



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

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The Horticulture Industry Forum (HIF) has structured this submission by supplying its contributions under each question relevant to HIF posed in the consultation document. Questions not relevant to HIF or where HIF felt it did not wish to make a contribution, have been omitted from this submission

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 HIF approves continued application of the 50:50 rule and the acknowledges the need for the LMNT. However, HIF suggests that the 2006 Act should be further amended to require the employer to advertise the vacancy;

- With the DEASP Employment Services / EURES employment network on JobsIreland.ie for at least 2 weeks and
- In either a local newspaper or a jobs website (separate to JobsIreland.ie) for 3 days

The requirement for advertising the vacancy in a national newspaper should be dropped.

Although HIF acknowledges the need for LMNT, HIF advocates that current LMNT for the horticulture industry should be reviewed and improved, as it appears that the data correlated by Solus has been indicating that there is no labour shortage occurring in horticulture, when in fact all stakeholders reporting into HIF have been relating for the past 18 months that major difficulties recruiting employees were being experienced throughout the industry. We make further reference to this point and suggest a possible remedy in section 2.2 below.

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?

The HIF argues that the employment permit regime should be less restrictive and that horticulture should be removed from the ineligible list. In most EU countries, seasonal worker permit programmes for non-EEA applicants are in operation e.g. Netherlands [Seasonal Worker Permit](#) and Poland [work permits for non-EU assignees](#). These seasonal worker programmes are widely used by horticulture producers in other EU states as it is continually challenging, particularly in the current tight labour market, to attract EU and EFA candidates to take up employment opportunities that often involve

outdoor work. To ensure that Irish producers can compete with producers in other EU jurisdictions, similar schemes should be available to horticulture growers in Ireland.

The fact that other EU countries provide work permit programmes for non-EEA citizens working in the horticulture industry and Ireland currently does not, is undermining the ability of Irish producers to compete with imported produce. For example, Spanish tomatoes and strawberries, which are regularly imported into Ireland, are often picked in Spain, by workers from Morocco, where the minimum wage is currently €4.76. Details of the scale of non-EEA worker employment in Spanish horticulture including the EU-funded FUTEH programme can be found in this 2016 [ILO report](#). The availability of such imported produce undermines the competitiveness of Irish horticulture producers in what is supposed to be a European Single Market.

HIF argues that Irish producers should have access to a work permit programme for non-EEA citizens. As part of such a scheme, Irish producers would commit to a managed programme with appropriate safeguards that would ensure that non-EEA citizens could work at agreed rates, access suitable accommodation and enjoy a full life whilst living in Ireland.

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?

HIF believes that current processes employed by the Labour Market Research Unit (LMRU) in SOLAS do not accurately capture the labour needs of the horticulture industry on an on-going basis, as the structure of the industry is very different to other industries/sectors (including other agriculture sectors) and that alternative methods are needed to provide the required data.

HIF suggests that Teagasc, using their industry network and building on their current data capture activities, instigate a regular labour market survey that could capture the required data.

HIF also suggests, as there are issues around data availability and data quality in relation to the labour needs of horticulture, that greater weighting should be applied to the public consultation element of the ineligible list review. In addition, HIF would argue, given the different nature and structure of the horticulture industry, that greater weighting should also be given to the input of DAFM, as the line department, into the review process

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?

HIF would support a move to charge DAFM with the responsibility of administering a system that would provide objective information and data as outlined. Respective state agencies and industry stakeholders could feed into and partake in such an objective evidence-based system. It is likely to be possible to link capture of the required data and monitor industry improvements through some existing programmes that are already operational by some state agencies.

Producers in the horticulture industry are particularly aware of the retention issue and have made attempts to address it by, for example, implementing retention policies which cover areas such as upskilling, increased wages, free or subsidised accommodation, free or subsidised transport to/from work, flexible holiday arrangements, etc. In addition, if permits are restricted to particular sectors, then overall mobility out of the sector should be mitigated to a large degree.

Question 4.1

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

HIF would support a move to enable the employment permit system to give preference to sectors such as horticulture. Horticulture, when compared to many other agriculture sectors, has a much higher labour requirement particularly when it comes to harvesting crops.

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?

HIF would support, in the case of the horticulture industry, the use of relevant accurate objective data, pertaining to the horticulture industry, being compiled and supplied by DAFM that would inform submissions for the removal of occupations from the ineligible list.

Question 4.3

Can you recommend any other verifiable data/evidence?

HIF suggests that Teagasc, using their industry network and building on their current data capture activities, instigate a regular labour market survey that could capture the required data.

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?

Horticulture producers are introducing new technology, on an on-going basis, to improve the efficiency of production and harvesting. DAFM support such investment through the Horticulture NDP programme. Horticulture producers have a strong interest from a cost control perspective to use increased mechanisation and

technologies to reduce their large dependence on manual labour. However, although the extent of manual labour needs is being reduced, a significant demand for manual labour will continue in the medium term.

Five Multiple groups control over 90% of the retail fresh produce market and there is an elevated level of price competition between these groups. Irish fresh produce growers are in a weak position to bargain as many are competing to supply the retailers. This power imbalance has led to producers frequently obtaining prices that just cover or fail to cover their production costs. As a result, many producers are not able to make the required levels of re-investment to make their businesses as innovative and progressive as regularly as they would wish to do so. In addition, often with Bord Bia support, many producers have and are undertaking LEAN programmes to maximise efficiencies and practices. It is also important to note, that in relation to technological adaptation, that there is a huge diversity of crops grown by Irish producers and although automation technology is advancing, the pace of automation and the required level of capital investment in such technology is hampering the rate of adaptation.

HIF suggests that consideration be given to the introduction of a new permit scheme for low skilled occupations. In most EU countries, seasonal worker permit programmes for non-EU EFTA applicants are in operation e.g. Netherlands [Seasonal Worker Permit](#) and Poland [work permits for non-EU assignees](#). These seasonal worker programmes are widely used by horticulture producers in other EU states as it is continually challenging, to attract non- EEA candidates to take up employment opportunities that often involve outdoor work.

HIF would support the application of a maximum quota, for employments that are removed from the ineligible list provided the quotas were informed by and set in accordance with objective accurate up to date data that identifies the scale of demand. The Teagasc labour market survey, proposed earlier in this document, could provide the salient information required.

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?

As previously mentioned, Horticulture producers are introducing new technology, on an on-going basis, to improve the efficiency of production and harvesting. DAFM support such investment through the Horticulture NDP programme. Horticulture producers have a strong interest from a cost control perspective to use increased mechanisation and technologies to reduce their large dependence on manual labour. However, although the extent of manual labour needs is being reduced, a significant demand for manual labour will continue in the short to medium term.

HIF suggests that consideration be given to establishing permit programmes of 10-month and 20-month duration that could work and meet the needs of both the

employees and employers. As part of these schemes, producers would commit to a managed programme with appropriate safeguards that would ensure that non-EEA citizens could work at agreed rates, access suitable accommodation and enjoy a full life whilst living in Ireland.

HIF would also support the introduction of formal responsibilities and conditions on employers who wish to avail of work permit programmes for non-EEA citizens, similar to those that operate in other jurisdictions, to minimise the potential exploitation of migrant workers. For example, the Dutch [Seasonal Worker Permit](#) prioritises applications from approved employer sponsors and the conditions of attaining such status are outlined [here](#). The New Zealand and Australian seasonal worker programmes outlined in the 2016 [ILO report](#) require producers to fulfil conditions before they can be approved to employ migrant workers.

Producers should also be proactive in supporting migrant workers to get set up well in their new job. A [report](#) on the employment of migrant workers for vegetable and berry picking in Finland cited how beneficial migrant workers found good induction practices where employers took care of many practicalities, such as provision of medication, offering shopping tours to nearby towns and helping with access to health care and issues related to accommodation

Question 6.1

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

As farming and food production generally operate on a business model of 'high volume – low margin', the nature of the occupations where a labour shortage exists is generally low-skilled. For these reasons, remuneration for the occupations in question tends to be at, or slightly above, minimum wage level

HIF suggests that there is a strong business case for setting remuneration around the minimum wage level as Ireland currently has the 2nd highest minimum wage in Europe: IE €9.55, UK circa €8.60, ES €4.76, DE €8.84, PD €3.83 and NL €9.03.

Although the minimum wage in Ireland is officially €9.55 this does not reflect the real cost to employers. When employer PRSI is added the real hour minimum wage cost is greater than €11. As previously mentioned, tomatoes and strawberries are harvested in Spain using labour that is paid a minimum wage rate of €4.76 and this rate does include the total wage cost. Given the highly competitive nature and low margins involved with the retailing of fresh produce in Ireland (previously outlined in 5.1), our growers are very vulnerable to being undercut by imported produce from other EU countries that is harvested by non-EEA workers at minimum wage rates significantly below rates being paid by Irish producers.

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?

HIF suggests that consideration be given to establishing permit programmes of 10-month and 20-month duration that could work and meet the needs of both the employees and employers. HIF also suggests there is a strong business case for setting remuneration around the minimum wage level as Ireland currently has the 2nd highest minimum wage in Europe: IE €9.55, UK circa €8.60, ES €4.76, DE €8.84, PD €3.83 and NL €9.03

Question 7.1

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

HIF would support the employment rights that are set out in the current employment permits system and in line with Irish labour laws and including the safeguards for non-EEA workers as outlined.

HIF suggests that all horticulture producers who apply for employment work permits must commit to a managed programme with appropriate safeguards that would ensure that non-EU citizens could work at agreed rates, access suitable accommodation and as part of this scheme enjoy a full life whilst living in Ireland.

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?

HIF would suggest that the 2006 Act be amended to remove the need to advertise in newspapers as they are no longer the significant publicity organ that they used to be.

This submission is made by the Horticulture Industry Forum (HIF) on the 18th April 2018

The Horticulture Industry Forum (HIF) was formed in 2014 as a stakeholder group to address the critical issues facing the industry. The HIF currently has representatives from seven sectors, Vegetables, Mushrooms, Soft Fruit, Top Fruit, Potatoes, Amenity Horticulture and Protected Crops. DAFM, Teagasc, Bord Bia and the IFA are associate members of the Forum.

Contact details

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**Submission to the Department of Business, Enterprise and Innovation on the
Consultation on Proposed Guiding Principles to frame the State's Economic Migration Policy**

Submission by Sage Support and Advocacy Service, 24-26 Ormond Quay Upper, Dublin D07 DAV9.

Phone: 01 536 7330; Email: info@sageadvocacy.ie.

Sage Support and Advocacy Service

Sage is a support and advocacy service whose mission is to promote, protect and defend the rights, freedom and dignity of vulnerable adults and older people¹. It was established in 2014 with funding from the HSE and The Atlantic Philanthropies with support and governance provided by Third Age. Sage Advocacy clg assumed responsibility for governance of the service on 1st March 2018.

The development of Sage has been influenced by the scandals of Leas Cross and Aras Attracta. Through its dedicated support and advocacy service, Sage works to ensure the will and preferences of the person can be heard and implemented, independently of family, service providers or systems' interest. The model to which Sage works is of core paid staff supported by, and in turn supporting, trained volunteers. Some of these volunteers act in support roles, some are advocates and some have specialist legal, financial or other professional skills.

It is conservatively estimated that the work of Sage in 2016 impacted on the lives and practice of some 20,000 people. Sage works to uphold the right to self-determination and autonomy by supporting a functional approach to capacity and ensuring the person is enabled to make decisions that affect them.

Sage works with vulnerable adults and older people at transition points in the person's life when they are adapting to a cognitive impairment, moving from home to residential care, in acute hospital, transitioning from hospital to residential care and when they are experiencing significant loss associated with these changes. Sage works to build and maintain a supportive and sustainable circle of support around the person, to strengthen the natural support structures of family and community in partnership with professionals and services.

Introduction

Sage welcomes the opportunity to make this submission and will address the principles of most relevance to the care sector.

Sage has continuously highlighted the inadequacies of current policy and care provision for older people to enable a person to receive care in accordance with their wishes, and in response to their individual care needs in a timely manner, which respects, protects and upholds their human rights. The lack of flexible models of care, suitable accommodation for people with care needs, an over reliance and systemic bias towards care in congregated settings and an under resourced home care system has resulted in violations of individual's dignity and rights.

Despite repeated policy and research on care for older people policy, current provision of care is wholly inadequate to meet existing and emerging needs. At one point in 2017 there were 4,600 people on waiting lists for home care. The impact of this shortage results in vulnerable older people remaining in acute hospital for prolonged periods, and people moving into residential care due to the lack of suitable alternatives to be cared for at home or in a place of their choosing.

¹ The main Objective of Sage Advocacy clg is "To promote, protect and defend the rights and dignity of vulnerable adults and older people, the prevention of cruel, inhuman and degrading treatment and deprivation of liberty and the enhancement of personal autonomy and decision making in all care settings and in the transition between them within the Republic of Ireland".

Research suggests that more than 50% of people in long-term residential care centres could be cared for at home if adequate resources for home and community based care was provided². The establishment of a statutory scheme for homecare would ensure that an individual's right to be cared for at home could be met, and those working within the homecare sector could benefit from the associated standards, regulations and employment rights that a statutory scheme introduces. Undocumented migrant workers who are providing care in a private home, and ensuring Government policy of enabling older people to remain living in their own homes is realised, are at risk of exploitation and poor working conditions³. The situation leaves the worker and the person in receipt of care in a vulnerable and precarious situation, forcing people into an informal economy which has an impact on the person's employment rights, and is a loss of revenue to the State.

The ESRI Report on projected demands for healthcare in Ireland up 2030 found that the population will grow between 14 to 23%, with people aged 65 and over increasing to one in six people, and the population of people aged 85 and over will almost double. Increases in population are expected to create increased demand on already inadequate services for older people. Demand for home care, and residential care places in nursing home is expected to increase by 54%, with increased demand for acute hospital and GP services. Along with greater infrastructure requirements there is a need for workforce planning and training to meet the expected demands.⁴

Workforce planning and training, and the increase of migrant workers in the care sector, is not being presented in this submission as a solution to meet the needs of an ageing population. The demand for people with the appropriate skills and competencies to be recruited into the care sector is one element in a broader systemic and societal response needed to respond to the individual needs of people who are ageing in Ireland.

The care sector, and provision of care in the home, is characterised by low pay, demanding work environments and for some people poor working conditions with low levels of job security. The quality of relationships with a carer has a significant impact on an older person's quality of life, it is often a dependent relationship involving intimate care, and can be the main supporting and meaningful relationship an older person has. Considering the importance of the role, people who enter the care sector to provide vital services to some of the most vulnerable people in society should be appropriately trained and supported to work with vulnerable adults, and should have the core competencies and skills needed, including language and cultural competencies. In return the sector employers should be required to appropriately value the role and service the workforce provide, provide adequate remuneration and ensure employment rights are upheld. Consultation on labour market needs and skill shortage in this context should incorporate the contribution of the NGO and community and voluntary sector organisations in the migration, integration, older persons and care sectors. Organisations working at a grassroots level have immediate and accurate awareness of changing needs, and play a significant role in enabling the integration of migrant workers at local and national level from provision of English language supports to representation of workers' rights.

Principle 2: Labour Market Responsiveness and Principle 3: Skills Shortage

As highlighted earlier current research and data indicates that there is and will be an increased demand for

² Donnelly, S., O'Brien, M., Begley, E. and Brennan, J. (2016). *"I'd prefer to stay at home but I don't have a choice" Meeting Older People's Preference for Care: Policy, but what about practice?* Dublin: University College Dublin. Available at http://www.dementia-neurodegeneration.ie/sites/default/files/publications/staying_at_home_-_older_peoples_preference_for_care_2016.pdf [accessed 23/06/2017]

³ <https://www.mrci.ie/press-centre/new-report-reveals-poor-treatment-of-migrant-home-care-workers-in-ireland/> [accessed 17/04/2018]

⁴ ESRI (2017) Projections of demand for healthcare in Ireland, 2015-2030: First report from the Hippocrates Model Available at <https://www.esri.ie/news/demand-for-healthcare-projected-to-increase-substantially-with-rapid-growth-and-ageing-of-population/> [accessed 17/04/2018]

services for older people as the population ages. Provision and planning needs to be prioritised to develop a skilled workforce that can respond to these needs. In order to develop a comprehensive understanding of skills shortage in the care sector the Department could engage a range of stakeholders including older people, families, carers and sector specific organisations.

To harness the existing skills and experience of the many undocumented migrants currently providing vital support and care to older people, and to meet skills shortage, a scheme should be introduced to facilitate skilled undocumented migrants to fairly re-enter the employment permits system. A transitional measure would enable people who currently, or in the future, wish to employ a carer to support the regularisation of a person's immigration status. The employer could benefit from tax relief for employing a home carer, and the outcome would generate revenue for the State.

Principle 4: Sector Preferences and Principle 6: Net contributor

The designation of work in the care sector as low or unskilled work does not adequately value the role that is provided by carers who work in very stressful and demanding conditions, and are often taking on the sole responsibility for the physical care and social care needs of a vulnerable adult. The carer role, and the provision of care and support services in a flexible and responsive way, is essential to ensure that any policy to enable older people to live according to their wishes is meaningfully implemented. While informal models of family and community support and care that meet individual's needs should be supported, there exists a need for dedicated personnel that can provide a range of care and support services in a responsive and flexible way, who are adequately remunerated, supported in their work and protected by employment rights. The value of this role in society is not easily measured, however a broad range of sector organisations, older people themselves, family members and researchers can demonstrate the value of a meaningful quality relationship for an older person.

The salary threshold for an employment permit for a person working as a carer should reflect the skills of the person, the responsibilities of the role, provide an adequate living wage for the person and be realistic in the current market context to ensure that the threshold does not act as a barrier to obtaining an employment permit. In some circumstances additional benefits are provided to an employee in the care sector, for example accommodation, which could be considered as part of a remuneration package.

Principle 7: Employment Rights:

To protect against control and exploitation of workers in the care sector the employment permit system should enable mobility between employments in the sector. The introduction of a sector based employment permit would enable mobility for a worker within the sector and would allow for flexibility and responsiveness to the needs within the sector

DBEI Consultation – Economic Migration Policy

MII Submission – April 2018



Introduction

- Name of organisation: Meat Industry Ireland
- Contact details:
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- Main activity of the organisation:
 - Meat Industry Ireland is the Ibec sector association representing the primary meat processing sector across beef, lamb, pigmeat and poultry.

Principle 1 – EEA Preference

Q1. 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 Labour Market Needs Test (LMNT) while ensuring breadth of job advertisement may need to review the need for national print advertisement given so much of recruitment advertising has moved to online options.

Principle 2 – Labour Market Responsiveness

Q2.1 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?

The meat processing industry has a serious challenge in terms of securing the necessary labour resources at general operative level which are essential to maintaining current operational activity in processing facilities but also to allowing the industry meet its growth plans under Food Wise 2025, retain high-end customer contracts and take advantage of much needed new international market opportunities.

Recent Irish economy recovery, increased job creation and in particular the surge in construction activity has meant that meat processors are already faced with a major challenge in attracting workers for many positions, but particularly for unskilled/low-skilled general operative roles. The critical nature of the current situation is deepening as the economy is on the cusp of full employment again. Recent Central Bank forecasts suggest that the race to full employment has quickened, which makes the case for action even more urgent.

Ongoing significant efforts are being made by processors to recruit for these positions including continuous engagement with local Social Welfare offices, adverts in Irish and Eures websites, local and national publications, etc. In addition to the loss of labour to construction, it has become increasingly difficult to attract and retain employees from Central and Eastern EU member states as their own domestic economies grow and unemployment levels fall. The situation has now deteriorated to critical levels where it is having a real impact at individual plant level and negatively impacting the ability of companies to plan for expansion

and indeed to meet day-to-day operational demands in order to service existing customers. Any delay in addressing this labour shortage will not only impact the companies concerned but will be a loss to the national economy.

MII believes it is essential that the employment permit system becomes more adaptable and responsive in addressing critical labour shortages in specific sectors. Failure to do so will in the short term reduce processing capacity in the industry, limit companies' ability to take on new business opportunities in new international markets (e.g. the recently opened Chinese market). In the longer term, it will undermine the potential future expansion of the sector and indeed its viability.

Q2.2 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?

Regular engagement with industry is key to ensuring an adaptable, responsive migration policy that recognises sector-specific challenges as they arise. A 'one size fits all' policy will not work given the diversity of industry across Ireland and the critical competitiveness challenges being faced by certain sectors.

The meat sector (beef, pigmeat, sheepmeat, and poultry) in Ireland, from farm through to processing and export, is one of the most important indigenous industries in the national economy. It generates annual exports of €4bn and provides direct employment of approx. 15,000 people as well as indirect jobs in associated service industries and also supports in excess of 120,000 farmers.

The sector has a major impact on regional economy spend and rural economic activity. In many of the rural areas where processing facilities have been established, the meat factory is often the largest local employer. Rural towns such as Bunclody, Edenderry, Bandon, Athleague or Shercock do not benefit significantly from Foreign Direct Investment and therefore are heavily dependent on these meat processing facilities and the employment and services demand generated by them.

The unique exposure of the Irish meat processing export sector to the impact of Brexit has, at this stage, been well documented. The consequences of a deterioration in our future trading relationship and access to the UK market, let alone a Hard Brexit scenario, are massively negative. In addition, given the uncertainty already created by the Brexit vote and the major deterioration in the sterling exchange rate, the industry is already facing significant additional competitiveness challenges. Business cost competitiveness is more critical than ever. The meat processing sector can ill-afford to be further disadvantaged by labour shortages that give rise to processing inefficiencies or curtail companies' ability to retain particular clients due to the labour intensive nature of their specifications or to secure new market opportunities internationally.

Q2.3 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?

MII would agree with such an approach. MII has submitted two business cases in recent years to DBEI seeking assistance with specific labour shortages; skilled knifemen/boners and general operatives. In both cases, MII worked very closely with the Department of Agriculture, Food and the Marine (DAFM). In these situations, MII provided DAFM and DBEI with significant detail outlining the efforts being made to recruit personnel (from Ireland and Europe), engagement with local Social Welfare offices, as well as the breadth of strategies aimed at retaining existing personnel in meat plants. In the most recent submission (general operatives) a state agency was also engaged by DAFM/DBEI to verify the number of unfilled open vacancies in the meat processing sector. While MII accepts the above approach, it is important that the responsiveness of Government to critical labour shortages is enhanced.

Principle 3 – Skills Shortage

Q3.1 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?

Through engagement with DBEI, DAFM and other government departments (Education, Social Protection), MII has previously been successful in securing a facility for a limited number of permits for skilled knifemen/boners. While a specific exemption was made regarding the €30,000 threshold, the final specified salary level was still a major challenge for a low margin industry operating in an extremely competitive market environment. A further challenge was the 'reckonable' factors which made up the salary, meaning in some cases (due to existing pay structures), companies were unable to utilise the permit facility. This could have been avoided had there been greater flexibility shown in the calculation of certain 'reckonable' factors in the determination of gross pay.

Therefore, MII strongly believes that permits, which are specific to particular sectors, must take into account the existing pay levels and pay structures within that sector and the remuneration threshold be set accordingly.

Principle 4 – Sector Preferences

Q4.1 Should the employment permits system give preference to sectors, occupations or occupations within sectors?

There must be a recognition of the particular aspects of a sector in terms of its national importance. The meat processing sector, as part of the wider Agri-Food sector remains critical to the national economy and took centre stage during the recession years when it played a key role in maintaining economic equilibrium during a very turbulent period for our country. In addition, it is worth noting that the meat processing sector, as the largest agri-food segment is amongst the largest net exporters, accounting for some €4 billion in 2017,

as well as an industry whose raw material is almost 100% indigenously sourced. This means that the Irish economy value multiplier is far greater than most other sectors.

Under the government's Food Wise 2025 strategy, the meat sector has identified a potential for an additional €1bn in meat exports. While the threat of Brexit looms over the sector, it is making significant efforts to gain access to new international markets. For instance, the Chinese beef market has now been opened following a number of years' effort by meat processors and the Department of Agriculture, Food and the Marine. Maximising the opportunity that arises from these new markets is dependent on having access to labour at competitive rates. While other sectors of the economy can offer salaries at the €30,000 threshold, the meat processing sector, which is a low margin business operating in an extremely competitive marketplace competing with global suppliers, is not in a position to do so. Therefore, there must be an acknowledgement and recognition of these challenges when reviewing the list of eligible skills and determining remuneration thresholds.

Q4.2 Should submissions for removal of occupations from the ineligible list include up to date CSO data on GDP and employment growth for relevant sectors?

In cases where up-to-date CSO data is available, then its inclusion within submissions would be relevant. However, the government through its various departments and state agencies, such as Enterprise Ireland and Bord Bia, is regularly engaged with the various sectors and therefore should already be in a position to validate labour shortages.

Q4.3 Can you recommend any other verifiable data/evidence?

Government department and agency data should also be utilised to confirm trends within the specific sector.

Q4.4 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?

As outlined earlier, regular engagement by the relevant departments and state agencies (Enterprise Ireland, Bord Bia) both with companies directly, and with sector associations, will serve to ensure that DBEI has the ability to provide timely support to sectors facing particular challenges, including labour shortages. Food Wise 2025 outlines the growth strategy of the wider Agri-food sector and within the meat sector MII has produced a series of strategy documents for each of the meat species (beef, lamb, pigmeat, poultry) which outlines the potential expansion and the critical factors necessary to facilitate this expansion. Through the Food Wise High Level Implementation Committee, on which DBEI is represented, we need to constantly keep under review and address the competitiveness challenges facing the sector and act decisively to ensure that such challenges are ameliorated.

Principle 5 – Balanced approach to innovation and labour market

Q5.1 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?

Close engagement by DBEI with the relevant sector representatives will help to ensure there is an accurate estimate available of the specific labour shortage in that sector. In this context, quotas are one method of implementing a permit facility to alleviate this labour shortage.

However it is essential that the baseline for quotas initially established should be sufficient to meet the medium term needs of the sector. Clearly, in the case of the meat processing sector, a need for 2,000 permits has already been proven as necessary for industry viability. Our view is that once that facility has been approved, such a quota should be regularly reviewed and revised upwards, in a timely manner, if necessary and based on sound evidence from the sector that demonstrates a worsening of the labour supply. As mentioned above, a recent MII submission on employment permits which included the number of unfilled open vacancies, was then verified by a state agency by direct engagement with the companies within the meat processing sector.

Furthermore, concerns were raised in the *Proposed Guidelines* regarding how access to low-skilled immigrant workers may stifle innovation and automation of certain roles. However, there are a number of sectors where this is not valid and where that solution may never apply. For example, the meat processing sector is unable to automate the labour intensive nature of disassembling animal carcasses into various cuts and products. It is an area under constant review by the sector but currently remains an issue.

Q5.2 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?

In sectors, including meat processing, where there has always been challenges in terms of recruiting for particular roles, MII does not believe that time limits should be applied to permits. However as mentioned above, any permit facility should be regularly reviewed, as is already the case, via the DBEI 6-monthly review process. These reviews will help to validate the shortage being experienced in certain sectors.

Principle 6 – Net contributor

Q6.1 What are your views on the remuneration as provided for in law?

It is essential that DBEI, in its review of permit applications, recognises the different challenges being faced by various sectors of the Irish economy. Given the low margin nature of the meat processing sector, it simply is not possible for the industry to compete internationally if it does not have access to sufficient labour at competitive rates. Furthermore, within Ireland, the sector already cannot compete with other sectors of the economy (manufacturing, construction etc.) in terms of wage rates to attract the limited labour that is available.

With other Irish business costs (e.g. energy, insurance, cost of finance) significantly out of line versus competitors in Europe and internationally, the meat processing sector can ill-afford to be further disadvantaged by labour shortages or by unrealistic salary thresholds. The meat sector is particularly exposed in relation to Brexit given our heavy reliance on the UK market. In this context, and to ensure the continued viability of the sector here, business cost competitiveness is more crucial than ever before. The competitiveness of Irish meat has already been significantly challenged due to deterioration in sterling value

since the Brexit referendum and faces further significant competitiveness challenges in terms of potential extra costs in relation to customs, border inspections, transit via the UK and tariffs on Irish meat to enter the UK market.

MII strongly believes that where a specific sector can demonstrate the labour shortage and competitiveness challenges being faced by the industry, that such factors are taken into account by DBEI and that no salary threshold, other than the National Minimum Wage, is applied to any such permits.

Q6.2 Do you have any views on these permit types, in particular the timeframe for which these permits can issue and the remuneration thresholds?

See above (Q6.1) regarding remuneration.

At an operational level, MII members have expressed concerns over the length of time other employment permits can take. Due to the lack of a single contact point in the Department where individual cases can be discussed, this has led some employers to experience inconsistencies in information received through emails or the helpdesk. Having a designated point of contact would enable a relationship to be built up with employers.

Q6.3 What should the minimum threshold for low skilled workers in occupations removed from the ineligible list be set at?

See above under Q6.1. This should be set at the level of the National Minimum Wage.

Q6.4 How do we mitigate against unnecessary shocks to the labour market or deflationary pressure on wages?

Regular reviews are essential to provide an adaptable and responsive employment permit system. As outlined throughout this submission, this should include regular engagement with specific sectors, and their representative bodies, to develop an understanding of trends within these sectors e.g. growth and expansion, sector not able to develop and conclude value-add contracts due to labour shortage, etc.

MII members readily acknowledge the benefit of a local labour supply and are making continuous efforts to recruit from the ever tightening Irish labour pool. Equally efforts are taking place to recruit from Europe. However, given the performance of many of the Central and Eastern European economies, it simply is no longer possible to attract labour from these previous sources. Therefore, it is essential that the state intervenes now to assist meat processors. Failure to do so will ultimately jeopardise existing employment and dampen economic growth.

Q6.5 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?

Meat processing plants are spread across the rural economy in rural towns and villages. These locations do not benefit significantly from other Foreign Direct Investment (FDI) and do not experience the same challenges being experienced in cities (cost of living, housing access, etc.). Therefore a 'one size fits all' policy,

in terms of remuneration thresholds, is not appropriate and would further undermine specific sector's ability to survive and thrive.

Q6.6 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?

As outlined earlier, applying an unrealistic salary threshold will further undermine the ability of particular sectors, including meat processing, to compete on a European or international basis. In this context, DBEI should adapt a sector-by-sector approach to dealing with such permit applications. In recent MII submissions to DBEI on this matter, MII has actively engaged with the Department of Agriculture, Food and the Marine.

Principle 7 – Employment Rights

Q7.1 Do you have any views on the arrangements in place to protect the employment rights of employment permit holders?

MIl recognises the importance of upholding the obligations made by companies in applying for employment permits and feel that the current system does protect the rights of the permit holders. Companies are committed to the equal treatment of all employees irrespective of their country of origin.

Principle 8 – Legislative framework & process

Q8.1 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?

As outlined above, MII believes that DBEI should operate a sector-by-sector approach in terms of handling permit applications i.e. taking into account the opportunities within the sector but also the current challenges it faces. In order that DBEI is in a position to quickly respond to market demands for employment permits, it would be sensible that legislation be amended to facilitate greater flexibility in the administration of the employment permits scheme. MII also believes that the permit application process would benefit from a dedicated point of contact for companies, to assist with consistent messaging and a timely response.

Q8.2 Do you have any views on the EPOS and any recommendations to improve?

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

Furthermore it appears that the current system does not facilitate analysis of the overall queue of permit applications i.e. it is not possible for DBEI to advise the number of applications in process against a specific

permit type. Therefore, companies are unclear whether there are remaining permits still available and instead must gamble by lodging an application, undergoing the various recruitment costs and then forfeiting a portion of the application fee if the overall quota has been reached already.

Submission 12

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?

In some cases, there is not one lead Department. In the case of the hospitality sector, DTTAS is the lead Department for tourism but the overall tourism sector is broader than that and not within the remit of DTTAS. This could present issues regarding supporting evidence/hard data possibly not being available to the Department making the business case. For example, while chefs work in the tourism sector, they also work in other industries e.g. hospitals. If evidence is to be provided it should be from "the relevant Departments" rather than "the lead Department".

Also, while DTTAS is responsible for Tourism Policy, they have no regulatory role for employment in this sector.

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?

In the case of tourism, CSO data does not capture "tourism" as a sector for employment data purposes. The closest CSO data available is for "Food and Accommodation", which is not the totality of employment in the sector.

Question 4.3

Can you recommend any other verifiable data/evidence?

Again in the case of tourism, in the absence of specific CSO data, we rely on estimates of overall tourism employment from Fáilte Ireland. This is calculated by applying a multiplier to the CSO accommodation and food services figure. This is currently the only "tourism" employment figure available.

Submission 13

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 can potentially mitigate against employers who are for example due to skills shortages within Ireland/EU are seeking to hire nurses or healthcare assistants from outside the EU. In start-up situations in particular for nursing homes, HIQA require that the employer has a full complement of staff to look after residents according to their assessed needs and according to building size and layout as per the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013. Registration is contingent on the foregoing. In order to secure the volume required, the employer has no option but to hire from outside the EU skilled English speaking healthcare personnel. An exception should also be made for this sector and reviewed after 24 months. A significant number of planning permissions for new nursing homes and extensions of current ones have been successful, particularly in Dublin. This is in response to the aging demographics that have pushed acute services to their limits due to lack of capacity in the community. These nursing homes are of significant scale 100-200 beds. A significant workforce is required to staff such facilities. We are currently at full employment levels and have engaged through our representative body with various methods to obtain staff from within the EU with limited success. There are significant barriers currently to obtaining Healthcare Assistants such as:

- HIQA requires that Healthcare Assistants are competent and trained to respond to the care needs of increasingly complex frail older people. (<https://www.hiqa.ie/sites/default/files/2017-01/National-Standards-for-Older-People.pdf>)
- Language barriers have proven to be quite challenging with nationalities from mainland Europe who have not got a sufficient level of English to communicate effectively with frail older residents.
- Sourcing Healthcare Assistants from colleges and training organisations yields little to no results as these graduates tend to use this course as a stepping stone to third level degrees in nursing and social care or drop out when they realise it is not what they had expected. The remainder who come to nursing homes, do so for work experience so that they can move on to the more coveted HSE jobs when they open up later on. Nursing homes become revolving doors for healthcare staff.
- While suitably qualified nursing home management staff can train new staff, it is long-term strategy, very demanding of time and resources that already go into day to day up-dating and skilling of your workforce. There is an enormous regulatory burden placed on the nursing home Director of Nursing and her managers in terms of mandatory auditing and reporting of its services throughout the year. Nursing homes as part of their work force strategy and corporate social responsibilities are also facilitating Student nurses from Universities, Fetac Level 5/6 students with work placements, and community TY students who all require preceptorship and supervision. So they are constantly working on various avenues to obtain a sustainable workforce already.

- Those who are already receiving valuable state benefits do not want to be at the loss of this income and therefore cannot work full-time. Most HCA jobs would be Whole time equivalent roles with part-time exceptions.
- There is also competition from other sectors for HCAs similarly paid such as retail, hotel, catering and call centre jobs.
- The Minimum Annual Threshold is a barrier to sourcing qualified staff who do want to work in nursing homes without restriction as it is set above the average pay for healthcare assistants in private nursing homes in Ireland. This dis-incentivised the nursing home sector from bringing in more Filipino healthcare workers and that was ok for a time as we had the influx of professionals from Eastern Europe filling the gap for a period from 2004*

*The experience of nursing home providers, particularly those in the sector long enough to see cyclical patterns emerging for staff shortages should be listened to in regard to their views. The last time healthcare assistants were in critical shortage was during the “Celtic Tiger” era when the economy was booming. The saving grace that time was the ability to source staff from Eastern Europe when they became part of the EU. It solved the crisis and staffing of healthcare assistants until the economy started to take off again. This time there is no incentive for Eastern Europeans to come now as their own economies have taken off and they are staying at home. Those who came to Ireland originally were skilled professionals in their own right from Eastern Europe, newly qualified doctors, nurses, physiotherapists, occupational therapists etc. Those who were able to qualify for full registration here, went on to their chosen profession eventually and that meant the healthcare assistant workforce waned again. The original cohort of Filipino healthcare workers that arrived post 2000 are for the most part still in the current nursing home sector and form part of the nursing homes core staff.

The pathways to nursing while great opportunities for healthcare assistants, leave again a gap to be filled in the workforce. The recent NMBI/HSE initiative to run back to nursing courses (typically six months full-time) take qualified healthcare workers currently working as healthcare assistants out of that workforce as well for further advancement. There are 300 places on the back to nursing course, it closed in April 2018 for candidates as it has reached the number of suitably qualified individuals that wished to do further study to become fully registered nurses.

I have no issue with the Labour Market Need Test as it is necessary to control immigration. However the method of recruitment requiring advertising in newspapers is old fashioned and doesn't belong in a modern technologically advanced society where all jobs are advertised on the internet through job sites, social media etc. The primary legislation needs to be changed to reflect that.

Question 2.1

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

Nursing homes by their nature involve the healthcare needs of very complex individuals. Approximately 5% of the over 65 populations reside in nursing homes and the vast majority are

individuals in their 80s and 90s. Due to modern medicine we are living longer, however, this is qualified by the incidence of complex conditions such as frailty, diabetes, heart failure, dementia and stroke that contribute to the debilitation and life limiting conditions of the cohort older people who are in nursing homes. These individuals rely on quality nursing and medical care that is essential to their comfort and well being. A responsive workforce is paramount to successfully meeting their needs. If the skills are not available in sufficient numbers within the state, it is imperative that the employment permit regime is responsive and reactive.

There is plenty of evidence to support the needs for a responsive workforce. I have already outlined in Q1 above the barriers. The vast majority of residents in nursing homes are supported by the Nursing Home Support Scheme "Fair Deal". A Consultant led Comprehensive Geriatric Assessment is carried out to determine if the individual meets the frailty criteria to avail of the scheme. This cohort requires a responsive skilled workforce. There are reports that forecast the crisis such as NHI Workforce Survey 2017, states 4,266 Healthcare Assistants will be required due to turnover rates and increasing nursing home population. By 2019 this is forecast to rise to 5,214.

The ESRI forecasts that residents in nursing homes will increase between 40-54% between 2015 and 2030 (ESRI October 2017). This signifies that an additional requirement of 7,000 Healthcare Assistants will be needed. This survey should take cognisance of this and plan to relax the permits to bring in controlled numbers of skilled Healthcare Assistants from outside the EU to stem the crisis that is already upon us.

Question 2.2

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

While the Department does take into consideration the evidence based processes you have bulleted along with Public consultation, Health Service Capacity Review 2018, ESRI: Projection of demand for health in Ireland, 2015-2030: First report from the Hippocrates Model and the National Strategic Framework for Health Workforce Planning, the process could be improved by engaging with the sector. A crisis is only a crisis when the HSE is involved. The vast majority of nursing home residents are cared for in private nursing homes that make up 80% of the provision with the state providing 20%. Private nursing home owners reach the crisis before the HSE as nursing homes are a traditional recruitment ground for both nurses and healthcare assistants and when HSE's needs have to met, that's when Government bodies begin to be responsive, long after the acuity has been felt in the nursing home sector. Very often the private nursing home sector is the innovator. Providers through lobbying from the private nursing home sector in the late 90s secured the Filipino healthcare workers who were brought to this country from abroad in early 2000 to service the needs. Private nursing home enterprises are invisible to the Department until the crisis reaches the public sector acute services and we would appreciate engagement by the Department far earlier. As a modern technologically advanced society with vast amount of data analytic capability, it should be possible to

be on top of the demand as soon as patterns are emerging. Temporary measures can be put in place so as not to disturb the indigenous potential for staff.

Question 2.2

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

- A) It is important to continue to grow a healthcare workforce from within Ireland and in cooperation with our European counterparts so that it is sustainable. A number of initiatives have evolved over the years. The trainee healthcare assistant pathways undertaken by the colleges of further education, the move away from technical colleges and apprenticeships to mainstream education ensured that Healthcare Assistants had a path to third level. However, this had unintended consequences whereby failed university applicants used the pathway as a back door to third level squeezing out the potential to fill healthcare assistant jobs in the economy. Perhaps this now needs to be further divided and resources re-directed into funding apprenticeships schemes like those now introduced in the UK to ensure a healthcare assistant workforce is grown in sufficient number to meet demand. While we wait for that to start and bear fruit, we need a temporary stop gap to meet current needs.
- B) The skillset of the Healthcare Assistant needs to respond to the complexity of looking after the needs of frail older people and those with chronic illness. It is a career path that is vocational in nature as the work is physically and psychologically demanding. It requires a level of personal resilience and stamina and not everyone on the unemployment register is motivated nor suited to this career. Engagement with Intreo and job fairs has provided minimal transfer to this sector.
- C) Most nursing home residents are funded by the Nursing Home Support Scheme which funds older people to enter nursing homes. The rates to nursing home providers are set by the NTPF who negotiate prices with them. Providers have no influence in how their income is set. There has been very little by way of increases to nursing homes owners that allows them room to manoeuvre where salaries are concerned for Healthcare Assistants. There is a gap between starting rates for healthcare assistants in the private sector versus the public sector. The public sector pay for healthcare assistants was bench marked towards the starting rate of pay for nurses with the idea that healthcare assistants who were trained to take blood pressures and temperatures would alleviate the work of the registered nurse, however, this did not materialise into real gains and the nurse as a registered professional is accountable for the care of the individual patient and therefore continues to take the vital signs as healthcare assistants were not registered and accountable professionals. Hence, private nursing homes lose HCAs to the public sector inevitably. Nursing homes can't compete as they are not resourced to.

Question 3.1

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

The idea of raising this threshold while seeming common sense on one hand could have unintended consequences by causing an even greater shortage of nurses by barring new entrants to the workplace and the early starter years of a nurses' career whereby being open to a variety of experiences enhances your skillset, not unlike doctors who take up rotational posts to get as much exposure to a variety of caseloads to grow experience. Nursing is career that travels, Irish graduates who can't get jobs in Ireland or wish to travel will go to Australia, Canada, UK and some USA for work as well as third world countries with NGOs and in reverse, nurses newly qualified and eligible to register in Ireland will come our way from India, Philippines, parts of Africa etc. Staff from Europe will travel now in much smaller numbers due primarily to language barriers and the ability to pass newly introduced English language testing by our nursing regulator NMBI. If we raise this threshold nursing home providers will no longer be able to hire newly graduated or a few years graduated nurses as the salary would no longer bench mark with a new qualified or a few years qualified Irish nurse (INMO salary scale 2018). A newly graduated nurse starts at €28,768 basic pay and rises incrementally per year to €43,904 for 12 years qualified. €36,919 would be close to 7 years qualified nurse. This would drastically and catastrophically reduce the number of nurses who would be available to come to Ireland. The cohort who come to Ireland are typically a few years post qualified reason being that the older ones have either already emigrated or are married and settled with families in their own country. By changing this scale you would cut off the supply of nurses to Ireland with unintended consequences occurring.

However, there may be a solution that helps both sides of the argument, whereby nursing candidates who apply for registration with NMBI which takes up to a year or more with exacting requirements and strict English language test rules, could enter temporarily to skill up in the language while working as healthcare assistants in order to pass the exam and qualify to register. In the meantime they would be acclimatising to the Irish culture while learning on the job thus helping with the workforce crisis.

Question 4.1

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

The critical role of Healthcare Assistants and nursing staff in keeping the healthcare sector safely staffed is paramount to the health of the nation which in turn has a knock on effect on the health of the nation's workforce if it is in crisis. Lack of HCAs and nurses mean that workers for example have to give up work to mind mammy and/or daddy, elective surgeries for your employees are put off due to lack of staff increasing illness absence from work thus contracting your workforce in other ways. Beds have to close if there are no staff to man them. Nursing homes can't open if they have no staff to operate them. A properly staffed healthcare sector backs up the economy.

Question 4.2

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

Yes, this ensures that local labour markets are accessed first before outside EU taken on board.

Question 4.3

Can you recommend any other verifiable data/evidence?

The nursing home sector representative body sends out on a monthly basis a survey to ascertain the workforce needs of this sector. Through consultation with the sector I am sure they would be happy to share the data with you.

Also, the Department of Education should have statistics on the number of students who progress to third level from colleges of further education, this would be another indicator of the availability of qualified staff to the healthcare sector.

Question 4.4

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

Several reports already identify projected demand in the sector such as the ESRI "Projections of Demand for Healthcare in Ireland 2015-2030. The aging population as evidence by CSO statistics and the demand for nursing home places. The number of new buildings coming on stream both in the public and private sector forecast increased demand for a workforce. Every 100 bed nursing home that opens needs a staff of approximately 130 to operate it safely at full capacity. Most new nursing homes are 100-200 bed in size. That is a significant workforce. 75-80% of that workforce will be made up of nurses and healthcare assistants.

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?

The ESRI reports and forecast in demand should be evidence that a sector will require to remain on the list until the sector achieves alignment. Engagement with the nursing home representative body NHI will also assist with early figures on the ground.

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 idea mooted above Q3.1 could be introduced temporarily while the crisis is upon us to help provide a more acculturated workforce in training for full nursing registration by working as a Healthcare

Assistant in the meantime and alleviating the shortage. This would also allow more lead time to innovate with perhaps apprenticeship type schemes to grow an indigenous healthcare assistant cohort that balances out the cyclical nature of the workforce peaks and troughs over time.

Question 6.1

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

IN the case of Critical Skills Permit, remuneration is comprised of basic salary plus payment for health insurance. While this is optional, it has unintended consequences whereby Filipino workers are controlled by the Philippine Overseas Labour Organisation who insist that health coverage is provided for their workers before they agree to release them to employers. Employment equality legislation in Ireland would in turn dictate that all similar workers be provided with the same coverage. Therefore, it has to be included if you are bringing this workforce it is a requirement.

The current threshold of €30,000 is not appropriate for those working as Healthcare Assistants, I would propose that this be at recent graduate rates in Ireland. This would keep nursing homes compliant with their NTPF agreements for “costs prudently incurred”.

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

The time frame would need to factor in how long it would take to grow an indigenous workforce from a new innovative idea such as apprenticeships, taking into account consultation with the relevant bodies, pilot schemes to when the initiative would be fully up and running.

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

Setting the rate at the average graduate salary in Ireland with allowances for shift premia inclusive should be a rate that the NTPF finds “reasonable”.

Question 6.4

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

Monitoring regularly the market and including premium payments, health insurance and additional annual leave to meet the salary would help with this.

Question 6.5

Low wage jobs may yield income below threshold for social transfers e.g. medical card, rent supplement, FIS (from 2018, Working Family Payment), and local authority housing. Should 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?

As outlined above flexibility in reaching the minimum salary threshold should help with this. Allowing family members to work unencumbered would also help. Family members can also have skills that benefit other skills shortages in for example the hospitality sector.

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 drawback in using the HSE as the main expert is that they are the main competitor of the nursing homes sector when it comes to staffing and by the very nature of the attractive benefits offered by the state with opportunities to advance within a vast health ecosystem the ability for them to understand the constraints and barriers for our sector is limited to their own vested interests. They receive higher remuneration from the NTPF for their facilities while also availing of other budgets within the HSE for their operational requirements. Private nursing home sector should be included in any health workforce planning as they look after the vast majority of the frail older cohort in residential care. Representatives of the private and voluntary sector who conduct most of the care for the country should be part of the National Strategic Framework for Health Workforce Planning as the Health Sector has outsourced most of the caring role to this sector and it cannot ignore its needs in tandem with its own strategic plans. Independent expert consultants could also be of value.

Question 7.1

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

The employment permit systems does ensure that the employment rights of migrants are observed. The provision of informative literature and list of helpful agencies to migrants advises this at the outset.

The Trusted Partner scheme has been a very innovative and invaluable assistance to companies who frequently use the service. The on-going use of this service demonstrates the employer's dedication to upholding the rights and dignity of the employment permit holder.

Question 8.1

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

Primary legislation can tie those who operate the schemes down to modes of operating that are not flexible to evolving technology for example. Legislation should leave room for improvement of systems and processes.

Question 8.2

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

The Department is to be congratulated on the innovative measures have been undertaken to date to speed up the processing times of applications through the deployment of online applications, trusted partner scheme and the responsiveness of staff to employer's queries. The responsiveness of Department personnel and courtesy they show to employers is to be commended. An added feature could be reminders from the department that renewals are coming due and advisement of wait times for same.

Might I suggest that at cross-department consultation suggest that a similar technological approach to processing the Atypical Work Permit by the Department of Justice team would help to enhance the overall flow of the emigration process.

Thank you for taking the time to read this submission.

Tara Winthrop Private Clinic is a 140 bed long-term care facility for frail older people and young chronically sick adults.

Submission 14



Submission to the Department of Business, Enterprise and Innovation in response to the public consultation on proposed guiding principles to frame the State's Economic Migration Policy

On behalf of PwC

18 April 2018

Executive Summary

We are writing to you in response to your invitation for submissions on proposed guiding principles to frame the State's Economic Migration Policy.

PwC is the largest professional services firm in Ireland. We provide assurance, tax and advisory services to a broad range of organisations, from Irish plcs, large domestic corporations and multinational groups operating in Ireland, to private businesses, the public sector and not-for-profit organisations. We are also a leading provider of immigration services acting as agent on behalf of a number of large domestic and multinational corporations.

Whilst it is acknowledged that this consultation has arisen as a result of pressure from certain sectors, particularly the hospitality, construction and agricultural sectors, where the economy has improved in recent times, the clients we represent generally experience labour shortages predominately within the highly skilled sector.

The majority of clients we represent operate mainly within the IT, financial services, engineering & pharma sectors. Our clients are experiencing a growing need for highly skilled personnel within these sectors as the economy has improved in recent times. The evolution of the employment permits regime since its overhaul in 2014 has adapted to market needs and has facilitated our clients in bridging those skills shortages via the employment permits regime.

We see the introduction of the Employment Permits (Amendment) Act 2014 and its associated Regulations, which have been updated in 2017 & 2018 accordingly, as a positive and welcome move by Government in response to the continuing need to address the constant labour market needs of the Irish economy.

Whilst acknowledging the present economic need for accessibility to lower skilled roles within the employment permits regime, we are of the opinion that this should be on a critical market needs basis for a specific time frame only to ensure maintenance of a system which caters for and attracts highly skilled workers into Ireland.

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We would encourage continual review of the highly skilled occupations list, and maintenance of the bi-annual review which has been a feature of the system in recent times. We envisage a requirement for ongoing engagement with relevant stakeholders and representative bodies as the principles underpinning economic migration and labour market needs continue to be developed. Engagement is key to designing, maintaining and delivering an attractive, practical, efficient, and modern user friendly regime which is responsive to the economic needs of key growth areas in the Irish economy.

We propose to set out our current views and opinions on aspects of the employment permits regime relevant to us and our clients together with proposed suggestions for maintenance and improvement of the current system in the paragraphs which ensue.

Principle 1 – EEA Preference

Retention of the 50:50 requirement is key to maintenance of a highly skilled Irish and EEA workforce. It is however important to acknowledge the fact that not all roles can be filled from within the EEA. It is therefore critical that talent from outside of the EU is sourced to service labour market needs. It is important to retain the 50:50 requirement to ensure an equal ratio of EEA and non-EEA nationals within the Irish labour force and economy.

However, an exception to this which merits consideration is in the case of Contract for Services Employment Permits. In reality, non-EEA contractors who have successfully secured contracts with customers in Ireland (either directly or via global agreements) will not meet the 50:50 requirement. It therefore falls to the “Relevant Person” in Ireland to meet the 50:50 requirement. This includes the requirement to sign the declaration on the application form which confirms this requirement is met. The declaration is quite onerous in that it places responsibility on the “Relevant Person” to guarantee the employment rights of the employment permit holder. In practice, there is often a reluctance on behalf of the “Relevant Person” to sign this declaration given that they will not directly employ the individual. This is challenging in particular where the contract is with a new customer, or the Relevant Person is prohibited from signing the declaration due to the regulatory restrictions in operation in their industry. We would therefore encourage the Department of Business, Enterprise and Innovation to give some consideration to removing the 50:50 requirement in the case of non-EEA Contract for Services Providers.

On the whole we are supportive of the Labour Market Needs Test requirements and agree with this principle. However, the codification of certain operational aspects of the employment permit regime through the employment permit Regulations has resulted in the creation of inflexibility. The main example of this is the mandatory requirement to advertise the offer of employment in a national newspaper.

Given the current technological environment in which we all operate and the move towards online advertising in the main, the current requirement appears quite outdated. Based on our experience and from conversations with potential candidates and clients alike, a national newspaper would not feature as one of the main sources to which a candidate would look to seek potential employment. Therefore candidates may be missing out on the opportunity to apply for a particular role. Equally the employer seeking to fill a particular role may miss out on a large pool of skilled candidates who may be suitable for the employment on offer.

Advertising on business or employment oriented and jobs websites would be more appropriate and likely to capture a larger pool of skilled workers. This would also afford greater flexibility to whoever



posted the advert by allowing them monitor on a real time basis the applications received and also allowing the employer amend the advert where the need arises.

We therefore propose that this specific mandatory requirement to advertise in a national newspaper be removed.

Principle 8 – Legislative Framework and process- Question 8.1

Dependant Employment Permits

We acknowledge that the general area of family reunification is a matter for the Department of Justice. However, on behalf of our clients and PwC, we must draw attention to the significant barrier that restrictions on the rights of dependants to work creates in attracting key talent to Ireland.

We suggest that dependants of all categories of employment permit holders should be eligible to seek a Dependant Employment Permit and it should not be limited to the dependants of Critical Skills employment permit holders only.

While dependants are eligible to seek an employment permit in their own right, they do not always meet the relevant eligibility criteria. We are of the opinion that the system in its current form is inequitable and starves the economy of skills which may be readily available if the dependant employment permit criteria were applied to dependants of all employment permit holders. By extending the remit of eligibility for dependant employment permits, this opens the possibility for lower skilled workers to enter the work force and fill those roles which may otherwise remain vacant. This would limit the requirement for continual review of lower skilled roles and relieve the administrative burden associated with opening the system to allow for access to such roles.

Taxation Experts

Another key area of the employment permits regime which has proved to be a significant barrier in attracting highly skilled individuals to Ireland is in the area of taxation experts.

The challenges posed by the restrictive criteria set out in Schedule 2 Part C and Schedule 3 of S.I. No. 95/2017 significantly limits the options for employers seeking to employ tax professionals in roles that are not specifically limited to tax consultancy duties. Additionally, the local employee population are being prevented from gaining valuable insight into international markets and building up international skillsets through knowledge transfer.

For avoidance of doubt, we fully acknowledge and agree with the inclusion of “taxation experts” in the Highly Skilled Occupations List. We also acknowledge that Regulation 15(2) of S.I No. 95/2017 removes the requirement for registration with the Irish Tax Institute where specific criteria are met. However the current criteria for eligibility are proving restrictive in practice. The criteria significantly limit and create barriers for employers in sourcing and hiring the appropriate talent for such roles.

Additionally, our understanding of the current position is that it is open to a candidate, who does not fulfil all of the above criteria, to apply for a General Employment permit. However, based on our experience with such applications, it appears that case processors are applying the same strict criteria required to be eligible for a Critical Skills employment permit to applications for General Employment permits. This goes against the principle of eligibility for a General Employment permit where the role



is not deemed to be highly skilled enough to be eligible to be included in the Critical Skills employment permit category. In light of this unfavourable practice, we would welcome written clarity and guidance as to the criteria applicable for General Employment permit eligibility for a tax consultancy role.

Currently, a candidate who has a relevant Turkish tax qualification and who has worked for over 3 years in the Turkish tax market, is prohibited from qualifying for an employment permit because the role on offer does not specialise in Turkish tax consultancy. We submit that experience in a tax role is invaluable and applicable to a role in tax, regardless of the specialism or market within which tax is practised. To effectively perform the duties of a tax consultancy role does not solely require a candidate to function within their own non-EEA market specialism.

We propose removal of the requirement to work in a role with a particular focus on a non-EEA market as this wording has proved extremely restrictive in practice and has resulted in an inability to fill tax consultancy roles which do not require knowledge of specific non-EEA markets to perform the role on offer.

SOC 242 – Business, Research and Administrative Professionals

We propose the current criteria under SOC 2421 be amended to allow for the granting of Critical Skills Employment Permits to individuals who meet the following criteria:

- Hold a professional tax qualification or legal qualification with tax specialism;
- Have a minimum of 3 years' experience of tax consultancy requirements and regulations in an international market

We are of the opinion that SOC Codes 2423 and 2424 should not be restricted to specialisms in big data analytics or finance and investment analytics. These designations should be amended to take account of market needs for such roles in a more flexible and fluid manner. We propose the following amendments:

- 2423 - Management consultants and business analysts possessing relevant specialist skills in the areas of finance and business strategy, with relevant qualifications or experience
- 2424 - Business and project management professionals possessing relevant specialist skills in the areas of IT, finance and business strategy, with relevant qualifications or experience.

Principle 8 – Legislative Framework and process- Question 8.2

PwC were heavily involved in providing feedback on the design and practical operation of the online employment permits system. We undertook extensive testing of the system initially which gave us the chance to provide feedback in real-time on the operation of the online system prior to formal introduction of EPOS. The online system has been one of the most well received improvements to the employment permits system in recent years. It has, in the main, been a seamless transition however as frequent users of the online system, we some feedback and suggestion in relation to improvements to EPOS.



Acknowledgement Emails

The online payments system has proved a lot less burdensome than previous payment methods, operating with little or no issue in practice. The only point of note in this regard is the acknowledgement email which is generated by the EPOS system once an employment permit application has been filed and payment made. We have frequently experienced a delay, and in some cases have not received an acknowledgement email confirming the employment permit application reference number in respect of applications filed. We would welcome a review of the method by which these emails are generated by the system to ensure the smooth and consistent issue of such emails to all service users. The issue of these emails is crucial to enabling tracking of applications online via the online enquiry facility. This facility has been welcomed by clients and from an agent perspective, has significantly reduced the number of phone calls and written correspondence with the DBEI previously required to track the status of a particular application.

Photo

We have encountered difficulties on a number of occasions in relation to uploading of the digital photograph. Despite the digital image meeting all of the relevant requirements, as specified in legislation, the online system has rejected the photograph for no apparent reason. On a third or fourth attempt to upload the image the system has then accepted the photograph. It may be useful to examine this in further detail from an IT perspective to ensure the system is equipped to receive the photograph seamlessly where the specified requirements are met.

Wet Signature

We would also welcome and support the introduction of a “wet signature” for online applications as this would remove the burden to print and scan the signature pages to be filed.

View Filed Applications

Currently there is no mechanism in place by which users of the system can view the filed application and attachments. It would be a useful addition to the overall online system to have this option. This would also see a reduction in correspondence to the Department directly where users may identify they neglected to upload a particular supporting document at a later date.

Stamp 4

We note that planned service enhancements are to include the submission of Stamp 4 Support Letter applications & review of refusal decisions online. PwC would welcome such a move and would fully support extension of the online system to all aspects of the employment permits regime, not just employment permit applications. This would ensure a consistent and coherent approach for users of the system.

Statement of Loss

We would suggest that the Statement of Loss procedure be included as part of the online system. The Statement of Loss procedure in its current form is dated and burdensome on users of the system. While this process would not feature prominently it is not accessible or efficient where the requirement arises to engage with this process.



We are of the opinion that 4 weeks in total is sufficient to warrant the request for re-issue of an employment permit. In particular, this should be adhered to where an instance occurs of the Department of Business, Enterprise and Innovation (DBEI) misplacing the permit or it being lost in the post from the DBEI.

The requirement to wait an additional 4 weeks after filing the Statement of Loss impacts heavily on business requirements particularly where the loss is not the fault of the employee or employer.

The practice of including the original start date on the re-issued employment permit should also be amended. This proves problematic in practice particularly where the employment permit holder is a visa required national. We would ask that consideration be given to inclusion of a future start date on the re-issued permit to avoid any issues for visa required nationals and also to minimize impact on eligibility for Stamp 4 down the line.

We would also welcome written clarity on the exact timeline for re-issuing the employment permit following completion of the requisite waiting period as, based on our experience, there is a lack of consistency in approach which causes confusion and frustration for users of the system.

We would recommend the abolition of the requirement to submit a physical passport photograph in conjunction with filing a Statement of Loss application. We suggest introduction of the requirement to provide a digital image, in line with general employment permit application requirements.

Trusted Partner Scheme

The introduction of the Trusted Partner Scheme in 2015 has been warmly welcomed by Irish and EEA businesses. Companies registered as Trusted Partners have seen a significant reduction in processing times as well as a reduction in the paperwork involved. We would encourage the Department to continue to work to a 2 week processing times however we also acknowledge resourcing issues which limit capabilities in this regard. The move to an online application for Trusted Partner Status has made the process even more appealing however as mentioned above, we would also welcome the introduction of a “wet signature” for these applications.

We would also welcome some additional clarity from the Department in relation to eligibility for Trusted Partner Status. In particular, in its current guise, it is unclear if a company must have been granted a specific number of employment permits in a given year prior to making an application for Trusted Partner Status. We understand, based on experience that it may be possible for start-ups to seek Trusted Partner Status where it can be demonstrated employment will be created and therefore a need for additional employment permits may arise. However companies and agents would welcome clear and concise guidance on this.

We would also encourage the Department to consider inclusion of non-EEA Contract Service Providers in line with market needs where such contractors are providing vital services to Irish companies.

Validity Dates

With regard to processing of employment permits in general, an anomaly in relation to employment permit validity dates, in particular the start date on an employment permit, has become apparent. We have seen a number of cases where an indicative start date was included on the application form but due to backlogs in processing, the employment permit did not issue until after the indicative start date had passed but the employment permit issued with the original start date i.e. a date that was in the past.



This is frustrating for the employment permit holder and employer alike. It becomes more of an issue where the employment permit holder is a visa required national as he/she must apply for and obtain his/her visa and travel to Ireland to commence working within a 3 month period of the start date included on the employment permit.

We would encourage case processors within the Department to adopt a practical approach when issuing employment permits and only include a start date which is in the future and at least a few days after the permit issues thereby ensuring visa required nationals in particular are not disadvantaged.

Conclusion

In conclusion, and as mentioned in the opening paragraphs, the clients and businesses we represent generally fall into the highly skilled categories and we therefore are not in a position to provide any significant or real-time feedback and suggestions on expansion of the employment permits regime to facilitate lower skilled workers.

We would like to thank the Department of Business, Enterprise and Innovation for the opportunity to put forward our views and observations via this public consultation process. In addition we would encourage the Department of Business, Enterprise and Innovation to continue to engage, both formally and informally, with stakeholders.

When making your submission please provide the following information:

a. Name of individual, firm or organisation

PricewaterhouseCoopers

b. Contact details

[Redacted contact details]

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

1. Introduction

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

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

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

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

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

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

The following factors are in scope for this review:

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

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

2. Public consultation

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

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

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

The closing date for receipt of submissions is **5pm, Monday 9 April 2018.**

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

3. Publication of Submissions

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

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

4. Relevant provisions of Freedom of Information Act 2014

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

Guiding Principles to frame the State's Economic Migration Policy

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

Principle 1: EEA Preference

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

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

The 50:50 Rule applies in all situations except:

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

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

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

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

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

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

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

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

Question 1

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

CIF

This is a valid approach – no issues.

Principle 2: Labour Market Responsiveness

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

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

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

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

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

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

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

Question 2.1

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

CIF

The average annual growth rate for construction in the period 2017-2020 is projected at 8.5 per cent. The system needs to be responsive to shortages that may arise and within a reasonable period of time. The construction sector demands change quickly as projects come on line and the sector needs to be able to react at short notice to these demands. This can put strain on the availability of required skills. We welcome the ability to make periodic inputs into the "Highly Skilled and Ineligible lists". We do have concerns that the sector is not represented on either the National Skills Council or the Expert Group for Future Skills Needs – therefore not part of the decision making process at this level – what action can be taken to address this ?

The ramping up of construction investment, both private and public, will require access to appropriate skilled labour to ensure current and pent-up demand for construction can be met while also delivering value for money. As the economy returns to near full employment the re-establishment of a strong skills base across the full range of occupational groups in construction is critically important for the industry, from elementary construction occupations right up to qualified skilled craftspersons, operatives, technicians and professionals.

According to the Central Bank of Ireland, overall employment is expected to grow by 2.2 and 1.8 per cent in 2018 and 2019, respectively. This would see an additional 89,000 people in work and overall employment levels at 2.3 million, in excess of the pre-crisis (2007) peak level. However, the composition of employment across all sectors, including construction, is changing from that which presented in 2007. This is reflective of the emerging technological developments which are transforming the way in which industry is innovating into the future by providing more off-site technology based roles.

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?

CIF

The point made regarding our sector is relevant here – without sector representation at the ‘front line’ of decision making we feel the sector does not have a loud enough voice. Formal representation could improve this. The demands and composition of employment across the construction industry (both direct and indirect) should be a critical consideration. The new Labour Force Survey (CSO) offers all stakeholders an opportunity to review the evidence and data needs on a more regular and flexible basis.

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?

CIF

Agreed. However, some arrangements should be in place to deal with short term issues. Items a,b,c, as outlined above are medium to long-term in their ability to address skills shortages. The key challenge for the construction industry is to ensure the sector has the requisite skills needed to deliver high quality residential and non-residential buildings and infrastructure. Employment in the industry has been growing at approximately 1,000 persons per month since 2013. Total employment now stands at 133,800 persons (CSO, LFS, Q4 2017). However, attracting and retaining skilled persons becomes more challenging in a tightening labour market.

Additionally, the construction industry is committed to achieving the targets identified in the ‘Digital Transition Roadmap’, which include: a 20% reduction in project delivery programme, a 20% increase in construction exports, a 20% reduction in capital costs – all leading to a 20% improvement in productivity by 2021. The technological advancement of the construction industry, though the increasing application of BIM (Building

Information Modelling) for example will increasingly present opportunities for many highly skilled persons to find long-term employment in the industry.

Principle 3: Skills shortage

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

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

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

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

At €30,000, the minimum annual threshold for an employment permit has fallen substantially behind the 2016 average annual earnings of €36,919. This undermines the intention that the

threshold remains as neutral as possible in terms of wage effects. It also ceases to fulfil its function as a proxy for skills and a guarantee for sufficient resources. Without this alignment, there is a risk that the development of particular skills in the resident labour pool may be discouraged, if it seems attractive on a cost basis for employers to hire non-EEA nationals at salary levels below the annual average salary.

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

Question 3.1

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

CIF

CIF have no experience of this scheme but it appears innovative. The concern over skills shortages in the industry is valid given the trends in the number of qualified skilled craftspersons which almost halved between 2007 and 2010. Other occupational groups in construction from apprentices to managers and professionals to labourers also experienced losses at the onset of the crisis in 2007.

The CIF can see the benefit in the CSEP as it will attract non-EEA workers who are highly skilled in occupations where there are recognised skills shortages. While the €30,000 minimum threshold is behind the average annual earnings, it is a minimum salary and it allows employers a level of discretion and flexibility depending on the sector and skill need. There is a Sectoral Employment Order (SEO) in the construction industry that sets legally binding hourly rates of pay for construction workers. General Operatives who hold skill certificates in specific areas are generally on a basic salary of €34,557. If a construction non-EEA worker obtains a CSEP they would be legally entitled to the rate of pay outlined in the Construction Industry SEO (S.I. No. 455 of 2017).

Principle 4: Sector preferences

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

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

Question 4.1

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

CIF

In theory there should be some degree of flexibility built into the system to ensure the economy does not suffer on account of specific skills shortages within or across industry sectors. More research is also needed to determine the transferability potential of existing skills from sector to sector. Brexit will likely impact on certain sectors of the economy more than others and this will naturally result in labour market movements. It is prudent to plan to facilitate a responsive employment permit system in the event that certain sectors, occupations or occupations within sector come under pressure.

In construction for example with the exception of electricians, every apprentice trade experienced losses greater than 70 per cent between 2007 and 2015. This possibly reflects the fact that a high proportion of electricians also work in the Manufacturing and ICT sectors.

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?

CIF

Yes

Question 4.3

Can you recommend any other verifiable data/evidence?

CIF

Economic Reports

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?

CIF

By building in a system of periodical review / working through consultation with the CSO and Employer Groups.

Principle 5: Balanced approach to innovation and labour market

Economic migrants bring new ideas and different perspectives, helping organisations to innovate, for example through developing and adapting technology, and encouraging the adoption of more efficient processes and strategies. However, where access to a low-skilled immigrant workforce is not managed, employers may be deterred from investing in skills and technology to innovate and improve productivity such as fruit picking automation (Australia) and hotel self check-in machines (Sweden). It is important that a balance is achieved between the need for industry to innovate and invest in new processes to reduce dependence on low skilled labour, and ensuring that labour shortages do not result in lost commercial opportunities and value added.

Question 5.1

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

CIF

The Construction industry is labour intensive and transient by nature. Varied levels of skills are required at different times and these skill shortages can be short lived depending on the size and duration of a project. Nevertheless, the National Planning Framework for 2040 has set extensive plans for the construction industry over the next 22 years and with the reduction in manpower in this industry over the last decade, skill shortages are imminent.

Maximum quotas should be set in line with the level and duration of manpower required.

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?

CIF

Yes, it would seem prudent to set time limits. The duration of time limits should be set based on assessment of the level and duration of manpower required. Consultation with employer bodies can assist with assessing such time limits and quotas.

Principle 6: Net contributor

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

Definition of remuneration

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

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

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

Economically-focussed permit types

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

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

The *General Employment Permit (GEP)* provides for shorter term employment contracts and, subject to a LMNT to establish that there are no viable local or EEA applicants for the employment, for occupations that are not on the ineligible list of occupations for an employment permit. Such permit holders are eligible to sponsor family reunification after 12 months. Non-EEA nationals who have

held valid *GEPs* for 5 years or more consecutively and have been working lawfully during that time may apply to INIS for permission to reside and work without the requirement for an employment permit. The thresholds of €30,000 is generally applied with the following exceptions: €27,500 for meat boners, and €27,000 for recent graduates and customer service/sale roles with non-EEA languages

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

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

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

Ancillary permit types

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

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

- *Dependant/Partner/Spouse Employment Permit* - The rationale for this type of employment permit is that in order to attract foreign nationals to apply for the *Critical Skills Employment Permit* or to encourage third country researchers to carry out research in the State under Council Directive 2005/71/EC, provision has to be made for their families where appropriate.
- *Reactivation Employment Permit* - This employment permit provides for those foreign nationals who entered the labour market on a valid permit but who have subsequently fallen out of the system for a variety of reasons including redundancies and exploitation. The primary objective is to regularise the situation of such previous permit holders - such persons are unlikely to be in highly paid occupations.
- *Sports & Cultural Employment Permit* - This employment permit provides predominantly for sports professionals. The minimum remuneration threshold is currently set at NMW, but most employments achieve a higher remuneration.

- *Internship Employment Permit* - This employment permit provides for student internship programmes for the purpose of gaining work experience in employments on the highly skilled occupations list. It is a one-year, non-renewable permit.
- *Exchange Agreement Employment Permit* - This employment permit provides for reciprocal international arrangements where opportunities are afforded to Irish nationals in exchange for opportunities afforded to foreign nationals e.g. trade agreements which include labour transfers, exchange agreements concerning researchers or student work experience, etc. It is a one-year, non-renewable employment permit.

Question 6.1

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

CIF

The employer should not be legally obliged to make arrangements to provide accommodation and/or board and health insurance for any permit holders. This is an unnecessary administrative burden on employers where the permit holder can make such arrangements themselves.

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?

CIF

No issues with time frames.

Question 6.3

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

CIF

The Construction Industry SEO provides for minimum remuneration rates for construction workers. New entrant General Operatives in the construction industry, receive a basic salary of €27,925 based on a 39 hour working week. Therefore, the CIF submit that the minimum threshold for low skilled workers removed from the ineligible list should not be any higher than €27,925.

Question 6.4

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

CIF

The medium-term prospects for the construction sector are generally very positive following the introduction of this longer-term capital investment plan (NDP 2018-2027). Sustained capital investment will help to moderate the influence of external factors such as Brexit and place the construction industry, along with the wider economy, on a more sustainable path – thereby helping to mitigate against unnecessary shocks to the construction labour market specifically. The new NDP 2018-2027 promises to boost all sectors of the industry.

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?

CIF

No, wage rates should be based on the norm in any particular sector. In the construction industry the rates of pay are set by the SEO and these rates are significantly higher than the NMW so generally construction workers are not reliant on state resources.

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?

CIF

It is important that representatives of the State who are negotiating the grant of employment permits at lower remuneration thresholds have expertise in the specific sector. However, it is equally important that there is engagement with the relevant employer bodies.

Principle 7: Employment rights

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

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

- the foreign national receives the original employment permit and the employer gets a copy;
- employers are prohibited from making deductions from the remuneration of employment permit holders in respect of their employment permits; neither may an employer hold any personal document of the employment permit holder.
- a job offer must come from a bona-fide employer registered with the Revenue Commissioners and, where applicable, the Companies Registration Office/Register of Friendly Societies;
- the employment must achieve a minimum remuneration threshold;
- the 50:50 Rule ensures that no more than half of the employees of an enterprise seeking to hire a foreign national on the basis of an employment permit should be non-EEA nationals, to increase the likelihood that the employees in an enterprise where non-EEA nationals are to be employed have a measure of familiarity with normal employment practices in Ireland;
- the *Reactivation Employment Permit* scheme is available for those foreign nationals who originally entered the labour market legally on an employment permit but who fell out of the system;
- holders of a *Critical Skills Employment Permit* or a *General Employment Permit* who have been made redundant may apply for the same job with a different employer, even where the job is no longer on the highly skilled list or is now ineligible;
- employment permit holders may change employer within 12 months where in circumstances, such as redundancy, or where circumstances (unforeseen at time of application) arise in the employment that fundamentally change the employment relationship (eg. the employer plans to change the location of the business to a site a significant distance from its current location, or the hours that the permit holder work are being significantly changed, or significant changes are being made to the nature of the work that they are required to do).
- employment permit holders may change employer after 12 months provided the new employer fulfils all conditions attached to employing a non-EEA national.
- the Workplace Relations Commission has powers of enforcement under the Employment Permits Acts. Workplace Relations Commission's investigation and enforcement powers work to discourage abuses of the employment permits system by unscrupulous employers. All employment in Ireland is subject to the provisions of employment law with the protections that entails for employees, and in addition to these provisions, employers are subject to fines of up to €250,000, or a prison term of up to 10 years' duration, where they are found to be in breach of the Employment Permits Acts.

Question 7.1

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

CIF

No issues.

Principle 8: Legislative framework and process

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

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

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

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

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

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

Question 8.1

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

CIF

The construction industry is traditionally a fragmented industry and it is continuing to re-structure in order to meet the needs of the economy with an increase in the number of specialist sub-contracting firms in recent years. To avoid labour market issues hindering economic growth in the future it is advisable to consider the introduction of flexible review mechanisms which could address any tightening in the supply of skills available.

Question 8.2

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

CIF

No additional recommendations to make.

Economic Migration Policy Unit

21 March 2018

Submission 16

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

Principle 1: EEA Preference

The 50:50 Rule requires that employers seeking to hire foreign nationals on an employment permit have at least 50% of their workforce from Ireland or the EEA

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?

Principle 2: Labour Market Responsiveness

At all stages of an economic cycle, it is imperative that every opportunity is afforded to Irish and other EEA nationals in the first instance

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?

Loosening of permit legislation should be targeted and reflect the balancing of the labour market to be achieved

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?

Vacancy data and advertised roles reflect an "arrived at" current situation. Permit legislation based on "after the fact" situations is reactive. Labour market intelligence could be improved by sectors construction future supply and demand scenarios based on a 5 to 10 year horizon.

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?

Principle 3: Skills shortage

The employment permit regime is part of the response to addressing those skills deficits which exist and are likely to continue into the medium term, but is not a substitute or pretext for avoiding the challenge of up-skilling our resident workforce

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?

Principle 4: Sector preferences

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

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 up to date CSO data on GDP and employment growth for relevant sectors?

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Can you recommend any other verifiable data/evidence?

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Principle 5: Balanced approach to innovation and labour market

Economic migrants bring new ideas and different perspectives, helping organisations to innovate, for example through developing and adapting technology, and encouraging the adoption of more efficient processes and strategies. However, where access to a low-skilled immigrant workforce is not managed, employers may be deterred from investing in skills and technology to innovate and improve productivity such as fruit picking automation (Australia) and hotel self check-in machines (Sweden). It is important that a balance is achieved between the need for industry to innovate and invest in new processes to reduce dependence on low skilled labour, and ensuring that labour shortages do not result in lost commercial opportunities and value added.

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Question 6.1

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employment permits at a lower remuneration threshold be led by representatives of the State that have expertise in the specific sector?

Principle 7: Employment rights

Migrant workers are a vulnerable class of people. Language difficulties, cultural differences, and lack of social networks can disadvantage migrants and increase the potential for abuse by unscrupulous employers. Ireland has a very thorough employment rights legal framework

Question 7.1

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

HSE implements and complies with relevant employment and work permit legislation

Principle 8: Legislative framework and process

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

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?