced, changing global business model, education and training cannot meet all demands in real time. Developments in terms of infrastructure, increased capacity and changing skills needs take time. This is particularly the case when broad economic policy is focused on attracting and supporting high value-added investment. This can often bring a requirement for skills to fill narrow occupations within ICT or pharma, generating skills demands difficult for the domestic labour market to immediately meet.

The number of vacancies identified as difficult to fill in the Recruitment Agency Survey, conducted in October 2017, has been increasing, particularly in relation to positions in the IT sector. This sector, along with industry, account for the highest share of difficult to fill vacancies. For the most part, an insufficient number of skilled candidates was the reason for the vacancies being difficult to fill, with more than five years' experience required for almost half (45%) of these. According to the recruitment agencies, demand for these skills and wage rates have both risen when compared to the situation one year previously. Professional occupations accounted for three quarters of all vacancies identified as difficult to fill.

Therefore, it is critical to have a fully functioning and responsive employment permit system that can promote Ireland as an attractive destination for the skills we need from outside Ireland and where necessary the EEA.

Employment permits provide an indication of where employers are having difficulty in sourcing suitably qualified personnel from the Irish or EU labour market. The number of employment permits

has been increasing in recent years with over 9,000 new permits issued in 2017. The IT and health and welfare sectors combined accounted for three quarters of all new permits issued. Nine of the top 20 companies for which employment permits were issued were technology companies. The other 11 were healthcare organisations. New permits were primarily issued for professional occupations with two thirds of all new permits issued for the Dublin region.

Demand for migrant types

The demand for employment permits appears to be a tale of two extremes. On one hand is the need for personnel which the *Critical Skills Employment Permit* aims to attract – highly skilled and experienced individuals such as those required in high-tech ICT and pharma sectors. On the other hand, is the need for unskilled or low skilled general operatives such as those in tourism, agriculture and food processing which have become increasingly difficult to attract and retain. Migrants fill important niches in both aspects of the economy.

- High skilled

Ireland attracts high-skilled migrant workers for various sectors of industry. Ireland has the third highest number of foreign-born full-time workers with third-level education in in the EU, at 57 per cent⁵. This is key for the filling of high-skilled jobs in Ireland. The streamlining of the work permit application system has been key to the success of the international recruitment of highly skilled professionals.

However, the volume of the headcount required is set to continue to increase as the gap between what can be locally supplied and what needs to be hired in continues to grow significantly. This is most starkly illustrated by the forthcoming report on the *Future Demand for High Level ICT Skills in Ireland, 2017-2022*. On a central baseline scenario, this forecasts a Compound Annual Growth Rate (CAGR) in demand of 8.5%, driving a dynamic increase in demand for high level ICT skills to 139,140 in 2022. Total potential job openings will number 72,864 over 2018-2022. Annual job openings will rise from 11,594 in 2018 to 17,795 in 2022. It is certain from the research that the easing of access to work permits as part of the ICT Skills Action Plan 2014-2018 has played a major part in facilitating further growth in the sector and, as a direct result, growth in the broader economy.

⁵ ibid

The current system performs well in general, flexing with the labour market. The *Highly Skilled Occupational List* is reviewed on a timely basis and engages well with both the labour market intelligence from the EGFSN and SLMRU as well as liaising with sectoral groups. At an operational level however, there can be challenges around transitioning from the *Critical Skills Work Permit* after two years to the *Stamp 4* permission to work. While the Department of Business, Enterprise and Innovation provides a letter for the individual after 21 months of employment there can be problems receiving the Stamp in a timely fashion. Greater collaboration between the Department and GNIB/INIS is needed to ensure that after investing in these highly skilled employees that we do not lose this talent due to unnecessarily bureaucratic procedures. This is particularly key given the prediction by the McKinsey Global Institute that companies will face a shortfall of some 40 million skilled workers by 2020.

Recommendation 1: Improve cooperation between DBEI and INIS/GNIB to ensure the process of movement from the Critical Skills Work Permit to Stamp 4 permission to work is more efficient.

International students have also become a large cohort of migrants based in Ireland. Those students who graduate from Irish institutions have the opportunity to remain on for a period of time under the IG visa – one year for Level 7 and two years for Levels 8 and 9. We would recommend liberalising this work permit and extending its duration particularly in the case of those at Level 8 and 9.

Recommendation 2: Consider increasing the duration of the IG visa for graduates of Level 8 and 9 programmes.

As the ‘war for talent’ continues worldwide Ireland should be promoted internationally as a destination for highly skilled ICT professionals including through development and promotion of a web portal, such as TechLifelreland, to attract international talent and host careers fairs in target overseas locations.

Recommendation 3: Promote Ireland internationally as a destination for highly skilled ICT professionals including through development and promotion of a web portal, such as TechLifelreland.

- Unskilled/low skilled roles

Other sectors of the economy are experiencing serious challenges with gaps at unskilled general operative level e.g. food processing, hospitality, agriculture and healthcare. These skills shortages

are unlikely to abate as these sectors increasingly find themselves competing to attract the interest of a reduced pool of resident workers. This phenomenon is particularly acute as certain sectors “adjacent” to tourism (such as retailing, healthcare, call centres) look set to expand while others like meat processing have always struggled to attract Irish workers.

For some sectors the situation is so critical that it is impacting the ability of companies to plan for expansion or meet day-to-day operational demands. The agri-foods sector generally in Ireland like most other advanced economies depends on migrant workers. The meat processing industry for example, has labour force needs that if left unresolved will reduce processing capacity, endangering existing business and limiting the ability to take on new business opportunities internationally, which in the context of Brexit is crucial. Longer term, this will also impact their ability to meet the sector targets under Food Wise 2025.

The unskilled and low skilled operatives being sought by particular sectors like manufacturing and in particular food processing are also in demand due to the competition with the construction industry. Due to low margins for example in the food processing sector, it is not possible to match construction wages. The forecasts within *Rebuilding Ireland* suggest that it is likely that construction employment will need to grow by around 50,000 between now and 2020 to meet demand, thus making construction employment 9 percent of the workforce, levels similar to 1998-99. This means that sectors competing for the same workers will start to experience further critical skills shortages that could damage operational demands and stifle growth opportunities.

These are economically strategic sectors and failure to address this situation in a timely manner could lead to indigenous exporting organisations going out of business as some did during the recession. Given that many of these employers are also very active in regions outside of Dublin it is important to ensure these jobs are maintained so that rural areas retain industries should another construction slowdown occur in the future.

Concerns were raised in the *Proposed Guidelines* regarding how access to low-skilled immigrant workers may stifle innovation and automation of certain roles. However, there are many sectors where this is not valid and where that solution may never apply. For example, the meat processing sector is unable to automate the labour-intensive nature of disassembling animal carcasses into various cuts and products. It is an area under constant review by the sector but currently remains an issue. Similarly, across the OECD, long term care is the fastest-growing division in the health and social care sector. The number of individuals aged 65 and over is projected to almost double over the next 50 years to reach 152 million in 2060. The number of people living with long-term illness

and disability is also projected to increase. To keep up with these trends the workforce will have to double by 2050. In Ireland, the residential care services sector requires individuals to support elderly or infirm clients remaining in the home another labour-intensive role which cannot be solved by automation.

It is possible that a model such as the *Lower Skilled Occupations Visa* used in Canada or the *Essential Skills Work Visa* in New Zealand could offer opportunities and parameters that could suit Ireland's need for lower skilled general operatives. The eligibility requirements are for the equivalent of a high school diploma or two years job specific training and enable a worker to remain in the country from six to 24 months and as such fill immediate labour shortages where gaps exist. In addition, such visas define the duration, wages and conditions for their stay in the country.

Recommendation 4: Consider models such as the Canadian *Lower Skilled Occupations Visa* or the New Zealand *Essential Skills Work Visa* to address the unskilled /low skilled worker need in the Irish labour market.

Current system – what works well and what else can be done?

At the foundation of the current system are sensible rules such as the current 50:50 rule which must be retained except in the special circumstances such as those faced by start-ups. The Labour Market Needs Test (LMNT) while ensuring breadth of job advertisement may need to review the need for national print advertisement given so much of recruitment advertising has moved to online options.

To date the Trusted Partners Initiative has reduced the administrative burden on employers when engaging in high volumes of employment permits. However, more generally at an operational level, employers have some concerns over the length of time other employment permits can take. Due to the lack of a single contact point in the Department where individual cases can be discussed, this has led some employers to experience inconsistencies in information received through emails or the helpdesk. Having a designated point of contact would enable a relationship to be built up with employers.

Recommendation 5: Introduce a designated point of contact for employers to follow up and review individual employment permit cases.

Recommendation 6: Provide greater levels of education on the regime, guidelines and process within the employment permits system to enable employers engage more completely and accurately with the process.

Outside of the employment permits system other structural issues could be addressed to increase the availability of workers in certain sectors. Residential Care Services face structural challenges within the social welfare system which prevent individuals from working small numbers of hours across a number of days as they will lose their Family Income Supplement (FIS). This is despite the fact that they can work the same number of hours concentrated in fewer days and retain the FIS. Thus, system review is necessary to meet the demand for carers within this sector.

Recommendation 7: Examine structural barriers to employment faced by workers in certain sectors due to the current social protection regulations regarding hours/days of work and retention of ancillary benefits.

Conclusion

Immigration will remain an important source of labour for Ireland in the future, one that can allow both a quick response to emerging skills shortages and provide an ongoing supply of skilled workers where the number of new entrants or experienced workers is too low. The continued economic recovery means that shortages will be observed in greater number and in more occupations and sectors.

The economic impact of migration reaches every aspect of the economy from population growth, labour participation and employment, the national skills base and net productivity. Migrants tend to be concentrated in the younger, more economically active age groups and as such contribute to the reduction of the dependency ratios⁶. Additionally, they arrive with skills and abilities that supplement the local human capital.

In an increasingly uncertain global environment, policy must continue to innovate and challenge boundaries. New ways to attract migrants must be undertaken to meet the labour market needs that extend beyond our own capacity. Competition will increase and failure to meet the skills and labour market demands will do untold, long-term damage to elements of our economy.

Ibec

⁶ OECD (May, 2014). *Is migration good for the economy?* www.oecd.org/migration

Consultation on Proposed Guiding Principles to frame the State's Economic Migration Policy

1. Introduction

The focus of the employment permits regime in recent years has been to ensure that the skills requirements of enterprise in the State can be met through economic migration where necessary. However, as the State approaches full employment, labour as well as skills needs are beginning to manifest.

As the economy improves, there are increasing calls to open up the employment permit regime to lower skilled workers in certain sectors/occupations such as agriculture and the care sector.

However, economic migration alone is not a sustainable long-term solution to skills and labour shortages and indeed can, in some circumstances, help to perpetuate those shortages in the economy. The development of particular skills in the resident labour force can depend upon a judicious deployment of economic migration as a supplementary rather than a primary source of those skills, and adjustments must be made with this in mind.

While there is some evidence of a tightening labour market in some sectors, the fact remains that there are 234,900 on the live register, and with a potential pool of 18 million unemployed in the EU 28, DBEI needs to be prudent in considering whether to open up the labour market to unskilled non-EEA workers on wage levels at or just above the national minimum wage.

In this context, it is timely to undertake a review of the economic migration policies underpinning the current employment permits system, to ensure they are fully supportive of Ireland's emerging labour market needs, be they skills or labour shortages in certain sectors. For this reason, the current review is included in the Action Plan for Jobs 2018 (Action 36).

An Inter-Departmental Group has been established to oversee the review and it is made up of relevant Government Departments, namely the Departments of Public Expenditure and Reform; Justice and Equality; Housing Planning and Local Government; Agriculture, Food and the Marine; Health; Transport, Tourism and Sport; Education and Skills; Employment Affairs and Social Protection.

The following factors are in scope for this review:

- All sectors of the economy
- All employment permit schemes
- Economic and social goals
- Regulating demand using available labour market tools eg minimum remuneration thresholds, highly skilled and ineligible lists, and quotas
- International comparisons
- Proposal of changes that can be made:
 - in the short term and within the existing legal framework;

- in the medium to longer term and which may require amendments to primary legislation
- Identification of appropriate performance indicators

2. Public consultation

As part of this review process, the Department is seeking submissions from representative bodies, and interested parties. The submission process is an opportunity for stakeholders to provide additional information and potentially different perspectives on the nature and extent of skills and labour shortages and how they might be addressed.

A draft set of guiding principles for the State's economic migration policy, designed to provide a context and framework within which decisions can be made and to provide a rationale for action taken has been developed to assist the process. These are set out in the following pages with questions to assist you in providing your feedback and comments.

Respondents are requested to make their submissions **by e-mail to empu@dbei.gov.ie**

The closing date for receipt of submissions is **5pm, Wednesday 18th April 2018.**

When making your submission please provide the name of the individual, firm or organisation making the submission; contact details and briefly describe the main activity and characteristics of the organisation making the submission.

3. Publication of Submissions

The Department proposes to make public on its website all submissions received under this consultation.

However, should you wish to submit information that you consider commercially sensitive, please identify that information in your submission and give reasons for considering it commercially sensitive. The Department will consult with you regarding such information before making a decision to disclose it.

4. Relevant provisions of Freedom of Information Act 2014

Attention is drawn to the fact that information provided to the Department may be disclosed in response to a request under the Freedom of Information Act 2014. Therefore, should it be considered that any information provided is commercially sensitive, please identify same, and specify the reason for its sensitivity. The Department will consult with interested parties making submissions regarding information identified by them as sensitive before making a decision on any Freedom of Information request. Any personal information, which you volunteer to this Department, will be treated with the highest standards of security and confidentiality, strictly in accordance with the Data Protection Acts 1988 and 2003.

Guiding Principles to frame the State's Economic Migration Policy

The State's Employment Permits System should help meet, in the short term, the sustainable demand for skills and labour in key growth sectors in the Irish economy without disrupting the Irish labour market.

Principle 1: EEA Preference

Irish labour market policy should aim to ensure that general labour and skills needs are met from within the workforce of the EEA. This policy continues to reflect the need for a responsive educational system, a focus on lifelong learning, and the need to maximise the potential of EEA nationals to fill skills and labour deficits.

In order to safeguard the employment opportunities of Irish/EEA nationals, restrictions exist on the granting of employment permits unless the employer can show at application stage that more than 50% of the total employees of the company are Irish/EEA nationals. The **50:50 Rule** requires that employers seeking to hire foreign nationals on an employment permit have at least 50% of their workforce from Ireland or the EEA. This policy underpins the Government's employment creation objectives by requiring employers in the State to hire in a balanced manner from the local labour market.

The 50:50 Rule applies in all situations except:

- In the case of a start-up company (i.e. a company registered with the Revenue Commissioners within the two years preceding the application) where an enterprise development agency recommends the granting of the employment permit *and* where the Minister is satisfied that to do so would help develop the potential for further employment. Often, start-up companies, including those arising by reason of FDI, will initially be comprised solely of foreign nationals from the company's HQ sent to Ireland to set-up and establish operations.
- Where employers do not have any employees on the date of application and where the Minister is satisfied, that having regard to the employment in respect of which the application is made, the foreign national concerned will be and will remain the sole employee of the employer concerned eg a parent who employs a non-EEA carer who has a long history of caring for a child with special care needs. This waiver is limited to applications for a *Dependent/Partner/Spousal Employment Permit, General Employment Permit, Reactivation Employment Permit, or Sports & Cultural Employment Permit*.

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

EU Regulations pertaining to freedom of movement of workers provide for priority for workers who are citizens of the EU. Accordingly, the 2006 Act as amended requires that the employer must advertise the vacancy:

- with the Department of Employment Affairs and Social Protection Employment Services/EURES employment network for at least 2 weeks (as per EU Regs) and
- in a national newspaper for at least 3 days and also
- in either a local newspaper or jobs website (separate to Department of Employment Affairs and Social Protection/EURES websites) for 3 days.

Regulations under the 2006 Act as amended require that the advertisement must include the following information:

- a description of the employment,
- the name of the employer,
- the minimum annual remuneration,
- the location/s of employment, and
- the hours of work.

It is recognised that the duration of the advertising period needs to provide for a meaningful LMNT while at the same time allowing sufficient time for job seekers to respond. Prior to 2012, the advertising period was 8 weeks. It was believed that the reduced advertising period to 2 weeks would strike the right balance

The 50:50 Rule and LMNT are key restrictions on the grant of an employment permit and are provided for in sections 10 and 10A of the 2006 Act as amended.

Question 1

What are your views on the role, relevance and value of the 50:50 rule and LMNT and which are provided for in primary legislation?

The 50:50 is a fair means of protecting the EEA labour.

While we agree with the idea that the current legislative objective is to protect Irish and EU workforce, the issue is more about the market needs (and therefore roles and skills) that qualify for Employment Permits and the process to obtain it. The market is evolving but DBEI work permits section are not evolving at the same pace and companies in the Republic of Ireland are struggling to fill non EEA roles in the Republic of Ireland and EEA in general. For our business requirements to be met, our desired resources require an up-to-date deep cultural, social, geographical and linguistic knowledge of non EEA markets. Resources with these characteristics cannot be found within the EEA.

The purpose of the Labour Market Needs Test (LMNT) is to protect EEA labour, however some jobs cannot be filled by EEA labour as the main characteristic(s) of the role is to develop, test or improve a product for a non EEA market.

The current purpose of the Employment Permits is to find a temporary solution to fill a role that candidates from EEA area cannot fill hoping the EEA labour will be skilled enough at

some point to cover it. Due to the nature of the roles, it is difficult to see how to upskill EEA resources to meet the business requirements.

We feel the current process is not taking into account the following:

The IT sector has evolved and with it the businesses needs

The globalization of IT services, allows for resources to be located anywhere.

Our objective as an IT company, is to ensure all roles can be filled in the Republic of Ireland as opposed to having to locate projects in non EEA countries. On that instance, Employment Permits are critical to ensuring we can attract resources to meet clients' requirements.

Ensuring non EEA roles can be filled in the Republic of Ireland by means of an Employment Permit would have the benefit of creating secondary roles that support the non EEA role such as project managers, finance, directors, administration staff, health and safety officers, human resources, etc.

If an Employment permit cannot be obtained based on the above, this could mean that the initial non EEA role and also the support roles could be lost to a non EEA country.

Our believe is that roles that cannot be filled by EEA labour due to the main characteristics being to develop, test or improve a product for a specific non EEA market, should be included in the HSEOL.

The below should be included in the HSEOL:

- €27,000 (or current €30,000 minimum required) in respect of employment which requires a person fluent in the official language of a state which is not a Member State of the EEA
 - a data analyst role with relevant up-to-date deep cultural, social, geographical and linguistic knowledge of non EEA markets with specific product knowledge.

These roles are not as technical as an engineer (which is in the HSEOL) but it is a supporting role for EEA software engineers to keep working on developing products that can be exported to non EEA markets.

While we understand we could advertise in a national newspaper, a local newspaper and the EURES website, this delays the onboarding process of a non EU Candidate with a General Employment Permit. The WP application process needs to be aligned with an evolving world where technology has taken over almost all the aspects of people's lives. This includes the fact that candidates no longer buy a local newspaper to look for a job but use the internet instead.

Advertising in a newspaper also delays having the candidate onboard to perform the job. If delays occur, again, the enterprise may need to relocate to a non EEA country where the labour force will be readily available. This would affect not only big multinationals (that

have the capability to establish subsidiaries all over the world) but also SME from the Republic of Ireland that provide support services to the multinational sector. Being able to bring the workforce to the Republic of Ireland would not only create non EEA positions, but also create EEA roles that will support these non EEA positions.

In the last few years, the relationship between employer and employee has changed. The candidate is not longer the proactive part that seeks for the relationship. It is becoming more frequent the situation where it's the enterprise who has to proactively seek for a candidate and therefore the newspaper advertising is obsolete in our view.

Principle 2: Labour Market Responsiveness

At all stages of an economic cycle, it is imperative that every opportunity is afforded to Irish and other EEA nationals in the first instance, thus ensuring an uninterrupted flow of labour and skills from the domestic and EEA economies.

It is generally recognised that migration alone should not be a sustainable long-term solution to skills and labour shortages and that indeed it can in some circumstances help to perpetuate such shortages in the economy. Many labour intensive sectors are heavily reliant on migrant labour due to the shortage of Irish/EEA persons willing to work in such environments particularly given the alternative employment opportunities available at a time of full employment; the terms and conditions attaching to such employments; and the relatively low wage cost associated with migrant workers. It is neither possible nor desirable, in the context of the available EEA labour market pool, to address retention issues in the State's labour market through the deployment of the employment permits system.

Ireland's unemployment rate of 6% (Feb 2018), brings the State closer to full employment. However, it remains the case that 234,900 (Feb 2018) are on the live register. In January 2018, Eurostat reported that:

- The average unemployment rate across the EU-28 was 7.3 % and in the euro area was 8.6 %;
- 17.931 million men and women in the EU-28, of whom 14.111 million were in the euro area were unemployed.

In Poland, Romania and Lithuania (the top 3 nationalities for non-Irish labour in the workplace, excluding the UK (Census 2016, CSO)), economic growth of 4.2, 5.7 and 3.8%, respectively, was observed in 2017, with corresponding unemployment rates of 5.0, 5.3 and 7.9% (DG ECFIN, EC).

The Department's review of the highly skilled and ineligible lists is predicated on a formalised and evidence-based process:

- EGFSN/NSC National Skills Bulletin and Vacancy Overview Report
- Various EGFSN sectoral reports.
- Public consultation
- Engagement with Employer Engagement Services (D/EASP), Skills and Labour Market Research Unit (SLMRU in SOLAS), various Govt Departments and Skills & Education Policy Unit in DBEI.

Question 2.1

An improving domestic and EEA labour market has an impact on job seekers choices. What are your views on making the employment permit regime less restrictive where the labour market is tightening or at full employment?

In favour of reducing restrictions for reasons discussed in question 1.1., the list of roles that fall onto the employment permit umbrella should be increased as well as the LMNT process to be reviewed.

Question 2.2

While EU-level analysis shows that Ireland is ahead of most EU member states in terms of linking market intelligence to labour migration policy, can the review of lists process described above be improved upon? How?

Yes. To discuss with businesses the skillset needed on a biannual or yearly basis and to elaborate/update the list of what qualifies for a General Work Permit, Critical Skills Permit, HSEOL and LMNT processes based on that.

If changing the list permanently is not possible from the legislation point of view, a quota of certain amount of Employment Permits for Critical Skills that do not fall on the current HSEOL would help. For example, up to 200 work permits could be issued per year for a Critical Skill Not Otherwise Specified (CSNOS) on a company by company basis. This could be reviewed and this quota to vary every year.

Question 2.3

Should a business case for removing an employment from the ineligible list require that evidence must be provided by the relevant lead Department of efforts by the sector to (a) develop industry led models for improving the skills and productivity of the workforce; (b) to maximise opportunities for unemployed people; and (c) to address attraction and retention issues?

N/A for our business type

Principle 3: Skills shortage

Ireland continues to experience skills shortages in certain key areas as evidenced in research conducted by the Expert Group on Future Skills Needs (EGFSN) and the National Skills Council. The employment permit regime is part of the response to addressing those skills deficits which exist and are likely to continue into the medium term, but is not a substitute or pretext for avoiding the challenge of up-skilling our resident workforce. Nevertheless, it is recognised that Ireland has to compete with other countries for economic migrants, particularly at the high end of the skills continuum. Certain skills, such as those required in the high – tech sectors are in demand globally. Therefore, there continues to be a need to supplement Ireland’s skills stock through employment

permits and to ensure that Ireland's employment permits system is geared towards attracting such skills.

The employment permits system is designed to contribute to the positioning of Ireland as a locus with a highly skilled and highly remunerated workforce, employed by cutting edge enterprises. Retaining relevance in the fast moving, globalised and technically innovative enterprise environment of the 21st century requires not only the fostering of indigenous talent but the ability to attract the innovators and the experienced from elsewhere to deepen the skills pool here, with the knock-on effect that will have on the scale and the reach of enterprise located in Ireland.

Key amongst the employment permit schemes is the *Critical Skills Employment Permit (CSEP)* which seeks to attract highly skilled non-EEA workers in occupations where there are acknowledged skills shortages, often on a global scale. The *CSEP* does this by waiving a number of the requirements otherwise applying to the issue of employment permits, and by providing a route to immediate family unification, fast-track residency and the availability of employment permits to spouses, dependants or partners where this might be required. The advantages such an employment permit confers on its holder are commensurate with the contribution such personnel can make to the development of the enterprises for which they choose to work, a benefit that ultimately feeds more broadly into our economy, through the dissemination of expertise among colleagues and through enterprise growth.

The minimum annual threshold for an employment permit should remain as neutral as possible in terms of wage effects. It should fulfil its function as a proxy for skills and a guarantee for sufficient resources. It should encourage the development of particular skills in the resident labour pool and is not set at a level that seems attractive on a cost basis for employers to hire non-EEA nationals at salary levels below the annual average salary.

At €30,000, the minimum annual threshold for an employment permit has fallen substantially behind the 2016 average annual earnings of €36,919. This undermines the intention that the threshold remains as neutral as possible in terms of wage effects. It also ceases to fulfil its function as a proxy for skills and a guarantee for sufficient resources. Without this alignment, there is a risk that the development of particular skills in the resident labour pool may be discouraged, if it seems attractive on a cost basis for employers to hire non-EEA nationals at salary levels below the annual average salary.

Despite being such a valuable employment permit, the *CSEP* €30,000 minimum annual remuneration threshold is set at the same level as that of the *General Employment Permit* which is designed to deal with a general pool of labour/skills shortages in the State. This is currently under review and may be increased incrementally to align with annual average earnings.

Question 3.1

This principle is primarily focused on the *Critical Skills Employment Permit* which is designed to attract highly skilled and experienced personnel who can seamlessly fill short term skills gaps in the domestic labour market. Do you have you any observations on this principle, permit type and remuneration threshold?

Our objective as an IT company, is to ensure all roles (EEA and non EEA) can be filled in the Republic of Ireland as opposed to having to locate projects in non EEA countries. On that instance, Employment Permits are critical to ensuring we can attract resources to meet clients' requirements and not only to fill short term skills gaps.

Ensuring non EEA roles can be filled in the Republic of Ireland by means of an Employment Permit would have the benefit of creating secondary roles that support the non EEA role such as project managers, finance, directors, administration staff, health and safety officers, human resources, etc.

With regards to the remuneration threshold, we feel it is appropriate.

Principle 4: Sector preferences

Preference should be given to those employers and sectors best positioned to grow Ireland's economy i.e. employers capable of achieving a net national benefit to Ireland through innovation, exports or inward investments.

The employment permits system currently operates at occupational level with all employments organised using the Standard Occupational Classification system (SOC 2010), a system which classifies workers into occupational categories.

Question 4.1

Should the employment permits system give preference to sectors, occupations or occupations within sectors?

Employment Permit System should give preference to sectors (and not to specific job titles) that create employment and provide high salaries (i.e. IT, engineering, pharmaceutical). Again, you may not need an Employment Permit for an engineer (this could be done by EEA labour) but you need a non EEA to support some aspects of the engineering role that are linked to skills that cannot be trained (i.e. geographical, cultural, social or linguistic knowledge of non EEA market).

Question 4.2

Should submissions for removal of occupations from the ineligible list include up to date CSO data on GDP and employment growth for relevant sectors?

Yes. The Central Statistics Office Data should be able to provide information about the current situation (available labour and its characteristics) so it can be cross checked with the industry needs (not only GDP). Nevertheless, other data should also be taken into account as CSO data in the Republic of Ireland it is not collected in real time and therefore there could be a discrepancy with the accuracy of the data provided. The CSO data for population is not computed on a calendar year whereas most other data is. There are also discrepancies in migration data gathered on a household basis as many migrants live in multiple occupancy situations and sometimes hostels or other temporary accommodation. Another source of information could be the Revenue. The Revenue has access to the type of industry that an

employee is hired for, the salary and other incomes. This could be taken into account when deciding if a specific type of industry employs a relevant percentage of the labour located in the Republic of Ireland and therefore if the Employment Permits process should reflect this.

The industry needs perhaps could be found by DBEI organizing regular meetings with enterprise representatives. Those enterprise representatives could arrange meetings to gather information from the industry to see what the current market needs are and the difficulties faced by EEA companies and that could be solved with non EEA labour. Based on that, the HSEOL would be updated.

It could be argued that a General Employment Permit with a LMNT would suffice but this is not the case. Sometimes not only is the skill critical but also the project deadline. Not being able to fulfill the market needs on a specific deadline can cause a loss of business, that again would affect the growth of relevant sectors of the Irish industry.

Question 4.3

Can you recommend any other verifiable data/evidence?

Data could be received from the top companies in the Republic of Ireland as to a hiring/growth forecast and projected skills required within the next 12 months as an example timeframe. This would enable DBEI to have an idea of the projections of non-EU nationals who would potentially be required to enter Ireland for work purposes. DBEI could liaise with ESRI to obtain data that could help to forecast labour needs such as GDP and EEA technical assumptions.

Question 4.4

Work is being led by DBEI to ensure sectors for future growth potential can be identified and anticipated. How do we factor some level of future proofing to ensure the regime can remain relevant in the fast moving, globalised and technically innovative enterprise environment?

Annual meetings with Enterprise Ireland and other State Agencies with Irish companies that will expose the skillset that they need and cannot find in EEA area for X, Y, Z reason and need to be added in the Employment Permit eligible list and HSEOL.

Maybe Enterprise Ireland (EI) and other enterprise supporting agencies could act as a link between Irish enterprises and companies based in the Republic of Ireland and DBEI. EI would collect the data, requests and reasons for new Employment Permits being in the eligible list (or to be added in HSEOL) and would liaise with DBEI.

Principle 5: Balanced approach to innovation and labour market

Economic migrants bring new ideas and different perspectives, helping organisations to innovate, for example through developing and adapting technology, and encouraging the adoption of more efficient processes and strategies. However, where access to a low-skilled immigrant workforce is not

managed, employers may be deterred from investing in skills and technology to innovate and improve productivity such as fruit picking automation (Australia) and hotel self check-in machines (Sweden). It is important that a balance is achieved between the need for industry to innovate and invest in new processes to reduce dependence on low skilled labour, and ensuring that labour shortages do not result in lost commercial opportunities and value added.

Question 5.1

How can we ensure judicious use of the employment permit regime in respect of low skilled workers? For example, where employments are removed from the ineligible list should they be subject to a maximum quota? If yes, what factors should be taken into account in determining an appropriate quota on an evidential basis?

For us the most pressing issue is the need to add more skills/roles on the HSEOL list that at the moment are only considered in the General Work Permit Scheme. Alternatively, if those skills cannot be added into the HSEOL list, the LMNT process should be re-thought as previously mentioned.

To determine the quota: to discuss with businesses (or enterprise representatives) the skillset needed on a biannual or yearly basis and to elaborate/update the list of what qualifies for a General Work Permit, Critical Skills Permit, HSEOL and LMNT processes based on that.

If changing the list permanently is not possible from the legislation point of view, a quota of certain amount of Employment Permits for Critical Skills that do not fall on the current HSEOL would help. For example, up to 200 work permits could be issued per year for a Critical Skill Not Otherwise Specified (CSNOS) on a company by company basis. This could be reviewed and this quota to vary every year.

Question 5.2

While a short-term gap may need to be met, what about the longer-term impact in cyclical sectors? Should time limits be applied in respect of permits granted to low skilled workers?

N/A for our business

Principle 6: Net contributor

Employment permit holders should result in a positive net contribution to the Irish economy and as such should have the financial capacity to support themselves and their immediate families without recourse to State resources.

Definition of remuneration

The definition of remuneration is set out in primary legislation. In the case of the *Critical Skills Employment Permit* and *General Employment Permit* the remuneration is comprised of basic salary, plus payment for health insurance and which is an optional add on to basic salary.

In the case of *Contract for Services* and *Intra Company Transfer Employment Permits*, it is comprised of basic salary set at a minimum of NMW, plus optional payments for health insurance and payment for or the monetary value of board and/or accommodation. Regardless of whether or not payments for health insurance and/or payment for board and accommodation are included in the remuneration package to achieve the minimum remuneration threshold, the employer is legally obliged to ensure they have made appropriate arrangements to provide accommodation and/or board and health insurance for the permit holder

The definition of remuneration is designed to provide adequate safeguards to prevent abuse of the regime eg prevent unscrupulous employers relying on theoretical (but unobtainable) bonuses in reaching the minimum remuneration thresholds. It also ensures that where a permit holder remains in the employment of an employer outside the State (*Contract for Services EP* and *Intra-Company Transfer EP*), the basic salary element achieves the sub-threshold of NMW for the duration of stay in the State and that the permit holder is then adequately provided for in terms of board, accommodation and health insurance, thereby ensuring s/he is not a potential drain on the State's resources. It is also designed to provide clarity and certainty for all employers, but in particular those in the *Intra-Company Transfer* and *Contract for Services* situations, in respect of the remuneration requirements applying to the employment permit regime.

Economically-focussed permit types

The level of remuneration for economically-focussed employment permits - *Critical Skills Employment Permit*, *General Employment Permit*, *Intra-Company Transfer Employment Permit* and *Contract for Services Employment Permit* - should reflect the potential for social impact and cost resulting from economic migration and be sufficient to cater for the policy of family re-unification in certain circumstances.

The *Critical Skills Employment Permit (CSEP)* is designed to attract highly skilled third country nationals into the Irish labour market with the aim of encouraging them to take up permanent residence in the State. It has many benefits such as immediate family reunification and family members resident in the State are eligible to seek any employment and consequently apply for a *Dependant/Partner/Spouse Employment Permit* which is currently issued free of charge. In addition, after just two years, *CSEP* holders may apply to INIS for permission to reside and work without the requirement for an employment permit. Remuneration thresholds are currently €30k for occupations on the highly skilled list with degree and €60k for an eligible occupation (not limited to highly skilled list) and with an appropriate level of relevant experience without the need for a degree.

The *General Employment Permit (GEP)* provides for shorter term employment contracts and, subject to a LMNT to establish that there are no viable local or EEA applicants for the employment, for occupations that are not on the ineligible list of occupations for an employment permit. Such permit holders are eligible to sponsor family reunification after 12 months. Non-EEA nationals who have held valid *GEPs* for 5 years or more consecutively and have been working lawfully during that time may apply to INIS for permission to reside and work without the requirement for an employment permit. The thresholds of €30,000 is generally applied with the following exceptions: €27,500 for meat boners, and €27,000 for recent graduates and customer service/sale roles with non-EEA languages

The *Contract for Services Employment Permit (CfS EP)* and *Intra Company Transfer Employment Permit (Intra CT EP)* provide for the temporary transfer to the State of non-EEA employees of a foreign employer and they do not accrue rights for long term residency purposes. To achieve a minimum remuneration threshold of €40,000 for an *Intra CT EP* or *CfS EP*, or €30,000 in the case of an *Intra-CT (trainee) EP*, basic salary must comprise at least NMW, as the first component of the remuneration package. In addition, the following components may be added to bring the proposed remuneration to the appropriate employment permit threshold:

- Board and accommodation or its monetary value, and
- Health insurance payments made to a health insurer registered with the Health Insurance Authority on its Register of Health Benefits Undertakings under section 14 Health Insurance Act 1994 or what the Minister is satisfied is equivalent.

These permits have complex remuneration arrangements and the maximum timeframe for these permits is 5 years.

Ancillary permit types

There are a number of ancillary types of employment permits that are designed for purposes which are not, strictly speaking, economic purposes. The purposes served are educational, cultural, or humanitarian; as such, the presence in the State of such permit holders serves a social rather than an economic function and to a large degree, this off-sets the economic cost that may be associated with their presence. In addition to these permit types is the *Dependent/Partner/Spouse Employment Permit*, which is designed to attract highly skilled foreign nationals to work in the State by enabling their immediate family members to take up employment. The lower remuneration of NMW associated with this employment permit type is set in the context of a dual income household.

These ancillary types of permits represent a relatively small proportion of total permits granted:

- *Dependant/Partner/Spouse Employment Permit* - The rationale for this type of employment permit is that in order to attract foreign nationals to apply for the *Critical Skills Employment Permit* or to encourage third country researchers to carry out research in the State under Council Directive 2005/71/EC, provision has to be made for their families where appropriate.
- *Reactivation Employment Permit* - This employment permit provides for those foreign nationals who entered the labour market on a valid permit but who have subsequently fallen out of the system for a variety of reasons including redundancies and exploitation. The primary objective is to regularise the situation of such previous permit holders - such persons are unlikely to be in highly paid occupations.
- *Sports & Cultural Employment Permit* - This employment permit provides predominantly for sports professionals. The minimum remuneration threshold is currently set at NMW, but most employments achieve a higher remuneration.
- *Internship Employment Permit* - This employment permit provides for student internship programmes for the purpose of gaining work experience in employments on the highly skilled occupations list. It is a one-year, non-renewable permit.
- *Exchange Agreement Employment Permit* - This employment permit provides for reciprocal international arrangements where opportunities are afforded to Irish nationals in exchange for opportunities afforded to foreign nationals e.g. trade agreements which include labour

transfers, exchange agreements concerning researchers or student work experience, etc. It is a one-year, non-renewable employment permit.

Question 6.1

What are your views on the remuneration as provided for in law?

N/A for our business

Question 6.2

Do you have any views on these permit types, in particular the timeframe for which these permits can issue and the remuneration thresholds?

Remuneration thresholds: N/A

Timeframe: the turnover timeframes for Trusted Partners (TP) are good. The only aspect that affects TP is the LMNT (which as mentioned previously, should follow a process that reflects the new technologic world).

Question 6.3

What should the minimum threshold for low skilled workers in occupations removed from the ineligible list be set at?

N/A for our business

Question 6.4

How do we mitigate against unnecessary shocks to the labour market or deflationary pressure on wages?

Establishing a quota for number of Employment Permits being issued.

Question 6.5

Low wage jobs may yield income below threshold for social transfers eg medical card, rent supplement, FIS (from 2018, Working Family Payment), and local authority housing. Should the remuneration threshold be set at a level which ensures the migrant can meet their (and family) basic social care needs without recourse to the State's resources?

Yes.

Question 6.6

How can we ensure that a lower threshold would be deployed only in circumstances where there is evidence of a labour shortage? Should the negotiation of the grant of employment permits at a lower remuneration threshold be led by representatives of the State that have expertise in the specific sector?

N/A for our business

Principle 7: Employment rights

Migrant workers are a vulnerable class of people. Language difficulties, cultural differences, and lack of social networks can disadvantage migrants and increase the potential for abuse by unscrupulous employers. Ireland has a very thorough employment rights legal framework. Careful consideration is given to the potential for abuse and many of the criteria in evaluating employment permits applications focus on the bona-fides of the employer and the protection of the permit holder.

The employment permits system ensures that the employment rights of migrants are observed and criteria are aimed at ensuring that migrant employees are treated in line with Irish labour laws and is operated with the following safeguards for non-EEA workers:

- the foreign national receives the original employment permit and the employer gets a copy;
- employers are prohibited from making deductions from the remuneration of employment permit holders in respect of their employment permits; neither may an employer hold any personal document of the employment permit holder.
- a job offer must come from a bona-fide employer registered with the Revenue Commissioners and, where applicable, the Companies Registration Office/Register of Friendly Societies;
- the employment must achieve a minimum remuneration threshold;
- the 50:50 Rule ensures that no more than half of the employees of an enterprise seeking to hire a foreign national on the basis of an employment permit should be non-EEA nationals, to increase the likelihood that the employees in an enterprise where non-EEA nationals are to be employed have a measure of familiarity with normal employment practices in Ireland;
- the *Reactivation Employment Permit* scheme is available for those foreign nationals who originally entered the labour market legally on an employment permit but who fell out of the system;
- holders of a *Critical Skills Employment Permit* or a *General Employment Permit* who have been made redundant may apply for the same job with a different employer, even where the job is no longer on the highly skilled list or is now ineligible;
- employment permit holders may change employer within 12 months where in circumstances, such as redundancy, or where circumstances (unforeseen at time of application) arise in the employment that fundamentally change the employment relationship (eg. the employer plans to change the location of the business to a site a significant distance from its current location, or the hours that the permit holder work are being significantly changed, or significant changes are being made to the nature of the work that they are required to do).
- employment permit holders may change employer after 12 months provided the new employer fulfils all conditions attached to employing a non-EEA national.

- the Workplace Relations Commission has powers of enforcement under the Employment Permits Acts. Workplace Relations Commission’s investigation and enforcement powers work to discourage abuses of the employment permits system by unscrupulous employers. All employment in Ireland is subject to the provisions of employment law with the protections that entails for employees, and in addition to these provisions, employers are subject to fines of up to €250,000, or a prison term of up to 10 years’ duration, where they are found to be in breach of the Employment Permits Acts.

Question 7.1

Do you have any views on the arrangements in place to protect the employment rights of employment permit holders?

N/A for our business

Principle 8: Legislative framework and process

The employment permits regime should be administratively effective and efficient, have a clear legislative basis, and be sufficiently flexible to react quickly to changes in the labour market.

The 2006 Act as amended deals with an area of regulation where the needs of the economy interact with the needs of particular individuals. As a consequence, it has extensive underpinning both at the level of primary legislation and in Regulations. The 2006 Act also provides a degree of flexibility to deal with changing labour market and economic development needs which often require rapid response through the twice-yearly review of the Employment Permits Regulations.

The employment permit system is continuously evolving to better fit the needs of employers and the foreign nationals who choose to work here, with a well-established Trusted Partner registration scheme to support companies who are frequent applicants for employment permits, and an online application system, which streamlines the application process and greatly simplifies the process for applicants.

While the 2006 Act as amended provides flexibility (principally through the Regulations), many of the operational aspects of the employment permits regime are codified in primary legislation eg the LMNT mode (eg newspapers are mandatory) and the remuneration definition. This extensive underpinning in the Act has led to inflexibilities in addressing some operational issues arising due to a changing enterprise environment, for example advertising.

In support of the Department’s objective to improve service to businesses, the Employment Permits Online System (EPOS), which was launched in September 2016, was firmly established during 2017 as a preferred method of submitting applications for employment permits. It provides an intuitive, user friendly facility to submit online permit applications, supporting documents and secure online fee payment service. The system has supported faster turnaround of applications by removing the requirement for applicants to fill out application forms by hand and reducing errors and rejected applications. Currently, over 95% of employment permit applications received are being submitted online.

Further service enhancements are planned to make additional associated application forms available for submission online. Work is underway to allow requests for reviews of refusal decisions and requests for Stamp 4 support letters to be submitted online.

Question 8.1

What is your view and would you recommend amendments to the 2006 Act as amended to provide for more flexibility in the medium-longer term?

The Act should also cover the concept of issuing an Employment Permit for a Non EEA role that is happening in the EEA area. Filling non EEA roles in EEA would have the benefit that this would create supporting EEA roles.

For dependants on General Employment permits to be able to join their family after 6 months instead of after 12 months.

Question 8.2

Do you have any views on the EPOS and any recommendations to improve?

N/A for our business.

When making your submission please provide the following information:

a. Name of individual, firm or organisation

Globe Technical Services Limited (trading as GlobeTech Ltd.)

b. Contact details

Email: hr@globetech.ie

Telephone: (+353) 021 483 9380

Address: GlobeTech Ltd

Building 6900, Avenue 6000

Cork Airport Business Park

County Cork

Ireland

c. Briefly describe the main activity and characteristics of the organisation making the submission.

GlobeTech Ltd is a company with the head quarters in Cork, Ireland specialising in IT product development and services. We currently employ a team of over 300 people consisting on localisation engineers, translators and language analysts, testers and multilingual data analysts.

The team currently consists of 35 nationalities from across Europe, Asia and South America recruiting across 40 languages worldwide to support EEA and non EEA markets and products.

Submission 21



Property Industry Ireland
84-86 Lower Baggot Street
Dublin 2

Website: www.propertyindustry.ie
E-mail: info@propertyindustry.ie
F

Department of Business, Enterprise and Innovation
[by e-mail]

April 18th, 2018

To whom it may concern,

Re: Property Industry Ireland submission to consultation on Guiding Principles to frame the State's economic migration policy

Property Industry Ireland (PII) welcomes the opportunity to contribute to the *public consultation on Guiding Principles to frame the State's economic migration policy*. The boom and bust in the construction industry in recent years has been well documented. As outlined in Government's Rebuilding Ireland – Housing and Homelessness Action Plan, due to the falloff in housing construction we are currently building less homes than are required to meet annual demand. This is a concern for the country both socially and competitively, as the market is coming under pressure to house workers at affordable prices, particularly in Dublin.

The construction industry is facing a serious skills shortage in key areas. Given Ibec's current forecasts for other areas of construction and the housing targets in Rebuilding Ireland, it is likely that construction employment (including on and off-site staff) will need to grow by around 50,000 between now and 2020 to meet demand. To reach an output of 40,000 housing units per year this figure would increase to close to 80,000. This would leave construction employment at almost 9% of the workforce (levels similar to 1998-99) and without sources of inward migration would quickly see not just skills but general labour shortages and wage pressures becoming more pronounced.

Many of those working in construction trades before the recession have either emigrated, retired or changed profession. Given the volatility in the market in recent years there is a reluctance to return to these type of jobs, which is reflected and compounded by the historically very low level of take up for construction trades in third level institutions. During the last period of growth in the sector, Ireland relied on inward migration from Eastern European countries to make up any skills shortfall. However, this will be challenging going forward given the improved economies in these countries. The above issues and their impact on the economy should be considered by Government in formulating the Guiding Principles to frame the State's economic migration policy.

PII remains at your disposal for any further information you may require.

Yours sincerely

About Property Industry Ireland

Our vision:

A sustainable Irish Property Industry which is creative, responsive, competitive and well integrated in meeting the socio-economic needs of all the stakeholders in the built environment

Our mission:

To be the trusted partner and provider of “evidence based” information, policies and strategies for the property industry at National level, to the Oireachtas, Government, Local Authorities and Agencies, and for the benefit of the people of Ireland.

Our objectives are to:

1. Be the Leadership Forum in the Industry for the discussion on National Property Issues
2. Develop, propose and support a National Property Strategy, policies and solutions to issues for the benefit of the nation as a whole
3. Be a research led organisation, which collates and commissions relevant and innovative research on Ireland's construction sector in order to promote & sustain a competitive economy
4. Be the go-to organisation for Government and the Oireachtas on all aspects of property
5. Work with all stakeholders in the industry to restore it to a sustainable position in the economy
6. Increase membership through demonstrating the achievements and outcomes in relation to national strategy and policy

PII Council:

Tom Phillips, Tom Phillips + Associates (Chairman)
Aidan O'Hogan, Property Byte Ltd.
Patricia O'Brien, BHK Solicitors
Tony Reddy, Reddy Architecture + Urbanism
Padraic Whelan, Deloitte
Michael O'Flynn, O'Flynn Group
Jim Gallagher, Lafferty
Cormac O'Rourke, Goodbody Stockbrokers
Mark FitzGerald, Sherry FitzGerald
Michele Connolly, KPMG Corporate Finance
Ivan Gaine, Sherry FitzGerald

Policy Committee Chairs:

Executive Committee –
Michael O'Flynn, O'Flynn Group
Technical and Construction Issues –
Jim Gallagher, Lafferty
Planning and Development –
John Spain, John Spain Associates
Funding Initiatives –
Michele Connolly, KPMG Corporate Finance
Market Supply and Demand –
Ivan Gaine, Sherry FitzGerald

Executive:

David Duffy, Director
David Howard, Policy Executive

Recent publications:

- The Property Industry – Rebuilding Ireland's Economy (2011)
- Development of infrastructure Bonds (2011)
- Real Estate Investment Trusts for Ireland (2012)
- Putting the Residential Property Market on a Sustainable Footing (2012)
- Planning a better future: a report on reform of the Irish Planning System (2012)
- Towards a National Property Strategy (2013)
- Delivering Ireland's Property Needs (2014)
- A National Spatial and Development Plan for Ireland (2014)
- The Cost of Construction in Ireland: A European comparison (2014)
- Investing in Social Housing (2014)
- Housing Manifesto (2015)
- Policy Reform to Increase the Delivery of New Housing (2016)
- Delivering Rebuilding Ireland: PII Pre-Budget 2017 Submission (2016)
- Tax Treatment of Rental Income (2017)

Submission 22

EY's response

Consultation on Proposed Guiding Principles to frame
the State's Economic Migration Policy



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INTRODUCTION

EY (Ernst & Young) has people and operations in more than 150 countries, which are organized into four Areas - Americas, Asia-Pacific, EMEA and Japan - and further divided into Regions. As a global accounting and professional services firm, our people work across 4 client facing service lines, Assurance, Advisory, Tax, and Transaction Advisory Services (TAS) as well as our Core Business Services (CBS) which provides internal operational support to EY including HR and IT services.

EY is committed to doing its part in building a better working world. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

Our values define who we are. They influence the way we work with each other, our clients and regulators, and our communities, where we use professional skills to create positive change close to home and around the world.

EY in Ireland is comprised of Ernst & Young Chartered Accountants and Ernst & Young Services Limited (CBS function for EY Ireland). Our reference to EY refers to both of our businesses in this submission.

EY in Ireland provides a wide range of services to clients including Irish immigration services as part of our People Advisory Services department. As part of our service offering, we support a number of clients to interpret the employment permit legislation.

Our response to the Consultation on Proposed Guiding Principles to frame the State's Economic Migration Policy includes both EY's experience of the employment permit system as well as the experience and concerns that are raised by some of our clients who interact with the regime on a regular basis.

As part of this submission, we have set out our responses to each principle as per the Department's Consultation guide. Please note that in certain instances questions posed in the consultation paper have been grouped together and a combined response provided.

If you have any questions on this submission please contact Sinead Langan, Senior Manager - Immigration, People Advisory Services.

PRINCIPLE 1: EEA PREFERENCE

Question 1: What are your views on the role, relevance and value of the 50:50 rule and LMNT and which are provided for in primary legislation?

EY experience of the 50/50 Ratio:

Ernst & Young Chartered Accountants in Ireland has 2018 employees which equates to 82% Irish/EEA employees and 18% non EEA employees. In addition to this, the Ernst & Young Services Limited entity (CBS function) has 267 employees made up of 98% Irish/EEA employees and 2% non EEA employees.

EY's recruitment strategy is concerned with hiring people from the Irish or EEA market in the first instance and looks towards talent from other jurisdictions when they are unable to find people in the local labour market.

It is noted in the Department's consultation paper that the current statistics show a potential 18 million unemployed people in the 28 EU member states. Whilst our recruitment team strives to employ those from the EU market, there are certain challenges that are faced when trying to attract talent to Ireland from other EU member states or even when trying to attract Irish migrants back to roles at our offices in Dublin, Cork, Galway, Limerick or Waterford.

A large proportion of EY employees are qualified accountants or are those in the process of completing their accounting qualification. The Department's update to the Highly Skilled Categories of employment in 2016 to recognise accountants from the American Institute of Certified Public Accountants (AICPA), Philippine Institute of Certified Public Accountants (PICPA) and Institute of Chartered Accountants of Pakistan (ICAP) has greatly increased the talent pool from which EY can resource those with the relevant qualifications to resource our client engagements.

However, our recruitment team have challenges finding resources from the EU member states (excluding the UK) as the accounting qualifications of individual's from these states are not always recognised by the Irish accounting bodies. This restriction limits the talent available from the EU 28 market for EY in Ireland.

In addition to the accounting practice at EY, our firm also focuses on 4 global service lines Assurance, Tax, Transaction Advisory Services and Advisory. The recruitment team at EY Ireland largely looks to the Irish/EEA market to fill these roles, however this presents different challenges (to above).

Our recruitment team has advised that due to the high cost of living in Ireland as well as issues surrounding housing (including mortgage policies), it is becoming increasingly difficult to attract talent from other EU member states to Ireland or to attract home the Irish migrant population who left Ireland in recent years.

Our clients expect that our firm is able to deliver client services in an efficient manner with well-resourced teams. Failure to deliver such services due to lack of resources has an immediate risk impact on our client relationships and challenges short to mid-term growth of our firm. It also has the potential to severely limit Ireland's attractiveness as a business location for foreign direct investment. As such, EY continues to look to the non EEA market to recruit for highly skilled roles when they are not available in the local markets.

The 50:50 ratio is a sound arrangement to safeguard positions for the local population, while EY recruits from outside the EEA, the numbers coming in would not be enough to put us in a position where half of our workforce is from outside the EEA. However our firm needs to be able to comfortably recruit from the non EEA market as needed.

Client experiences of the 50/50 ratio:

Our clients have raised concerns about the parameters of the 50/50 ratio as it is currently prescribed in employment permit legislation/policy.

As per the Employment Permits (Amendment) Act 2014, the conditions of the 50/50 ratio are as follows

An Irish employer must have 50% of employees in the company who are Irish/EEA at the time of an employment permit application.

Based on interaction with clients in certain sectors such as IT, due to prevalent skills shortages, it is becoming increasingly difficult to source from the Irish and EEA market. As such these companies look to the non EEA market in order to fill these highly skilled roles. It has been suggested that the 50/50 ratio is waived for sectors which are experiencing skills shortages whilst the Highly Skilled List is opened up for additional occupations (within the corresponding sector). In addition to this and in line with the Action Plan for Jobs 2018, the introduction of industry stakeholder groups for different sectors to regularly discuss and identify solutions to combat these skills shortages may result in ways to ensure that the each sector could source local staff within a timeframe.

When an Irish employer is a start-up, a waiver of the 50/50 ratio can be put in place for the first 2 years on the basis that the company is supported by IDA Ireland or Enterprise Ireland.

Ireland has a very open economy which attracts heavy foreign direct investment. In a recent RTÉ documentary, What Are We Working For, Dr. Stephen Kinsella stated that Ireland is tied in greatly with globalisation. It is well known that the Irish State attracts foreign capital and as the demand for highly skilled workers continues to grow, we are no longer in a position to use local talent to fill these roles.¹

When FDI companies set up in Ireland, they are afforded the opportunity to bring in key personnel or senior management in line with the Intra-Company Transfer (ICT) permit. This is crucial for the set-up stages of a company and utilised by a large number of international companies in Ireland.

However clients have raised concerns about the 50/50 ratio at the start-up or transition phase when utilising the employment permits system. A start-up company or a newly created entity as part of a transition, can provide proof of their initial registration in Ireland, however, if they are not supported by the IDA or Enterprise Ireland (EI), they are unable to seek a waiver of the 50/50 ratio. This means that whilst the company has been attracted to Ireland and agreed to invest by setting up or taking over a company, they are restricted in the start-up stages if they are not IDA or EI supported. This is a concern as we have seen that not all transition or start-up companies will have support from the Irish enterprise agencies and they are at a disadvantage when setting up the company as they cannot bring in key personnel or senior management to oversee the process.

Once the start-up or transition company has evolved and is fully operational, these companies employ a large number of Irish/EEA employees but they may be unable to finish set-up if they cannot bring in the correct resources due to the restrictions of the 50/50 ratio. This means that whilst Ireland has an open economy, it is putting companies who are not enterprise agency supported at a disadvantage when setting up in Ireland.

We would recommend that the requirement is updated as follows so as not to impede companies who contribute to the Irish economy:

When an Irish employer is a start-up or transition company, a waiver of the 50/50 ratio for all employment permits types can be put in place for the first 2 years from the date that the

¹ What are We Working For? RTÉ, Monday 9th April 2018

company is established as an employer with Irish Revenue on the basis that a business case is provided which confirms the employer's strategy for the Irish entity and specifically shows the plans to hire from the Irish/EEA market.

Labour Market Testing (LMT):

Use of Labour Market Testing by EY or by our clients is minimal as the roles tend to be Highly Skilled and a Critical Skills permit is obtained. The reduction to 2 weeks from 8 weeks has been helpful in achieving a better balance between the search and appointment processes.

EY would like to highlight one issue observed and that is displaying the role on the Department of Social Protection and EURES website. There is an automatic sharing of the role on each site however in order for you to confirm that the advert is displayed on both sites, you need to contact a prescribed email address; also in order to obtain the EURES reference number for the permit application, you need to email this inbox. These processes make LMT time consuming and/or subject to errors.

PRINCIPLE 2: LABOUR MARKET RESPONSIVENESS

Question 2.1: An improving domestic and EEA labour market has an impact on job seekers choices. What are your views on making the employment permit regime less restrictive where the labour market is tightening or at full employment?

Question 2.2: While EU-level analysis shows that Ireland is ahead of most EU member states in terms of linking market intelligence to labour migration policy, can the review of lists process described above be improved upon? How?

EY has reviewed the above questions and believe that a consolidated response is best to address the materials raised.

Ireland needs an adaptable employment permit system to ensure that it works for employers and the Irish economy.

EY is currently experiencing significant difficulty in the attraction of certain skills in the volumes required, often competing with employers in other countries, particularly the UK, USA and Australia. A relaxation of the current employer permit regulations to allow for the recognition of additional roles, namely the Taxation sector and all facets of consulting would be welcome. The industry is experiencing a skills shortage in both of these sectors and despite widespread attraction strategies in the Irish and EEA markets we are struggling to attract sufficient numbers of suitably qualified people.

EY has been in a position to effectively use the employer permit system however we have identified issues with the regulations which recognise tax qualifications. The Department requires that an individual's tax qualification must be recognised by the Irish Tax Institute (ITI) in order to obtain an employment permit. The ITI does not recognise foreign tax qualifications. Based on submissions and discussions with the Department in 2016, the Highly Skilled List was updated as follows:

Tax consultants specializing in non-EEA tax consultancy and compliance with a professional tax qualification or legal qualification with tax specialism, and has a minimum of three years' experience of tax consultancy requirements and regulations in the relevant non-EEA market.

Whilst this introduction is welcome, it prohibits the use of the permits for a large number of individuals who have extensive international tax experience from working in Ireland. EY is finding it increasingly difficult to source individuals for international tax roles from the EEA market. As such, we would propose that the above SOC code on the Highly Skilled List is updated as follows:

Tax consultants specializing in non-EEA and international tax consultancy and compliance with a minimum of 3 three years' experience of tax consultancy requirements and regulations in the relevant non-EEA market.

In addition to this, the creation of industry body groups by the DBEI for sectors such as accounting, tax and financial services who can regularly discuss the issues faced in their relevant areas including recruiting appropriate talent would ensure that any additions or changes to the employment permit regulations would have current and relevant input from industry.

Question 2.3: Should a business case for removing an employment from the ineligible list require that evidence must be provided by the relevant lead Department of efforts by the sector to (a) develop industry led models for improving the skills and productivity of the workforce; (b) to maximise opportunities for unemployed people; and (c) to address attraction and retention issues?

EY believe that open dialogue and further discussions should take place with a view to reviewing the Ineligible Categories of Employment. It is necessary to ensure that sectors (not typically represented) which have seen recent growth are included in such discussions and these companies are not unfairly disadvantaged through a lack of access to the talent required to build and maintain their business.

EY are happy to contribute to any industry lead models which can be used to aid decision making on the removal of roles from the Ineligible List where they would benefit our firm.

PRINCIPLE 3: SKILLS SHORTAGE

Question 3:1 This principle is primarily focused on the Critical Skills Employment Permit which is designed to attract highly skilled and experienced personnel who can seamlessly fill short term skills gaps in the domestic labour market. Do you have you any observations on this principle, permit type and remuneration threshold?

Dr Aedin Doris² surmises that when an employee is on €25,000 per annum they are 30% better off than some workers on the payroll hierarchy and 70% worse off than other workers. Further to this, an individual who is on €50,000 or above per annum are considered to be half way up the salary distribution list in Ireland whilst those on €100,000 or above account for 5% of workers in Ireland.

At present, the average weekly wage³ in the Private Sector is €726.31 gross (€37,768.12 per annum) whilst the average weekly wage in the Public Sector is €946.55 gross (€49,220.60 per annum). We note in the consultation that the Department wishes to revise the annual salary entry point for Critical Skills upwards from €30,000 per annum.

On the basis that a role is identified on the Highly Skilled Listing, EY applies for a Critical Skills permit on the basis that the individual meets all qualifying criteria including the salary threshold. As part of this, EY has utilised the Critical Skills permit for graduates who are working in data analytics, IT Advisory, business and financial management as well as business analysis and management consultancy. The current minimum salary threshold for the Critical Skills permit works well for our graduate population who join EY for Highly Skilled roles. When individuals enter Ireland as a graduate, they tend to have limited market experience. They will receive extensive training in addition to their remuneration package so the current salary threshold is suitable.

It may be reasonable to create a Critical Skills graduate category whereby this salary threshold is retained.

An increase in the €30,000 to €59,999 threshold for experienced hires would need to be carefully considered. For example, EY offers permanent contracts to non EEA employees who complete their accountancy training (utilising the Stamp 1A from the Garda National Immigration Bureau) with the firm and a large increase could restrict our ability to offer permanent contracts to our trainees once they complete their training contracts and are fully qualified accountants. These individuals will have completed a degree and/or masters qualification in Ireland and then their accounting qualification, it is essential that EY can continue to retain talent once the 3.5 year training contract is finished. At the end of their training contract, they must be afforded the opportunity to remain in Ireland and continue to work and our ability to ensure that a fair salary can be offered to retain these employees should not be restricted.

Furthermore, EY will offer employment to new experienced hires within this salary threshold (who have not previously worked with the firm in Ireland). They will have a required level of experience but the salary would be below €60,000 per annum. A minimal increase for experienced hires with 3 years or more experience could be considered but a discussion with relevant industry bodies on market rate salaries would be recommended before changes to the minimum remuneration threshold for Critical Skills employment permits is considered.

² What Are We Working For? RTÉ, Monday 9th April 2018

³ Earnings and Labour Costs Quarterly, CSO statistical release, 26 February 2018

PRINCIPLE 4: SECTOR PREFERENCE

Question 4.1: Should the employment permits system give preference to sectors, occupations or occupations within sectors?

An employment permit system which gives preference to all occupations only would ensure that all sectors are given the opportunity to utilise the employment permit system. A preference to sectors might have a negative impact on the ability of one company to recruit someone for a role over another.

In order to reduce confusion and ensure that the employer permit system is easier to use, it might be useful to create greater certainty in respect of the codes of the Standard Occupational Classification systems (SOC 2010). Whilst the system is accessible, it can lead to confusion and restrictions of roles that are in fact Highly Skilled. In the UK, the classification system categorises occupations in terms of the duties/responsibilities of an individual rather than just the title. A role is more than just a job title so a mixture of the SOC codes and a brief explanation of the responsibilities to be considered may reduce uncertainty and make it easier to interpret the occupations.

Question 4.2 Should submissions for removal of occupations from the ineligible list include up to date CSO data on GDP and employment growth for relevant sectors?

As the economy continues to grow, there will be shortages for all occupations including those on the Ineligible Categories of Employment. EY would suggest that a review is conducted to ensure that all employment roles in Ireland are being serviced by the employment permit system. A mixture of CSO data and submissions for employers should be gathered to allow the DBEI to ensure the employment permits system works for all in the Irish economy.

Question 4.3 Can you recommend any other verifiable data/evidence?

In addition to CSO data and submissions from employers, consulting with industry groups is a good way to check that the employment permit system is supporting Irish employers. Setting up and arranging quarterly meetings with representatives from sectors such as financial services, IT, accounting, professional services, pharmaceutical and engineering would be a good way to generate first hand evidence. In addition to this, utilising the knowledge or evidence of Irish enterprise agencies who frequently consult with client companies provides further evidence and opportunities to discuss issues arising from the employment permit regime.

Question 4.4 Work is being led by DBEI to ensure sectors for future growth potential can be identified and anticipated. How do we factor some level of future proofing to ensure the regime can remain relevant in the fast moving, globalised and technically innovative enterprise environment?

Disruption is fundamentally changing the way the world works. Today's businesses, government and individuals are responding to shifts that would have seemed unimaginable even a few years ago. Artificial intelligence and robotics are reinventing the workforce. Drones and driverless cars are transforming supply chains and logistics; and changing preferences and expectations – most notably in the millennial generation – are altering consumption patterns and demand for everything from cars to real estate. The way in which people wish to work is also evolving⁴.

⁴ Schreiber, Uschi, Partner – EY (http://cdn.ey.com/echannel/gl/en/issues/business-environment/2016megatrends/001-056_EY_Megatrends_report.pdf)

As part of this, Nancy Altobello, Global Vice Chair - Talent at EY has researched the ways in which employers can attract and retain talent in the age of disruption. The world continues to be disrupted by globalisation, the rapid pace of technology and shifts in workplace demographics. In particular, EY has identified that talent attraction and retention is identified as a competitive risk by all employers including well-established technology companies. This has been further impacted by the "gig economy." This concept relates to employees working on a flexible, project or freelance basis. The trend towards such contingent workers has impacted a number of sectors particularly as professionals strive towards flexible working conditions. This shift in employment and the way we work over the last 10 years is in part due to newer entrants into the labour market, with Millennials expected to constitute 72% of the workforce by 2025⁵.

Technology is enabling companies to meet resource needs in new and flexible ways. Employers are continually looking at the benefits of accessing skilled labour at short notice and with limited commitment. This is considered to be particularly valuable in the fast-growth, agile environment of scaling smaller companies. According to research completed by EY, by 2020 SMEs expect one in five of their workers to be contingent⁶.

This new way of working is and will continue to evolve across borders. The DBEI must look at whether the current system is robust to meet this shift in employment terms and have a balance in place which allows employers in Ireland to deliver on globalised projects and ensuring that the rights of employees are met.

Another way in which to ensure the DBEI is recognising future growth potential may be to examine what contribution will be generated by particular industries and sectors to the State and on the basis that they are above a certain threshold/top performing, making sure these sectors have access to the talent they require in order to continue to grow/deliver at current levels.

The above would be a good way of safeguarding the relevance of the regime in a fast moving, globalised and technically innovative enterprise environment.

⁵ Nancy Altobello, Global Vice Chair – Talent, EY (<https://betterworkingworld.ey.com/workforce/three-ways-to-attract-and-retain-talent-in-the-age-of-disruption>)

⁶ EY 2017, The Gig Economy: A Chance to Control Your Costs or Accelerate Your Growth? (<https://betterworkingworld.ey.com/growth/the-gig-economy-a-chance-to-control-your-costs-or-accelerate-your-growth>)

PRINCIPLE 5: BALANCE APPROACH TO INNOVATION AND LABOUR MARKET

Question 5.1: How can we ensure judicious use of the employment permit regime in respect of low skilled workers? For example, where employments are removed from the ineligible list should they be subject to a maximum quota? If yes, what factors should be taken into account in determining an appropriate quota on an evidential basis?

In order to ensure judicious use of employment permits for low skilled workers, an appropriate quota could be determined by working alongside relevant further training and education institutions such as Solas who are producing talent for these industries (captured on the Ineligible Categories of Employment or similar). Estimating the shortfall in such industries could be used to influence quota size.

Question 5.2: While a short-term gap may need to be met, what about the longer-term impact in cyclical sectors? Should time limits be applied in respect of permits granted to low skilled workers?

The introduction of time limits for the granting of permits to low skilled workers allows flexibility to close down certain sectors should the economy slow down or contract.

PRINCIPLE 6: NET CONTRIBUTOR

<i>Question 6.1: What are your views on the remuneration as provided for in law?</i>
<i>Question 6.2: Do you have any views on these permit types, in particular the timeframe for which these permits can issue and the remuneration thresholds?</i>
<i>Question 6.3: What should the minimum threshold for low skilled workers in occupations removed from the ineligible list be set at?</i>
<i>Question 6.4: How do we mitigate against unnecessary shocks to the labour market or deflationary pressure on wages?</i>
<i>Question 6.5: Low wage jobs may yield income below threshold for social transfers eg medical card, rent supplement, FIS (from 2018, Working Family Payment), and local authority housing. Should the remuneration threshold be set at a level which ensures the migrant can meet their (and family) basic social care needs without recourse to the State's resources?</i>
<i>Question 6.6: How can we ensure that a lower threshold would be deployed only in circumstances where there is evidence of a labour shortage? Should the negotiation of the grant of employment permits at a lower remuneration threshold be led by representatives of the State that have expertise in the specific sector?</i>

EY has considered the above questions together and provided a consolidated response. EY would consider that the remuneration provided for in law is fair but that there should be further consideration given to the guidelines for all employment permits.

1. ICT Permit

The current legislation only recognises the following remuneration components when processing an ICT Permit application:

- a) Base salary (at least in line with Irish minimum wage plus top-up if applicable)
- b) Payment or monetary value for housing
- c) Payments in respect of health insurance

At a minimum the DBEI should request that the above is paid by the employer.

In general when an individual is sent on assignment to Ireland, they will receive other fixed guaranteed sources of income in addition to the above. Our recommendation is that the remuneration section on the ICT permit application is updated to allow for other allowances to be accounted for on the application that are paid and guaranteed by the employer. This will ensure that the DBEI can be satisfied that the individual is compensated fairly and will not become a burden on the State.

There has been a number of concerns raised regarding the requirement that all salary for an ICT permit holder must be paid solely by the sending organisation. Based on company structures, it is often more efficient to pay some if not all remuneration from the Irish business. However the change in policy at the DBEI where the full salary must be paid by the sending organisation has been met with concern and a number of our clients have raised issues about this policy change.

Employer assignment policy may facilitate the payment of salary to the individual in their host country but they are still employed by the sending organisation.

Some of the reasons why it is more feasible for the employer to pay the remuneration relates to things such as exchange rate fluctuation, fees associated with wire transfer, bank charges etc. These

costs associated with being paid the full salary outside Ireland could hinder the person's remuneration when they are assigned under an ICT permit and make Ireland a less attractive location for assignees and employers. The Critical Skills permit may not be an option for these individuals, as they wish to continue to contribute to home social security systems and pension schemes whilst they are on assignment. One option for the DBEI to consider would be to allow a foreign employer to make a salary payment from the home jurisdiction in line with Irish minimum wage with the balance paid by the Irish entity. Moreover, a written guarantee from the employer that the individual is still employed by the foreign employer could be submitted as part of the application to provide assurances to the DBEI.

2. ICT/CFS Permits

Another concern that has arisen about the Department's approach to remuneration on ICT or Contract for Services (CFS) is the breakdown of the figures on the permit. The Department itemise each of the above components (see legislative components on above page) on the permit. This approach has led to questions and comments from the Department of Justice, Irish Embassies and Immigration Officers at ports of entry who are concerned that the individual is not receiving fair remuneration. There is a lack of understanding about the remuneration breakdown on the permit and the full amount that the individual receives.

The line on the permit states "remuneration per week" and remuneration is made up of more than just the salary element. Dividing the full remuneration amount and populating it in the remuneration per week line on the permit would be preferred to reduce unsettling comments and questions by the Department of Justice, Irish Embassies and Immigration Officers at ports of entry.

PRINCIPLE 7: EMPLOYMENT RIGHTS

Question 7.1: Do you have any views on the arrangements in place to protect the employment rights of employment permit holders?

1. Work Rights of Dependents

We see a number of requests from ICT permit holders for work rights for their spouses when they join them in Ireland. The current legislation only allows the dependents of Critical Skills permits holders and Researchers to obtain a Dependent/Partner/Spouse employment permit to work in Ireland. This is a welcome benefit by Critical Skills permit holders and Researcher permit holders as it allows their dependents flexibility and ways to integrate into Irish society.

However the dependents of ICT and General Permit holders are unable to apply for this type of permit which has raised concerns for our clients already in the market as well as those who are looking to set up entities in Ireland. As Ireland reaches full employment, the introduction of a provision to allow these individuals to work would make the Irish State a highly attractive place for those who wish to come on assignment/work in Ireland. This would facilitate greater inclusion of the dependents of permit holders into Irish society so that the family unit can have a fulfilling and happy experience in Ireland.

2. Termination of Employment due to extenuating circumstance

There are instances when the employment of individuals who hold an employment permit to work in Ireland is terminated. This may be by mutual agreement (i.e. individual is not a good match for the role) or where the individual does not pass probation. The only instruction provided by the DBEI specifies that an individual can only change employer once they have completed 12 months on a permit with that employer. There is provision for when an individual is made redundant but this would not apply in these instances. As no consideration has been given in the legislation/policies to instances where the employment is terminated due to extenuating circumstances, EY would request that attention be given to when an employment is no longer viable with an employer as a result of extenuating circumstances (as outlined above). On the basis that the employer and/or employee can confirm the extenuating circumstances, the individual should be able to obtain new employment and a permit for that new employer.

As part of this, the agreed approach would need to be jointly followed by the DBEI and Department of Justice so that the individual can transition smoothly to another role.

3. Cancellation of permits

When an individual leaves the employment of one employer to move to another, the permit (certified and original) that is held in respect of the initial employer must be returned to the DBEI for cancellation before a new permit can be issued. It is agreed that an employer cannot stop an individual moving to another employer, however, we would suggest that the DBEI introduce an effective system which ensures that the individual has completed their notice period with the initial employer before the permit is cancelled.

PRINCIPLE 8: LEGISLATIVE FRAMEWORK AND PROCESS

Question 8.1: What is your view and would you recommend amendments to the 2006 Act as amended to provide for more flexibility in the medium-longer term?

EY has welcomed the changes that were implemented with the introduction of the Employment Permits (Amendment) Act 2014.

EY has included a number of considerations and recommendations throughout this submission that we would ask the Department to consider in the context of future amendments to employment permit legislation.

The Department must be equipped to put sufficient changes in place in order to adapt to the labour market quickly and efficiently. Mechanisms which allow for temporary employment permit policy change which is reactive and fully supportive of Ireland's emerging labour market must be put in place so that employers can continue to grow and develop businesses in the State.

Question 8.2: Do you have any views on the EPOS and any recommendations to improve?

EPOS is an easy and user friendly application in which to generate permit applications and make submissions of the final application.

We would like to draw attention to the following for consideration by the DBEI:

- From 1st January 2019, P60s will become redundant due to PAYE modernisation. At present for employment permit renewal applications, a copy of the individual's P60(s) must be submitted as part of the application. We would expect that the DBEI will update the legislation requirement as the document will no longer be available.
- For Trusted Partner (TP) users, it would be efficient that when an employer/agent enters the TP reference number that the corporate information i.e. ERN number, entity name and address etc., would automatically populate. If the TP reference number is populated incorrectly, the system does not recognise the mismatch of information. A possible solution would be to give each TP and/or their agent a unique login for applications to be submitted via EPOS.
- The introduction of an online portal where all correspondence relating to employment permit holders can be lodged on behalf of the employer/agent would save time and reduce the amount of paper correspondence being submitted to the DBEI. In addition, the system should allow the employer/agent to check the status of correspondence which should limit the number of follow up queries submitted to the DBEI following up on such items.
- The DBEI expect that any material change to a permit holder's employment is submitted to the Department. Clarification of the changes to be notified as well as an online submission system would make the process smoother. Guidance on when a response to such correspondence can be expected would reduce the number of follow ups and further queries submitted to the Department.
- When a permit application is submitted, an email is issued confirming receipt, however, when you check the application through the online tracking system, it will only show that the application was submitted as of the following day. On the basis that an online system is in place, we would expect that the received date is automatic and consistent with the date that the application is lodged.

- If a permit is issued with an error, it can take a number of weeks (up in 4 weeks in some instances) to receive a re-issued permit. This means that the individual and employer lose time as the amended permit does not have a new start date. It also encroaches on the initial 90 days during which the individual must seek entry to Ireland. This is particularly concerning for visa required nationals as they will need to wait to apply for their visa until they receive the original amended permit. A system to track the progress of an amended permit or guidance on when the permit can expect to be re-issued would reduce follow ups to the DBEI. The Department should provide a guaranteed time line to amend once received.
- In recent months, we have been advised of issues with the statement of loss process. It is understandable that the Department would require 4 weeks before the new permit is issued, however, we have heard that requests for the statement of loss form have taken a number of weeks to be addressed (from the date the request is made to the DBEI). On the basis that an individual must take up employment within 90 days of the start date on the permit, the 4 week waiting period for a new permit to be issued as well as the time it takes to get the statement of loss means that the individual and/or employer loses time. This is particularly concerning for visa required nationals who will face further processing times when they lodge their visa application to the Irish Embassy. As the start date on the re-issued permit is not amended, being able to start within the 90 day period may be out of control of the permit holder.

We have seen cases where this impacted the ability of an individual to obtain a Stamp 4 letter of recommendation at the expiry of their permit. The introduction of a mechanism to submit the request online and issuing a new start date on the permit should be considered as the loss of the permit is not the fault of the employee or employer.

- The Department's new employment permit regulations enacted on the 26th March 2018, require that a copy of the individual's signed employment contract must be submitted as part of the permit application.
 - For ICT/CFS permit applications, there may be no requirement to hold an employment contract in the home country, for instance in the USA, employments are often "at will," and no contract is issued. Employers cannot be expected to provide a written document that can be construed as a contract on the basis that the employment is "at will". As such, the DBEI may wish to examine the reasons for requiring the employment contract as well as the requirement for employment contracts in other jurisdictions.
 - For all other types of employment permits (where the individual will be employed directly by the Irish employer), a copy of the contract can be submitted. However the Department requests that a signed employment contract is submitted as part of the application. Acceptance of an employment contract by an employee continues to change and in many instances contracts are accepted online. We would recommend that the wording is amended accordingly.
- As technology continues to advance and the world becomes a paperless environment, the issuing of electronic documents would be preferable. The DBEI may wish to consider implementing such a system which would also reduce costs and time for case officers. If a move towards issuing an electronic permit is not permissible, use of registered post to issue the original/certified permit must be considered to ensure the safe delivery of this legal and confidential document.

CONCLUSION

EY appreciates the introduction of this public consultation on the employment permit legislation and welcomes further consultations to ensure that Ireland has a consistent and adaptable system. We look forward to the receiving the final report on the conclusion of this consultation.

EY is available to discuss and partake in any further discussions/sessions that will arise as part of this consultation.

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