



28 North Great George's Street, Dublin 1

E: info@mrci.ie

Ph: 01-8897570

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

Introduction

Migrant Rights Centre Ireland (MRCI) is a national organisation working to promote the rights of migrant workers and their families in low paid employment and at risk of poverty, exploitation and social exclusion. In 2017 MRCI provided information and support on 2,155 cases to people from 127 different countries. Of this, 33% were undocumented, and the most common sectors of employment were care and domestic work, restaurants, retail, hospitality and fisheries.

MRCI welcomes the review and consultation on the Guiding Principles to frame the State's Economic Migration Policy. This review takes place in the context of full employment, a buoyant and growing economy and shortages in labour. The review must be underpinned by the State's obligations and responsibilities to human rights and workers' rights as laid out in the relevant national legislation and international treaties and protocols. The review also has the potential to fulfil commitments currently being negotiated under the UN Global Compact on Safe, Orderly and Regular migration.

Migration to Ireland

Census 2016 shows that 810,406 (17.3%) of the population in Ireland is foreign-born, and according to CSO Population and Migration Estimates from April 2017 there were 566,600 (11.8%) non-Irish nationals residing in the country from 200 different nations. In 2017 there were 139,206 Non-EU migrants registered in Ireland which represent 24.6% of the overall migrant population¹.

¹ CSO Migration and Diversity Estimate Sept 2017 <http://www.cso.ie/en/releasesandpublications/ep/p-cp7md/p7md/>

People from a migrant background are integral to the Irish labour market. 14.9% of the workforce is non-Irish nationals. Almost half are employed in Food Services, Manufacturing Industries and Human Health and Social Work. Nearly half (46.9%) are classified as non-manual, manual skilled, semi-skilled or unskilled workers, compared with 39.2% of Irish nationals².

Free Movement and EU Migration

Projections from Eurostat indicate that the workforce across the EU will shrink by 50 million over the next 50 years³. A decline in the number of workers that are potentially available will have a knock-on effect on tax receipts, social welfare and pensions. Without responsive and far-reaching labour migration policies, it will be increasingly difficult to address labour shortages and demographic change. This challenge will be felt across all sectors but particularly in the provision of care for our aging populations.

Ireland's Labour Migration Model for Non-EEA Nationals

Migration is a key feature of all modern societies and labour markets. MRCI recognises the need for migration at all skills levels to Ireland. Having safe, clear and regular channels for migration are necessary to respond to the demands in both skilled and essential areas of the labour market. This is a cornerstone for attracting and retaining people and for reducing irregular migration.

The main mechanism in place for Non-EEA nationals to take up full-time employment in Ireland is through the Employment Permit System, that either grants enhanced or limited rights to migrant workers. Despite many welcome reforms by the government in 2014, the Employment Permit System remains two-tiered and is restrictive for certain categories of workers. This review is an opportunity for the system to take an approach that grants both highly skilled workers and essential skilled workers parity in terms of rights.

Principle 1: EEA Preference

50:50 Rule and Labour Market Needs Test

To date Irish labour market policy has prioritised that general labour and skills needs are met from the workforce in the EEA. The 50: 50 rule and Labour Market Needs Test (LMNT) are used to ensure preference for Irish and EU nationals. EU nationals have full access to the labour market and can technically work in any job or sector they are skilled or qualified for. Yet in a number of sectors in Ireland there are significant challenges in recruiting EEA nationals with relevant skills and employers are looking to the Employment Permit System to address shortages.

² CSO Migration and Diversity Estimate Sept 2017 <http://www.cso.ie/en/releasesandpublications/ep/p-cp7md/p7md/>

³ ECB Economic Bulletin, Issue 2 / 2018 – Articles; The economic impact of population ageing and pension reforms Carolin Nerlich and Joachim Schroth (ECB 2018) http://www.ecb.europa.eu/pub/pdf/other/ebart201802_02.en.pdf?3b30b505d07b44d89eaeac15561e678d

If an employer advertises a job as per the LMNT and fails to recruit a suitably qualified and experienced EEA worker or non-EEA resident then it is reasonable the employer seek to employ a non-EEA worker through the Employment Permit System. The 50:50 rule offers no added value to preference for EEA workers, but can create a barrier for employers seeking to fill shortages through the Employment Permit system. It does not provide any meaningful preferential treatment to EEA workers as an employer can still choose to employ person on stamp two or stamp four residency permission without the department having oversight in the recruitment process. If 50% of employees are from outside the EEA and the employer is struggling to recruit EEA workers the 50:50 rule quickly becomes an arbitrary barrier. The DBEI has not presented any data or research to show the effectiveness of the 50:50 rule or the LMNT. In the absence of data, MRCI questions the effectiveness of such a measure.

Furthermore, EU preference for workers presumes to link EU unemployment and migration. Eurostat estimates that unemployment is at 7.3% across the EU in February 2018⁴. The Eurobarometer covering labour mobility in the European Union shows that 17% of the EU population indicated a willingness to work in a different country in the future, but the majority 60% indicated a non-European country as their intended destination⁵. According to the OECD it can *“be argued that migration intentions are a poor predictor of effective migrations given all the factors that intervene in the migration decision process”*⁶. It is therefore short-sighted to assert that unemployed EEA nationals will necessarily want to come and work in Ireland or another EU country. We cannot assume that all labour market needs will be met by EEA workers.

Principle 2: Labour Market Responsiveness

It is important that Ireland’s labour migration policy is responsive to the different economic cycles - expansion and contraction - within the labour market. It is the experience of MRCI that past and current labour migration policy has not been able to keep pace with these cycles and growth cycles in particular. This has led to serious anomalies within the labour market with undocumented migrants and international students (predominantly English language students) filling labour shortages.

The OECD warns against the increased use of discretionary migration channels to provide for cheap labour supply: *“problems arise when the cumulative impact of those channels cannot be*

⁴ http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics

⁵ Geographical and labour market mobility Summary Pub (June 2010)

http://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_337_sum_en.pdf

⁶ OECD Social, Employment and Migration Working Papers No. 188 - Is the European Union attractive for potential migrants? AN INVESTIGATION OF MIGRATION INTENTIONS ACROSS THE WORLD Flore Gubert, Jean-Noël Senne Pub: June 2016

monitored and where both the effects on the labour market and the workers cannot be monitored”⁷.

Despite the labour market participation of undocumented migrants and international students these workers are absent from any figures or projections. To avoid these anomalies, the employment permit system must have clear regular channels for migration of workers for all skill levels and to address the critical issues of undocumented workers. To give effect to this, MRCI believes we need to urgently make the employment permits system less rigid and restrictive and to be more open and responsive coupled with a parallel process to address the needs of undocumented workers in particular who are already in the state.

Ineligible Categories Process, Data and Research

Little attention has been given to labour migration policy and projections since the recession. To improve responsiveness and to make this system more transparent, the review process for eligible occupations needs to be overhauled.

It is not clear from the current approach taken by the department what available data sets are considered as part of this review. Where there is available data and when submissions for the review of ineligible categories are made, how these are assessed and what informs the Department’s decisions lacks transparency. For example significant studies such as an ESRI report on Projections of demand for healthcare in Ireland, 2015-2030 (October 2017), do not seem to be considered as part of the review of ineligible categories. It is also unclear how evidence from interested parties including worker rights and employer representative bodies are considered.

While it is always favourable to have and develop evidenced based policy there are many limitations with available data sets to capture labour shortages – particularly in sectors of employment with a high incident of migrant labour, such as domestic and care work, hotel and catering and restaurants as data samples are often simply too small to be representative or meaningful. Furthermore, due to the retrospective nature of data, it is also difficult to predict shortages and to identify real time trends. As a result, complementary approaches and supplementary data needs to be considered in determining skills and labour shortages.

Evidence suggests that where labour and skills shortages exist employers will informally employ workers. This is evident from the fishing sector, the employment of au-pairs and undocumented migrants across a range of sectors. This ultimately impacts the labour market and leaves workers more vulnerable to exploitation.

⁷ OECD (2014), International Migration Outlook 2014, OECD (2014), International Migration Outlook 2014, OECD Publishing. D Publishing.

Improving Transparency

The role of the Expert Group on Future Skills Need (EGFSN) is *“to advise Government of skills needs and labour market issues that impact on enterprise and employment growth”*. This group gets its mandate from the Department of Education and is focused on skills deficits and projections for the State. It relies on SOLAS - Skills and Labour Market Research Unit for data, analysis and research. The work of both these groups is vital. However, limited resources impact on determining and responding to the emerging and complex demands of the labour market and a longer term approach to conduct and carry out more comprehensive research.

While the EGFSN’s annual bulletin and thematic and sectoral research is very useful, their work however is limited due to a focus on skills needs over labour demand. Research is therefore limited to categorically predict high and low skilled labour shortages for migration to Ireland. Furthermore, the employment permits system has become over reliant on the ESFGN to identify shortages for the ineligible categories.

This area needs a more robust process. The EGFSN, therefore needs to be given additional resources and expand its remit to have a more balanced focus on labour and skills needs. It also needs to diversify its membership and collaborate with a wider range of interested parties, and put in place a process for input and consultation on labour and skills shortages to rapidly identify emerging gaps and avoid anomalies in the labour market.

Principle 3: Skills Shortages

MRCI believes all skill types need to be considered in Ireland’s Economic Migration Policy. Ireland operates a two-tiered system for high and essential (so-called ‘low’) skilled work. Currently high skilled, highly remunerated labour migration is favoured for people from outside the EEA or for recognised skills shortages which cannot be met through the EEA labour force. Yet defining a hierarchy of skills in relation to qualification level and/or remuneration is problematic. It is ineffective in identifying and filling critical shortages that may be in lower paid sectors.

Furthermore, the over qualification of migrants is a serious problem in Ireland. An analysis of the European Labour Force survey puts the rate of over qualification for migrants in Ireland at 41%, suggesting a cycle of “brain gain, waste and drain.”⁸ Ireland currently has no formal mechanism

⁸ Eurostat European Labour force survey 2011 <http://ec.europa.eu/eurostat/web/microdata/european-union-labour-force-survey>

for the recognition of qualifications of foreign workers. This lack of recognition traps people in low-paid employment and leads to stagnation in the labour market.

Please see Principle 2: Labour Market Responsiveness for additional information

Principle 4: Sector Preferences

To support innovation and economic growth we need to ensure that labour and skills shortages are adequately filled. The Government believes preference should be given to sectors where industry and employers can achieve a net economic (financial) benefit to Ireland. There are many jobs and sectors which are essential to the Irish economy and society yet their impact on economic growth and GDP are difficult to measure.

Economic migration policy must consider sectors and jobs which are essential and valuable. While some schemes exist, which are both social and humanitarian, it is concerning that the Government sees labour migration policy in the main as solely an economic endeavour. It is important to recognise other important benefits for example the importance of care to Irish society and our aging populations. GDP and economic growth should not be the only indicator of success and provide only part of a rationale behind referencing certain occupations and sectors.

Certain sectors are more in need of labour and different working arrangements need a sectoral approach. Two areas which need special consideration in this review are the introduction of transitional measures and sectoral work permits.

Transitional Measures

Undocumented Workers

The employment of irregular migrants is an inevitable consequence of the lack of effective regular channels for migration to respond to the demand for workers. It is inherently an issue of concern for labour migration policy and Ireland is no different to other countries in this regard. MRCI has carried out extensive work to highlight the detrimental effect of irregularity, both for the individual and for the labour market.

Research carried out by MRCI in 2016 with over 1,000 undocumented migrants, found that the overwhelming majority (89%) are in employment, typically (though not always) in sectors where low-paid work is prevalent. The top five sectors of employment are Restaurant & Catering (32%), Domestic Work (29%), and Cleaning and Maintenance (13%). Other sectors include retail, hotel, medical, healthcare and agriculture.

A high proportion of these (66%) have been in their current job for over 2 years and of this 31% have been in the same job for over 5 years. 69% indicated that they are working over 30 hours, with more than half earning over €300 a week⁹.

Currently, an undocumented person employed in Ireland, with qualifications and multiple years' experience working, for example as a carer, cannot currently apply for a work permit. Current economic migration policy does not consider this significant pool of resident workers. This means that the wealth of skills in the state are not being fully utilised.

As part of this review, it is imperative that the state urgent addresses this issue in tandem with other changes and introduce a range of transitional measures or schemes to regularise these workers and to tackle exploitation and non-compliance. The DBEI needs to work with the Department of Justice and Equality (DOJ) to enable experienced and skilled workers already in the State who may be undocumented to formalise their labour market participation.

This requires a proactive and pragmatic approach which will create a level playing field for compliant businesses and for those seeking to formalise their employees' work. This is a practical for several reasons; people already have a connection to the state; they are familiar with the Irish working environment; have a proven track record with an employer; they are in employment; it can reduce costs for employers, including recruitment and initial training; and helps to minimise problems including exploitation.

This approach would recognise the contribution and value of the employment relationships people have developed over many years in the country. It will also provide valuable information on gaps, niches and the needs of the labour market and bring undocumented employees and their employers into the formal economy, generate revenue and tackle exploitation.

This approach could be modelled on the Reactivation Employment Permit (REP) Scheme and 2004 Student Probationary Extension Scheme.

International Students and People Seeking Asylum

The graduate scheme has worked well as a responsive measure to gaps in the labour market and a pragmatic approach for people who have been living in Ireland for a significant period of time. Every year Ireland receives a significant number of migrants on temporary schemes, most significantly through the international student system.

⁹ Ireland is Home Survey 2016: <http://www.mrci.ie/wp-content/uploads/2016/05/Ireland-is-Home-2016-Infographic-FINAL.pdf>

Despite many conditions imposed on their permission to reside, including a residency time limitation, they experience high labour market participation rates and contribute significantly to a range of sectors in our economy. This overreliance on international students demonstrates the need for non-EEA workers which is not currently being met through regular labour migration channels.

While the majority are here for a short period of time, some may want to stay for a longer period. At the same time opportunities to transition to more permanent status are limited for many students. MRCI recommends a pragmatic approach to introduce measures which will help maximise the skills international students bring and the skills and experience they acquire here

The recent Supreme Court judgement confirms the right to work of people seeking asylum. As an interim measure the State granted access to the employment permits system pending the introduction of the 2013 Reception Conditions Directive due to come into force in July 2018. To the best of our knowledge to date no applications have been granted, in part due to the LMNT, the salary threshold and the ineligible categories of employment. MRCI is of the view that people seeking asylum should have been given a more appropriate permission to work. All participation in the labour market should be visible in data collection to assist with determining gaps in labour and skills shortages.

A facilitated entry into the employment permits system by means of a different salary threshold would help increase access to the labour market, compliance in many sectors, reduce irregularity and help employers retain staff. A scheme should be put in place to enable workers already in the State to access an employment permit system with a range of conditions waived for entry.

Sectoral Work Permit

Ireland continues to operate an employment permit system which is demand-driven rather than focusing both on supply and demand. The Green Card with gives full access to the labour market after two years and immediate family reunification rights and the general employment permit which give full access to the labour market after five years or with 60 months reckonable residency. The general employment permit needs to be less rigid and grant worker mobility by making this type of permit a sectoral as opposed to job/employer specific. Due to the changing nature of employment and as a measure to tackle exploitation this is a favourable approach to be adopted by the Government and the department.

Sectors of the labour market where problems arise for general work permit holders are linked to;

1. The lack of labour market responsiveness for clear and regular channels for migration

2. Emerging labour gaps which are filled by unprotected workers such as undocumented workers or more vulnerable workers – such as Roma
3. Unscrupulous employers paying below the minimum wage
4. The changing nature of the workplace – for example people working across multiple locations
5. The lack of mobility for a worker which ties them to an individual workplace and limits bargaining power, ability to realise rights and progression

MRCI recommends a sectoral approach to general employment permit particularly for labour intensive sectors. This permit would give access across a sector of employment and would be renewable. This would require legislative change.

NOTE: When a worker is changing jobs, the employee would be required to inform the employment permit section on an administrative basis through an online system of this change. There would be no cost to the worker and verification of employment would be required for renewal of the sectoral permit. This would allow people to change employer easily if a problem arises or if better terms and conditions of employment are available. The 12-month restriction as it is the case now for an employment permit could still apply except in exceptional circumstances.

Principle 5: Balanced Approach to Innovation and labour market

Quotas

MRCI does not support the current moves towards to a quota system as can be seen in the Restaurant Industry. We already have a system of complicated labour market tests to ensure there is an established shortage in a sector. This is a further unnecessary layer. In addition, a “quota” is defined as the share of a total; however, there is little or no available data or projections as to what the total is in a given sector or what a share of the total looks like. Quotas or limits need to be validated and verifiable as to their appropriateness and efficiency in responding to the needs of a given sector and be considered in the context of overall policy goals and objectives. According to the OECD “*migration quotas per se tend to be the exception in OECD countries*”¹⁰. Countries are in fact moving away from quotas as they are difficult to manage and hard to predict and are an incomplete or ‘stop gap’ rather than a more considered and comprehensive solution.

¹⁰ Managing Migration – Are Quotas and Numerical Limits the Solution? International Migration Outlook OECD 2006 <https://www.oecd.org/migration/mig/38840304.pdf>

Seasonal Employment Permits

MRCI has concerns about seasonal and temporary employment permits as they can be difficult to monitor, and workers are more vulnerable to exploitation. This approach creates a power imbalance favouring employer needs over worker rights. MRCI has long pointed out that attraction and retention in Ireland is a problem. While we acknowledge that some people may only wish to stay for a short period of time, it is important that a balanced approach is used. The best way to protect workers is to give them from the outset security setting out clear sets rights and responsibilities. It is extremely important that there is a procedure to change to longer term permits if work is available

Principle 6: Net contributor

As previously stated, the OECD warns against the increased use of discretionary migration channels to provide for cheap labour supply¹¹. However, exploring the use of different salary thresholds is a factor to prevent irregularity and undeclared work. Significantly, Employment permits cannot be divorced from the dynamics of the labour market. Ireland is a low wage economy and operates by keeping wages low - one in five workers are in low paid employment. Current labour shortages are emerging in sectors where there is a prevalence of low pay and business in low paid sectors are more likely to pay by the hour than have salary-based systems for labour intensive employment.

Ireland also operates a complex system of social transfers system which can arguably be described as a form of state aid to employers as it substitutes the wages of workers. Until we have a fairer system and are no longer a low pay economy, migrant families should continue to be entitled to the Working Family Payment (WFP).

It is also important to note that family reunification rights are different for different groups of workers (general employment permits and the green card or critical skills employment permit). MRCI is not in favour of a two-tiered approach to family rights. People on lower wages are disproportionately affected by this approach. Furthermore, many migrants who are entitled to the WFP often do not avail of this in their first five years for fear it will impact on their citizenship application, despite being entitled to it.

Salary Threshold

The salary threshold has not been reviewed since its introduction and the labour market in Ireland has changed in this time. Minimum salary thresholds however often become the ceiling

¹¹ OECD (2014), International Migration Outlook 2014, OECD (2014), International Migration Outlook 2014, OECD Publishing, D Publishing

rather than a floor. In addition, wages stagnate without proper bargaining power for workers; this includes a worker's ability to change jobs.

The salary threshold for graduate scheme is €27,000. MRCI would support a move from €30,000 to €27,000 for a general work permit for essential or lower skilled work to facilitate entry to State and labour market.

For labour intensive sectors this needs to be accompanied by other favourable rights through the introduction of sectoral mobility where a worker has the right to move jobs in a sector and family reunification rights as outlined above. This is a proactive approach to protect workers' rights and improve bargaining power and improve integration.

Principle 7: Employment Rights

Preventing Exploitation

Reactivation Employment Permit Scheme

The DBEI operates the Reactivation Employment Permit (REP) Scheme. This REP scheme is designed for situations where a foreign national who entered the State on a valid Employment Permit but who fell out of the system through no fault of their own, or who has been badly treated or exploited in the work place is granted the ability to work legally again.

The first stage in the scheme is for the person to apply to the Irish Naturalisation and Immigration Service (INIS) for "temporary immigration permission", and once approved, this will then allow them to apply for the REP. The application must be on the prescribed application form as detailed below.

The REP has worked well as a proactive and preventative measure to respond to address exploitation and should be retained.

Labour Mobility and Sectoral Work Permits

Over the past 16 years MRCI has conducted research and taken a range of cases to highlight exploitation of migrants in the Irish Labour Market - restaurants, fishers, agriculture and care. Central to our work and research has been the inability of a worker to change employment easily. This lack of mobility leads to exploitation, wage stagnation, and a lack of progression.

Without bargaining power, unscrupulous employers can take advantage of workers. This is compounded by language issues, unfamiliarity with Irish labour laws and isolated work places

with poor transport. Giving a worker bargaining power through being able to choose where they work if problem arises or if they are offered better terms and conditions is critical. This approach mitigates against exploitation. Currently, the system does not allow for sector-based permits e.g. where someone has permission to work in any occupation in the hospitality sector or care sector for example.

Ireland could replicate some recent developments in Sweden and Canada, reforming the work permit system to provide for greater occupational mobility or implementing transitional measures, including sector-based employment permits, to reduce irregularity in the labour market.

Upholding and Enforcing Rights

For a person migrating to Ireland - possibly for the first time - it is imperative that they are informed about their rights and entitlements under Irish labour laws. A copy of Irish labour laws should be provided in a language they can understand and should be issued along with the work permit. This should also include information on the WRC and have signposts to Trade Unions and organisations such as MRCI where they can seek advice and representation.

Principle 8: Legislative Framework and Process

Legislation

The Employment Permits (Amendment) Act 2014 enables an undocumented worker to take a legal case for breaches of their employment rights to the civil courts. To our knowledge no cases have been taken under this provision. Problems arise with the cost of legal representation which presents a significant financial barrier and the burden of proof on the employee to prove that they *took all steps as are reasonably to open to them* to ensure they were legally working in this state. This section needs to be amended to make it clear that cases should come within the remit of Work Place Relations bodies.

MRCI recommends amending the legislation to make provision for the introduction of sectoral work permits and labour mobility.

Summary of MRCI Recommendations

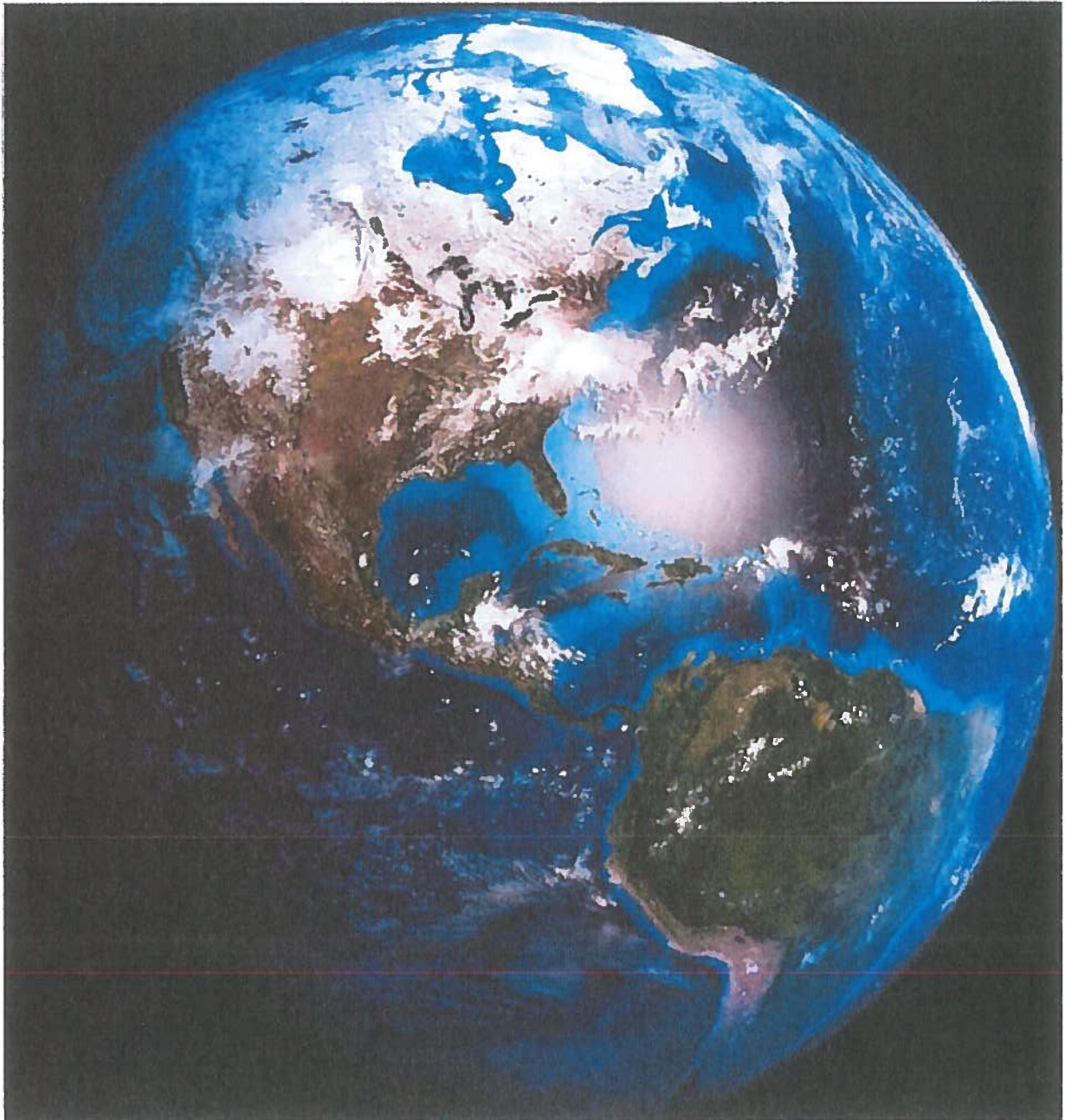
1. Ensure there are broad range of regular channels for labour migration which outline clear rights and responsibilities as a cornerstone for Ireland's labour migration policy and for attracting and retaining workers.
2. MRCI questions the effectiveness of the 50:50 rule and LMNT. We are in favour of the reduced two-week period for advertisements under the LMNT. We would also recommend the DBEI carry out research on EEA preference and the 50:50 rule to better inform policy in this area.
3. Enhance the department's decision making process to provide clarity on how the ineligible lists are determined by government and why measures are not put in place to respond to undocumented workers already in the state.
4. Improve data and evidence collection through expanding the remit of the EGFSN to have a more balanced focus on labour and skills needs to address practical shortages in the labour market. In addition, the EGFSN should collaborate with a range of interested parties and put in place a robust process for input and consultation on labour and skills shortages to identify emerging gaps and anomalies in the labour market. This group should be given additional resources to carry out more research with this task.
5. Introduce transitional measures for undocumented migrants and resident workers in the state
 - a. The DBEI needs to work with the Department of Justice and Equality (DOJ) to enable experienced and skilled workers already in the State who may be undocumented to formalise their employment relations. This approach could be modelled on the Reactivation Employment Permit (REP) Scheme and the 2004 Student Probationary Extension Scheme. This would recognise workers contribution to the state and allow for better responsiveness in the labour market.
 - b. A facilitated entry into the employment permits system by means of a different salary threshold would help increase compliance in many sectors, reduce irregularity and help employers retain staff. A scheme should be put in place to enable experienced and/or skilled workers already in the State to access the labour market.

6. Amend the Employment Permits Act 2014 to introduce sectoral work permits particularly in labour intensive sectors.
7. Remove quotas as LMNT acts as a check to ensure shortage is genuine
8. Migrants on temporary work permits should be given preference to transition into other employment if employment is available.
9. Introduce parity for all workers - high and essential (low) skilled for family reunification rights.
10. Reduce the salary threshold to €27,000 for new applicants on a general employment permit. It is recommended that this is accompanied by granting a (new) sectoral mobility.
11. The DBEI to provide information of Irish labour laws and redress mechanisms in a language the persons can understand when the work permit is issued.
12. Amend the Employment Permits (Amendment) Act 2014 to make clear that cases for undocumented workers should come within the remit of Work Place Relations bodies.

MRCI is available to meet with the Department to discuss any of the above recommendations.

Submission 24

Deloitte.



**Consultation On Proposed Guiding Principles To
Frame The State's Economic Migration policy**

Deloitte Submission

18 April 2018

Contents

Introduction	3
Guiding principles to frame the economic migration policy	3
Conclusion	7

'Contributing to the
successful improvement and
implementation of an
enhanced migration policy'

Deloitte seeks to submit a response to the Public Consultation for Economic Migration Policies, and hopes it can contribute to the successful improvement and implementation of an enhanced economic migration policy for Ireland.

Introduction

Deloitte has over 2,700 employees on the island of Ireland providing audit, tax, consulting and corporate finance services to public and private clients spanning multiple industries. We have offices in Dublin Cork, Limerick, Galway, and Belfast.

Deloitte continues to invest in both the Irish and EEA workforce – through the recruitment and upskilling of graduates through various programme. We also employ non-EEA nationals as part of our workforce – we use the immigration systems of the Department of Business, Enterprise and Innovation and Department of Justice and Equality when hiring foreign nationals. We are continuing to grow rapidly in Ireland to meet the market needs of the ongoing investment in Ireland – from a local level to the multinational level.

Deloitte also operates one of the largest immigration practices in Ireland and serves a large number of foreign multinationals and domestic companies in relation to assisting them with their immigration obligations.

We appreciate the opportunity to review the current system to ensure it is supportive of the labour market needs in Ireland.

Guiding principles to frame the economic migration policy

In Ireland, companies continue to look to the domestic workforce to meet their general labour and skills needs. However, due to the skilled roles and skill sets required for certain roles, companies occasionally require certain skills that cannot be located within the EEA market.

As part of the consultation process, and taking into account the proposed guiding principles to frame the State's economic migration policy, we would make the following observations and recommendations.

1. Skills shortage - Utilisation of dependant permission

A change that would have a significant impact on economic migration policy would be the adoption of a policy that gives dependant foreign nationals an automatic right to work. This proposal would further ensure that the labour market would be less restrictive and address the skills shortage referenced in the guidelines.

The dependant/spouse employment permit was created to attract highly skilled nationals and their spouses/partners. This permit is applicable only to the spouse/partner of an individual who holds a Critical Skills Employment Permit ("CSEP"). However as this is reliant on an offer of employment for that spouse – many dependant foreign nationals

have been unable to utilise these employment permits. Such scenarios include where dependant family members may work in freelance careers (e.g. journalism/painting) or as self-employed.

Evidence has shown that many of our foreign nationals are highly skilled¹ and from our experience, we seek to employ foreign nationals on a CSEP. This is resulting in many dependant partners who fall into the scenarios outlined above being unable to work. As a result, Ireland is unable to utilise a highly skilled section of the foreign national population. It further has a detrimental impact on our ability to hire and retain highly skilled foreign nationals where their dependant partners are not guaranteed employment in Ireland.

We would ask that automatic work permission (Stamp 1) could be provided to dependants of holders of CSEP and other work permissions (employment permit or Stamp 4 permission).

We have experience from an international comparative that other countries provide automatic work permission to dependant family members – allowing them to contribute fully to the economy and society. In the UK, accompanying dependants are able to live and have full rights to work in the UK as PBS dependants. Likewise in Australia, dependents are included in the one electronically approved application together with the visa holder and they are granted full work rights – no additional steps are required post arrival.

2. *EEA preference and review of the highly skilled and ineligible lists*

We appreciate the opportunity to contribute to the bi-annual reviews of the highly skilled and ineligible lists. However, the information sought to support any submissions can sometimes be challenging to obtain.

In previous reviews, we have found the inclusion of data can be difficult to gather. Rather, it is our insight and experience of the forecasted roles that we see in our future business and our future client's business that we can provide. We also find with the required transformation to meet our client's and the market's needs – our roles are evolving out of the stereotypical roles of the past.

There are scenarios where a specialised, highly-skilled role would not be considered as falling within the strict boundaries of the 'Highly Skilled List'. In this scenario, we have been unable to offer the position.

Likewise, the requirement of having a relevant qualification to be suitable for a role under the 'Highly Skilled List' (and with a salary of under €60,000) continues to impact our ability to hire people. We have found that candidates may have been suitably qualified due to their skillset and experience but may not have had the traditionally expected qualification and therefore not been eligible for a CSEP. Due to immediate family reunification requirements, many foreign nationals will seek to be employed under the CSEP as opposed to the General Employment Permit. This can impact the ability to hire the right people.

Further flexibility in assessing critical skills employment permits would be greatly beneficial.

¹ Approximately 69 per cent of new employment permits issued in 2014 were to professionals (Behan et al., 2015) Behan, J., J. McNaboe, C. Shally and N. Burke (July, 2015). National Skills Bulletin 2015. A Report by the Skills and Labour Market Research Unit in SOLAS for the Expert Group on Future Skills Needs.

For example:

- where a role doesn't align under the Standard Occupational Classification code on the highly skilled list but is a technically skilled role due to the functions and roles of the role and the skillset of the person required; or
- the foreign national doesn't have the relevant qualification but does have the skillset and experience – e.g. a candidate going into an IT role but with a background in business administration.

3. Balance approach to innovation and labour market

We continue to employ our workforce from graduate level up to experienced hire level. We invest in our graduates as the future of our business. The gradireland Graduate Recruitment awards recently recognised us as one of Ireland's leading graduate employers from the perspective of those that matter most – the students and graduates who will provide the next generation of innovators and leaders in Irish business.

In recent years, as Irish educational institutions attract further foreign nationals, we have recognised an increase in successful candidates under the graduate programme who are non-EEA nationals. This creates an increase in the number of employment permits required for these candidates.

The current minimum levels of remuneration in order to obtain an employment permit stands at €30,000 base salary. Training and other benefits provided are not taken into account for this purpose.

The successful candidates are coming in at graduate level and we invest in their future in upskilling them through study and work programmes, we would ask that their level and our investment in their future be taken into consideration when establishing minimum levels of remuneration. Their continued growth and input into the Irish economic market is important for future economic development.

4. Employment Permit Systems

The employment permits system have seen great improvements with recent innovative changes such as:

- Employment Permits Online System
- Trusted Partner processing
- Frequently Asked Questions
- Online Status update
- Department processing times

With many of these changes there has been reduction in processing times and increased transparency that has greatly assisted us in making business decisions for clients and internally in hiring new employees. Likewise, the communication of the Department in engaging with us and hosting educational seminars and events has been beneficial.

There are a few remaining systems where we continue to expect delays which impacts our clients and our business. The challenge we face is the inconsistency of delays and where there are immigration delays, this can impact our business, our employee's business travel and employee's personal lives. This impact can be very detrimental to all concerned.

Further automation would greatly assist these processes – for example;

- Stamp 4 Support letters – the requirement to confirm that the permit holder has worked for the term of their exiting permit and complied with the terms is currently delaying the transition from a CSEP to a Stamp 4 – thus reducing the benefit to attracting a highly skilled workforce
- Statement of Loss – the application forms to be signed by an Garda Síochána and the employee could be automatically generated online

- Formal Notifications of Job Title – creating a formal process to make these applications and have the recording on an automated system may assist. For example, when an employee's job title changes due to a team re-structure or the annual salary increase occurs – there is not an effective system to monitor and update their employment permit.

- The requirement to have original signatures on certain applications can often cause unnecessary administrative burdens and slow a process down. The acceptance of soft copy signatures regarding the EPOS system has significantly improved the efficiencies of the employment permit system

Additionally there are some areas of the employment permit system where further guidance would be appreciated.

- Grace period post-employment

In many other international jurisdictions, we have seen the use of grace periods – when an employee leaves their employment. There is currently no guidelines in place to direct either employers or employees in this scenario. For example in the United States, there is generally a period of up to 60 days to file for the transfer of their work permission. Whilst the Reactivation Employment Permit allows for employees who have 'fallen out of the system' due to redundancy or exploitation – there is no suitable options for those who have left or been terminated.

- Leaving Employer within 12 months, where the employee has permission of current employer²

A flexible approach to this restriction would be of assistance – for example in circumstances where the current employer has given approval or where the current employee has already worked on a client site at the new employer.

5. Work Permission options

At Deloitte, we utilise the economically focused and ancillary permit types for our employees. Further we assist companies in seeking immigration permission. However there is currently no flexibility to cover employment outside of these strict work permission types.

We note the involvement of the Atypical Working Scheme Permission to assist in covering short term authorisation. However in circumstances where we have employees required to work between offices, there not a suitable work permission that allows them to work in two offices in two geographical locations. For example, we cannot have our foreign national employees working in another foreign office (e.g. London) while employed in Ireland where they are working on a global client.

² In accordance with Section 12(1)(e) of the Employment Permits Act 2006 as amended, a new Employment Permit (for a different employer) cannot be considered if fewer than 12 months have elapsed since the permit was issued.

Our team structure within Deloitte relies on cross-geographic collaboration to grow and meet the needs of our global clients. The situation above affects our business and clients. It also affects employees who may not have the access to the same opportunities and career development as a consequence of this restriction.

We would request a more flexible work permission be introduced to cover these scenarios – especially where we expect our future workforce to require increased flexibility. We have seen a more flexible work permission introduced in other international jurisdictions.

6. *Legislative Framework and Process: A single permission in Ireland*

The challenge we found with the current economic migration policy is the diversification of work, residence and entry permission across different government departments. A single immigration permission approach would significantly reduce the time and administrative burden and cost.

For example, a non-EEA visa required national (e.g. from India) must apply for work permission from the Department of Business Enterprise and Innovation, apply for entry permission from an embassy (online and then in person) through the Department of Justice and Equality (DJE), then apply in person for residence permission from the DJE and then again apply (often in person) for re-entry permission from the DJE. Separate to this immigration process, they will need to attend in person to get a PPS number and card. This is in addition to the administration required when moving to a new country – bank appointments and residential housing appointments. This makes Ireland a less attractive place for high skilled nationals to move to and therefore has a detrimental impact on our ability to hire highly skilled.

From an international comparative, we have reviewed other immigration systems who maintain a single permission to enter (to include work, residence and entry). In the Netherlands, an employee will apply for work and residence at the same time. They can also apply from within the country. Likewise, in Australia, UK and Canada the single permission approach has been very efficient in minimising the administration and making the system for attractive to highly skilled employee. A unified system to allow for work, residence and entry permission would not only reduce the above administration, but would align with best-in-class immigration practice at international level.

In the interim, we believe that greater levels of communication between departments would greatly assist the process. The introduction of the online permit check to assist the Department of Justice and Equality in confirming the status of employment permits was a positive step.

Conclusion

Where we continue to see growth in the market, due to global trends, growth in our local economy and the continued FDI investment – we expect further growth in the use of the employment permit system. In order to meet this expected growth, we welcome the opportunity to input to working towards an efficient and effective economic migration policy in Ireland to meet the labour and skills needs of our business. If you have any further queries, please do not hesitate to contact us.

Deloitte.

Deloitte, a partnership established under the laws of Ireland, is the Ireland member firm of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. Please see [About Deloitte](#) to learn more about our global network of member firms.

At Deloitte, we make an impact that matters for our clients, our people, our profession, and in the wider society by delivering the solutions and insights they need to address their most complex business challenges. As the largest global professional services and consulting network, with approximately 263,900 professionals in more than 150 countries, we bring world-class capabilities and high-quality services to our clients. In Ireland, Deloitte has nearly 3,000 people providing audit, tax, consulting, and corporate finance services to public and private clients spanning multiple industries. Our people have the leadership capabilities, experience and insight to collaborate with clients so they can move forward with confidence.

This communication contains general information only, and none of Deloitte, Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.



Submission to the Department of Business, Enterprise & Innovation in respect of the public consultation phase of the Review of Employment Permits rationale.

Company: Coillte CGA

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

Within Coillte we have three high potential businesses: Forestry, Land Solutions and Medite Smartply. Forestry in Ireland has seen accelerated development since the company was established in 1989 and became a commercial semi state. The forestry sector currently employs over 12,000 people and every year it contributes €2.3 billion to the Irish economy. Forestry is our core business. We plan to grow this business and improve the commercial return from our forestry investments to 3.5% by 2020 so that we achieve a long-term cash yield that is best in class in Europe.

Over the next 10 years, the forestry industry has the potential to double in size and Coillte will play a leadership role in shaping and driving this growth. We plan to become actively involved in providing sustainable solutions to private forestry owners that will drive the mobilisation of private forestry supply in Ireland. Forestry also has a critical role to play in mitigating the impact of greenhouse gases and climate change by storing carbon in the trees and soil. By managing our forests in a sustainable manner, Coillte remove the equivalent of 1.1 million tonnes of carbon dioxide from the atmosphere every year. Over the coming years Coillte will increase this contribution by stimulating afforestation within Ireland and helping to increase the 11% forestation cover in Ireland today to as much as 14% in the coming years. We are also enabling Government Policy to be implemented in key areas such as renewables, infrastructure, industrial development and tourism, all of which are leading to significant job creation.

Submission Rationale

We wish to provide a submission on the nature and extent of skills and labour shortages within the Forestry industry and request that this industry be added to the Critical Skills List. As an industry, Forestry has a key role to play in growing Ireland's economy and enabling government policy.

Specialist Forestry Professionals

There is a distinct skills shortage in qualified Forestry professionals with only two relevant course undertaken across Ireland each year. These include Waterford Institute

Coillte, Dublin Road, Newtownmountkennedy, Co. Wicklow, A63 DN2, Ireland.
 T 1890 367 378 F +353 1 201 5333 E info@coillte.ie W www.coillte.ie

Stiúrthóirí / Directors: John Moloney (Cathaoirleach / Chairman) Fergal Leamy (CEO) Roisín Brennan, Gerard Gray, Jerry Houlihan, Patrick Eamon King, Dermot Mulvihill, Julie Murphy-O'Connor, Thomas O'Malley
 Cláráithe in Éirinn No. 138108. Oifig Chláraithe: Coillte CGA, Baile an Chinnéidigh, Co. Cill Mhantáin, A63 DN25, Éire
 Registered in Ireland No. 138108. Registered Office: Coillte DAC, Dublin Road, Newtownmountkennedy, Co. Wicklow, A63 DN25, Ireland

of Technology and University College Dublin. The volume of students graduating from Irish universities is also very low at approximately 20 students per annum. Aligned with the growth of the Forestry sector in recent years there is also high competition for these students across private companies both at home and abroad. There are also concerns with Irish & European forestry course syllabi in comparison with worldwide Forestry Universities. In our experience some qualifications in Ireland may lack the commercial business and technical skills elements required for the roles. In addition the course content covered can be dated where Forestry today is an innovative business requiring the identification and utilisation of the latest technological advances and modern forest management theories.

There is also a distinct shortage in specialist forestry candidates who would require knowledge and skills in areas such as Tree Breeding, Remote Sensing (Python programming, Earth observation and airborne laser scanning data), as well as forest inventory and monitoring. These individuals would also need to be proficient in the Application Programming Interfaces of many of the open-source libraries that Coillte uses to process EO data and are extremely specialist skills.

Contractor Infrastructure & Harvesting Machine Operators

There are similar skills shortages as outlined above for Specialist Forestry Professionals who have the business acumen to support the growing need for independent contractors in the areas of Crop Establishment/Forest Maintenance, Harvesting and Haulage. The growth in the economy is resulting in the Irish workforce having more opportunities, particularly in Construction, which is leading to reduced numbers going into the forest industry. There is a particular shortage of manual labour to achieve the industry's national tree planting/maintenance programmes, as well as shortages in Machine Operators in both the Harvesting and Haulage sectors. Ballyhaise Agricultural College in Cavan is the only technical course currently available where machine operators are trained, with the demand currently outstripping the number of students who qualify.

These factors combined, lower the availability of suitable candidates in Ireland, particularly in relation to our Forestry specific Graduate Programme and other Technical and Specialist Forestry roles. As such we have been driven to advertise our vacancies internationally across European and Non-EU publication and forestry universities to attract a high calibre of applicant.

Submission 26



ICTU Submission

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

18 April 2018

Introduction

The Irish Congress of Trade Unions is pleased to accept the invitation to make a submission to the consultation on proposed Guiding Principles to frame the State's economic migration policy and to outline the views of Congress on the future strategic direction of the employment permits regime.

Congress is the largest civil society organisation on the island of Ireland, representing and advancing the economic and social interests of some 800,000 workers in all sectors of the economy.

Recent changes to the employment permit regime, such as the introduction of Reintegration Visas, have resolved some problems previously associated with the system. Notwithstanding, problems remain, as evidenced by the extreme exploitation uncovered in the fishing industry. The new arrangements here have not safeguarded the rights of these non-EEA workers and have proved impossible to police, as confirmed recently by an Oireachtas Committee¹.

Congress have provided responses in accordance with the template provided. The key issues for Congress with regard to work permits are as follows:

1. Protecting migrant workers from exploitation.
2. Ensuring the incidence of work permits does not become excessive in any sector/ sectors.
3. Protecting the labour market position of Irish, EEA citizens and existing permit holders from downward pressure on wages and conditions in a sector.
4. Ensuring policymakers do not repeat the mistake from the boom and lose focus on helping and incentivising the large number of working age people outside of the labour force back into employment.
5. Ensuring risks to the labour market are not overlooked.

These are discussed in details in our responses to the questions below.

¹ Joint Oireachtas Committee on Business, Enterprise and Innovation (November 2017) *The situation of non-EEA crew in Irish Fishing Fleet under the Atypical Worker Permission Scheme*
https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_business_enterprise_and_innovation/reports/2017/2017-12-14_report-the-situation-of-non-eea-crew-in-the-irish-fishing-fleet-under-the-atypical-worker-permission-scheme_en.pdf

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 rule and the labour market needs test (LMNT) remain critical to protecting the functioning of the Irish labour market.

Ireland has the highest rate of children growing up in homes where no adult is working, according to recent analysis of 13 comparable countries². Children who grow up in jobless families have poorer developmental, educational, and employment outcomes themselves. Furthermore, while there has been a year on year decrease in unemployment in all Member States, except Estonia, 17.6 million men and women in the EU28 were unemployed in February 2018. Out of which, 3.5 million were young persons (under 25), 2.5 million of whom were in the euro area³.

It has been the experience of Congress that the introduction of employment permits into a sector has led to downward pressure on wages and conditions in that sector. Paradoxically, this pressure has often been highest on citizens of the EU15 Member States working and living in Ireland.

Any move to alter the 50:50 rule and the LMNT needs to be mindful of the link between labour market standards and political stability. Ireland remains one of the few Member States without a Far Right, anti-migrant party. Policymakers and national actors should do nothing to undermine this.

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?*

While acknowledging the fall in unemployment, Congress is mindful our employment rate remains below the EU average.

² Cheng, R (March 2018) *International comparisons of health and wellbeing in early childhood* Nuffield Trust

³ Eurostat (April 2018) *Unemployment Statistics* http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics

The mistakes of the previous boom period, when large numbers of the working-age population were left behind in the upturn, must not be repeated.⁴ Indeed, the Programme for Government commits to supporting the long-term unemployed return to work, ending the plight of jobless households and improving the employability of disadvantaged youths.⁵

People furthest from the labour market, young people and women as well as non-Irish nationals have a higher incident of low skilled, minimum wage employment⁶.

One of the first responses of the State to a tightening of the labour market should be to look beyond the live register and to the potential labour supply, PLS2 to PLS4 as set out in the QNHS. The rate of unemployment – with discouraged workers included (PLS2) was calculated at 6.9 per cent in Q2 2017, the category broad unemployment stood at 13.3 per cent.

Furthermore, as referred to in Question 1 above, there are currently over 17 million unemployed people throughout Europe, 3.5 million of whom are under age 25 years or younger, who have freedom of movement. The impact of the expected withdrawal of the United Kingdom from the European Union next year on intra-EU mobility into Ireland cannot be overlooked in the future design of the employment permit regime.

While the numbers involved are relatively small, the position of asylum seekers has changed – and will change further with the adoption of the Reception Conditions Directive (2013/33/EU).

The following groups should be exhausted prior to the removal of any category from the ineligible list:

1. Long-term unemployed
2. Underemployed
3. Short-term unemployed
4. Inactives
5. Participants on activation programmes - CE, TUS, Rural Social Scheme, etc.
6. Irregular migrants

⁴ Byrne, S. and Conefrey, S. 'A Non-Employment Index for Ireland' *Central Bank of Ireland: Economic Letters Series* Vol. 2017, No.9

⁵ (2016) *A Programme for Partnership Government* Dublin: Government Publications pp.133, 136

⁶ Maître, B. et al (2017) *A study of minimum wage employment in Ireland: the role of worker, household and job characteristics* Dublin: ESRI

With regard to regularisation measures, Government may be wary of a pull effect. Congress consider it equally undesirable the downward pull on labour standards from labour who have fewer rights than EEA workers.

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?*

The most pressing need is a measure of the number of persons in the State on language school visas and the number of hours they are employed. In the absence of this information, we are without a coherent picture of non-EEA citizens in the Irish labour market. Congress have sought this information, without success, from the Department of Justice and Equality (see Appendix 1).

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?*

Applicant sectors will be accustomed to making business cases. Concessions to sectoral employer groups must be accompanied by tangible commitments to engage in upskilling initiatives. It is possible to demonstrate a commitment to workforce development through a range of measures such as membership of a Skillnet network, a consortium to develop new apprenticeships and other forms of upskilling, etc. It is the responsibility of those industries seeking adjustments in the permits regime to make the business case for the requested adjustment. It is unacceptable that line departments should provide this service gratis for private industry. In the absence of additional resources such a move would be to the detriment of the core work of relevant departments.

If sectors become reliant on migrant labour paid at or about the minimum wage they run the risk of downgrading the pay and employment conditions associated with their sector.

The phrase “attraction and retention issues” is a polite euphemism for pay and conditions. In examining this, evidence should be provided for the following:

1. Wage trends in the sector above the minimum wage.
2. A lower than average incidence of adverse WRC inspections findings.
3. Evidence of innovative practices such a ‘recruit a friend’ bonuses.

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?*

The Critical Skills Employment Permit addresses genuine skill shortages. However, employers availing of this type of permit should be required to demonstrate their commitment to training and upskilling initiatives, such as participation in a Skillnet network, in a consortium to develop a new apprenticeship, or strategic links with a Higher Education Institution.

In addition, the remuneration threshold should be re-set at: ‘The prevailing rate of pay and conditions for the occupation or double average industrial earnings per annum whichever is the higher.’

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

The sectoral work permits proposal is worthy of further examination. The claimed labour shortages exist at a sectoral level, and such sectoral work permits would allow for mobility within sectors. It would also give an advantage to good employers over bad.

However, there remains a significant risk for downward pressure on labour standards in the absence of sectoral mechanism such as EROs or JLCs. Sectoral wage bargaining where it exists provides a floor for workers’ rights and ‘protects the bad employers from the worst’.

Congress would not support a system of sectoral employment permits in the absence of a JLC or SEO in the sector concerned.

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?*

Submissions to make changes to the ineligible list need to be evidence-based and managed in a transparent manner.

A party seeking to establish that a labour shortage exists in a particular sector should be obliged to bring their claim to the Labour Court who would seek observations from relevant actors in the sector and subsequently make a finding.

Submissions should include information on distribution of earnings and the numbers on language school visa holders working in the sector. Sectors can experience labour shortages as a result of low wages or long and irregular hours remunerated by a fixed annual salary, with no overtime payment or time off in lieu. Such factors need to be a central consideration in assessing an application for a change to the ineligible list.

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

The sectoral breakdown of adverse findings from WRC inspections should be used in the assessment of applications for removal of occupations from the ineligible list.

The extent of turnover in an industry or sector concerned should also be considered.

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?*

Future skills needs is notoriously difficult to forecast with a degree of accuracy. That said, the work of the Skills and Labour Market Research Unit (SLMRU) in Solas is to be commended.

Congress is concerned at the ever-increasing reliance of employers on work permit holders to fill skills gaps and labour shortages. Congress maintain the answer to future proofing our growth potential lies in providing today's students/ tomorrow's workers with a broad set of transferable skills and competencies, as well as making available upskilling and reskilling opportunities for all workers.

As a member of the National Apprenticeship Advisory Committee and Apprenticeship Council, Congress supports the commitment to redeploy additional NTF funding to support 6,000 new apprenticeships and 3,900 traineeships in line with the Government's Action Plan. However, it is the firm view of Congress that these targets are a floor and not a ceiling. That is to say, there needs to be a commitment that the number, range and quality of apprenticeship programmes will continue to increase until we are in line with leader countries, such as Germany, Switzerland and Austria.

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?*

There is a danger that employers will exaggerate their need for additional labour. As part of the Labour Court procedure set out in answer to question 4.2 the views of the Low Pay Commission should be sought for any changes to the ineligible list.

Fundamentally, judicious use of the permit regime cannot be safeguarded without properly resourced labour inspections. The additional funding required might be raised by means of a contribution levied on the employers/ sector benefitting from a relaxation of the ineligible list.

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?*

At recent EMN Ireland/ ESRI seminar covering this issue in detail, Jonathan Chaloff of the OECD International Migration Division outlined the policy questions in need of addressing⁷:

- Who is responsible?
- How long should permits last?
- How can compliance be assured?
- Should different sectors be treated differently
- What are the trade-offs?

The experience of non-EEA crew in Irish fishing under the Atypical Worker Permission Scheme does not instil confidence in the capacity to manage any alteration in this part of the system.

In addition, the creation of a system of short-term permits is highly likely to increase the numbers of irregular over stayers.

Question 6.1: *What are your views on the remuneration as provided for in law?*

The levels of pay as set out are determined or altered by an administrative measure. It is undesirable for mandatory wage thresholds to be set in this manner. Instead, this process should be overseen by the Labour Court which has established competence in the area.

The original thresholds were set in 2000 with reference to the then rate of average industrial earnings. These thresholds have remained in place in subsequent revisions of the regulations. Average annual earnings for full-time employees in 2016 was €45,611, according to the CSO. Average annual earnings for all employees (part-time and full-time) was €36,919.⁸ It is imperative that the link to average earnings is restored with immediate effect, and is maintained in subsequent revisions of the regulations. This benchmark should be formalised in legislation and a procedure put in place linking thresholds with changes in CSO annual earnings statistics.

⁷ EMN Ireland/ ESRI (26 February 2018) *Managing Labour Migration for Low Skilled Jobs*
<https://www.esri.ie/event/emn-irelandesri-seminar-managing-labour-migration-for-lower-skilled-jobs/>

⁸ CSO (29 June 2017) *Earnings and Labour Costs, Annual*
<http://www.cso.ie/en/releasesandpublications/er/elca/earningsandlabourcostsannualdata2016/>

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?

As discussed above in Question 6.2, there is a pressing need to address the detachment from average industrial earnings which has been allowed to develop in remunerations thresholds over time.

With regard to the reductions in thresholds for native speakers in call centres and for boners in meat processing, it is not possible to form an opinion given the opaque nature of the process which surround decision-making.

Question 6.3: What should the minimum threshold for low skilled workers in occupations removed from the ineligible list be set at?

The minimum threshold for such low skilled workers should be no lower than that set at a sectoral level and the level of wages prevailing in the sector. It should be open to the parties in a sector to agree such a level through a JLC or SEO where these arrangements exist. Where such arrangements do not exist the wage thresholds should be set by the Labour Court. It is vital that the existing JLC framework be maintained.

Congress recommend the high cost of living, especially housing costs and limited supply in urban areas, need also to be factor into the minimum threshold. Recent research on workers earning the National Minimum Wage conducted by the ESRI on behalf of the Low Pay Commission found twice the incidence of minimum wage among non-Irish nationals than that of Irish employees⁹. The risk of in-work poverty and living in a deprived household is particularly high for low skilled workers without an established support network to cushion their living standards.

⁹ Maître, B. et al (2017) *A study of minimum wage employment in Ireland: the role of worker, household and job characteristics* Dublin: ESRI

Question 6.4 How do we mitigate against unnecessary shocks to the labour market or deflationary pressure on wages?

The labour market faces a number of known potential risks in the short to medium term. One comes from the threat of the US/ China trade war extending to EU goods, given that Ireland's biggest single trading partner is now the US. Another comes from changes to US and EU tax regulations. However, the most pressing threat comes from Brexit. This is expected to result in sizable regional and sectoral unemployment. The impact on intra-EU mobility into Ireland is also potentially significant and cannot be overlooked in the future design of the permits regime.

An opening up of the labour market to non-EEA nationals in large numbers, paid at or near the minimum wage, risks a shock to the labour market. A risk assessment of a deflationary effect on wages, conducted by an independent properly resourced agency, such as the WRC or the Low Pay Commission, should be a requirement in each case.

If the State is serious about safeguarding against shocks to the labour market, Congress recommend Ireland adopt the Employer Sanctions Directive (2009/52/EC) for the reasons set out by the European Commission:

Many irregularly-staying third country nationals are working across the EU, in sectors such as construction, agriculture, cleaning and hotel/catering. Knowing that such work is available in the EU is a major pull factor for people who come or stay in the EU under irregular conditions. Employers take advantage of irregular migrants' precarious position, and employ them for what are usually low-skilled and low-paid jobs. Due to their status, these employees are very unlikely to complain about working conditions or pay. This puts them in an extremely vulnerable position. The Directive helps put an end to this situation. It establishes minimum standards across the EU on sanctions and measures against employers of irregularly-staying third-country nationals.¹⁰

¹⁰ European Commission Press Release (27 February 2012) *Sanctioning employers of irregular migrants'* http://europa.eu/rapid/press-release_IP-12-166_en.htm?locale=en

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?*

Currently, non-EEA permit holders are required to pay social insurance and therefore are eligible to claim contributory social benefits if they have accumulated sufficient contributions. Otherwise they have to both pass a means test and prove an adequate connection with Ireland via the Habitual Residence Condition in order to be eligible for a non-contributory social payment. Their family members are not always granted the right to work.

In 2017, 57,000 families claimed FIS/ Working Family Payment at a cost of €422.5m to the State. FIS supplements the incomes of low-paid workers and reduces family poverty. Equally, Congress view FIS as a form of corporate welfare which supplements the profits of low pay employers.

Congress maintain that remuneration thresholds be set at levels that allows migrants a socially acceptable minimum standard of living and a Living Wage.

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?*

The allocation of responsibility for regulation of the labour market rests with DBEI. Consequently, there is a single department overseeing and managing the work permit regime which ensures a consistency of approach across the labour market.

The devolution or transfer of any responsibility in this area outside of DBEI would give rise to the consistent approach being compromised, and any systematic overview of the labour market being lost. This is evident in the area of language schools where neither the Departments of Education or Justice appear to be in a position to indicate how many of non-EEA student visa holders are working in the country at any given time. Secondly, there is a danger that departments other than DBEI would be subject to regulatory capture and would act as advocates of the interests of employers in their sector rather than taking a balanced view of the conflicting interests of employers and workers.

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

The best protection of employment rights is Collective Bargaining. In the absence of this workers are dependent on either sophisticated HR systems or a certainty that employers will apply the law in full.

This latter function is policed by the WRC but it is overly dependent on workers initiating a case. In addition, there are approximately 57 labour Inspectors tasked with enforcing a limited set of statutory provisions in the areas of minimum wage, protection of young persons and payment of wages. An example of the scale of the problem can be found in the WRC Annual Reports. In 2016 a 37 per cent incidence of breaches in Labour Law out of 4,800 inspections was documented, recovering €1.5m in unpaid wages. Recent high-profile coverage of exploitation of non-EEA workers employed in the fishing industry further support the view of Congress that the WRC is not adequately resourced to police sectors with a low skilled, non-English speaking migrant workforce.

Congress recommend that it be required for employment permit employees to receive WRC material on workers' rights in their own language. There should be flexibility to levy a higher processing charge to cover translation costs where material is not already available in the WRC. In addition, there should be an additional levy on sectors identified as high risk to resource an increased number of Labour Inspectors to safeguard against abuse.

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?*

Congress recommend amending the 2006 Act so that the aim of 'flexibility' is balanced with the need to protect against shocks to the labour market and the potential for exploitation of migrant workers. This include the transposition of the Employer Sanctions Directive (see Question 6.4), the folly of pursuing the opt out was shamefully exposed in the Mohammed Younnis case¹¹.

In addition, Congress have proposed the requirement that changes to remuneration thresholds would be set by the Labour Court, and the link to average Industrial earnings made explicit. Any proposal to alter the lists should go before a hearing of the Labour Court.

¹¹ (25 June 2015) Hussein v The Labour Court, Supreme Court Record Number 594 & 606/12
<http://courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/67b523d012e20c6280257e6f0053fabf?OpenDocument>

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

A system which streamlines the application process and reduces processing time is to be welcomed.

The move towards electronic processing is a general tendency in both commerce and public administration. However, it must be subject to a rigorous risk assessment in order to ensure that it is as effective a regulatory tool as the paper based system which preceded it.

Congress' experience of the conversion of the revenue RCT1 form from a paper to an electronic format has not been satisfactory, facilitating the rise in bogus self-employment. Learning from this, the system should be rigorously risk assessed for its capacity to detect and reject false or misleading applications.

Additional issues may arise in the context of The General Data Protection Regulation (GDPR).

APPENDIX 1: Emails seeking information on the number of Non-EEA students/Stamp 2 visa holders

Email dated 23 October 2017

Dear Sir/Madam, I wish to acknowledge receipt of your email.

*Alan McGreevey
Private Secretary to the
Minister for Justice and Equality*

Email dated 6/11/2017

Dear Mr Rigney

Thank you for your email.

The Visa Office cannot assist with your query as your query is related to Registration (Permission to remain/ Stamp). I have forwarded your email to burghquayregoffice@justice.ie (cc'd on this email) for their attention.

*Kind regards,
Visa Customer Services
Visa Office, Dublin
Irish Naturalisation and Immigration Service*

No reply received



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

Who we are

The IRHA was formed in 1973 with the purpose of representing and promoting the interests of Ireland's licensed road haulage industry both at a national and international level. It is the recognised national representative body of the licensed road haulage industry in the Republic of Ireland.

IRHA members operate under Road Haulage Operator Licenses issued by the Department of Transport, Tourism and Sport. A Road Haulage Operator's License is required where goods are carried for hire or reward in a vehicle or combination of vehicles which is in excess of 3.5 metric tonnes.

The association seeks to promote professionalism, excellence and safety in the operation of road transport businesses.

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?

50:50 rule. Our members have a work force comprising mostly of Irish and EEA members so this is not a problem at present and we do not foresee this as a problem in the future. Drivers for Irish haulage operators are among the best paid in the EU so, although there is a chronic shortage of drivers across the EU, some drivers will still opt to come to Ireland to seek employment.

Labour Market Needs Test (LMNT). Whilst the principle of advertising the vacancy first is understandable, we believe that where there is an accepted chronic shortage, this requirement can be obstructive and costly. In a fast paced business such as transport, time is money. An 8 week or even 2 week delay on top of all the other delays in procuring a permit for a non-EU driver is a direct cost on a business, as it means that it is another period of time an expensive truck is left idle for want of a driver.

Currently, in the haulage industry across the world there is a chronic shortage of drivers. In the US, there is a shortage of 900,000. In the EU, there is a shortage of at least 250,000. In the, it is estimated that the driver shortage is now 45,000. We estimate the shortage in Ireland is about 3,000.



In these circumstances, we believe the need to labour market needs test is met long before any advertisement is made. The need to advertise is costly in terms of time, but also in terms of direct advertising cost. Many smaller haulage operators have a very small administrative staff and operate on tight margins. The cost of advertising in a national newspaper is significant for these businesses.

We believe that if the advertisement requirement must stay, the requirement to advertise in a national newspaper is unnecessary and excessive. The fact is, no HGV driver looks in a national newspaper when looking for a job. It is all done online. So much of what a modern HGV driver does is done electronically – between dealing with head office, tachograph obligations, notices and fees and many others. It is safe to say that every HGV driver uses online tools to view job availability.

The IRHA believe that many members of found the experience of undergoing the process of applying for non-EU permits has been very difficult and has acted as a disincentive to applying.

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?

Currently, in the haulage industry across the world there is a chronic shortage of drivers. In the US, there is a shortage of 900,000. In the EU, there is a shortage of at least 250,000. In the, it is estimated that the driver shortage is now 45,000. We estimate the shortage in Ireland is about 3,000.

It is a priority for the IRHA to tackle this deficit. The traineeship mentioned above is one way to deal with it. However, in the short to medium term we need an efficient and effective system for bringing in experienced drivers from outside the EU to ensure many of our members' businesses remain viable.

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?

More dialogue with trade organisations and representative bodies. The IRHA are willing to meet with the Department to explain in more detail the feedback we receive from Members.

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

Suite 6, Gowna Plaza, Bracetown Business Park, Clonee, Co. Meath, D15 VY77

ph: +353 (0)1 801 3380 fax: +353 (0)1 825 3080 e-mail: info@irha.ie website: www.irha.ie



maximise opportunities for unemployed people; and (c) to address attraction and retention issues?

As stated above, direct dialogue with representative bodies will lead to a better understanding of the industry needs. The level of evidence required can be a matter for the Department in circumstances where the case put forward by a representative body is made.

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 any observations on this principle, permit type and remuneration threshold?

The threshold for the General Employment Permit which is designed to deal with a general pool of labour/skills shortages in the State is set too high at €30,000 as it can include semi-skilled to low skill work in certain areas where the labour is required. The 2017 Regulations allowed a threshold of €27,000 for meat boners which is a semi-skilled occupation. The general permit should be set at €27,000 to make the permit scheme more effective. For HGV drivers, the scheme is subject to a quota so there is no case for suggesting this would drive down wages.

Question 4.1

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

Yes. In our sector, drivers are at a shortage, not support or administrative staff.

Question 4.1

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

Question 4.2

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

Question 4.3

Can you recommend any other verifiable data/evidence?

Question 4.4

Suite 6, Gowna Plaza, Bracetown Business Park, Clonee, Co. Meath, D15 VY77

ph: +353 (0)1 801 3380 fax: +353 (0)1 825 3080 e-mail: info@irha.ie website: www.irha.ie



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?

As stated above, consultation and dialogue with the trade representative bodies. In the case of the haulage industry, the IRHA. However, related bodies such as those dealing with exports, manufacturing etc. should also be consulted with as an indication of growth in exports will indicate a greater demand for labour in support services such as road transport.

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?

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 IRHA have no issue with the quota system. The principle behind a quota system is understandable. However, the system must be reviewed effectively and closely monitored to ensure that it meets the needs of the particular industry.

Additionally, in circumstances where a quota has not been used up, this must be considered carefully. It may be indicative of a problem in obtaining the permit or the limited use the permit has. This is the case with the haulage industry. The quota set in 2017 was not reached for a number of reasons despite the chronic shortage of drivers.

Question 6.1

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

The threshold for the General Employment Permit which is designed to deal with a general pool of labour/skills shortages in the State is set too high at €30,000 as it can include semi-skilled to low skill work in certain areas where the labour is required. The 2017 Regulations allowed a threshold of €27,000 for meat boners which is a semi-skilled occupation. The general permit should be set at €27,000 to make the permit scheme more effective. For HGV drivers, the scheme is subject to a quota so there is no case for suggesting this would drive down wages.

Question 6.5

Suite 6, Gowna Plaza, Bracetown Business Park, Clonee, Co. Meath, D15 VY77

ph: +353 (0)1 801 3380 fax: +353 (0)1 825 3080 e-mail: info@irha.ie website: www.irha.ie



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?

In an ideal world, this is a aspiration. However, wage inflation is equally damaging to the economy and our competitiveness within the EU. Our social welfare regime should not dictate wage levels. In the haulage industry, most of the businesses are run in rural area throughout the country where the cost of housing is a lot lower than that of the cities. There are many factors that decide level of wages but unless an Irish business can remain competitive, there will be no job to seek a permit for. It must be remembered that Ireland already has the second highest national minimum wage.

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?

This may be of benefit. The important point is that each sector has special requirements and they must be considered.

Question 7.1

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

The IRHA fully support the specific measures in place to protect those working in the State under a work permit, as they are more vulnerable.

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?

Question 8.2

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

The IRHA appreciates the improvements that have been introduced through the online system. However, a number of members experienced great difficulty during the process. The IRHA

Suite 6, Gowna Plaza, Bracetown Business Park, Clonee, Co. Meath, D15 VY77

ph: +353 (0)1 801 3380 fax: +353 (0)1 825 3080 e-mail: info@irha.ie website: www.irha.ie



would like to see more resources being put into technical support. In many cases, applicants were unable to get up to date information on the progress of their application or on outstanding issues which delayed their application. Experience of members was the EPOS was not updated frequently enough.