

Immigration

# Immigration Update November 2013

## Update on Proposed new Employment Permits Legislation

Earlier this year, the Department of Jobs Enterprise and Innovation (DJEI) published a Regulatory Impact Assessment (RIA) regarding new Employment Permits legislation. The primary purpose of this legislation is to update Employment Permit schemes in line with policy and economic developments since 2007. In response, Eugene F. Collins (EFC) prepared a detailed submission setting out our views on the current schemes in existence in this jurisdiction as well as some suggestions to simplify and streamline these processes. The DJEI has now delivered a response to this submission which gives us an important insight into the development and the direction to be taken by the new legislation.

In January 2013, the Department of Jobs Enterprise and Innovation (DJEI) published a Regulatory Impact Assessment (RIA) regarding new Employment Permits legislation aimed at:

- a) Updating provisions for Employment Permit schemes in line with policy and economic developments since 2007;
- b) Providing flexibility to deal with a changing labour market, work patterns and economic development needs which often require a rapid response;
- c) Providing for a robust Employment Permits regime with greater clarity; and
- d) Catering for the accession of new member states to the European Union.

According to this RIA, the Irish Government has decided to overhaul the Employment Permit processing system in a bid to attract overseas workers to fill skill gaps in crucial areas like Information Communication Technology and Engineering. This approach has been identified as a key facet of the Irish Government's Action Plan to create 100,000 jobs by 2015. At present there are as many as 5,000 job vacancies in Ireland's burgeoning Information Communication Technology sector and this gap could well be exacerbated as Ireland moves rapidly towards becoming the digital capital of Europe.

The prevailing wisdom is that for every one job filled in the Information Communication Technology sector, a further five jobs are generated in the local economy in areas such as retail and services. In other words, simplifying the currently available Employment Permits schemes (and introducing further innovative schemes) to attract skilled professionals from outside the European Economic Area ("EEA") is critical for a country such as Ireland, whose future no longer pivots on areas like property and construction but emerging industries such as Information Communication Technology, Life Sciences and Medical Devices.

The DJEI is currently considering submissions in relation to the proposed legislation and is receiving input from industry, interest groups, Enterprise Agencies and other Government Departments. In April 2013, EFC prepared a detailed submission to the DJEI setting out our views on the current Employment Permit Schemes in existence in this jurisdiction as well as some suggestions to simplify and streamline these processes. In addition, we have suggested an expansion of the current system to include Employment Permit schemes for Information Technology professionals, individuals with extraordinary abilities, multinational managers or executives and independent contractors. The DJEI has recently delivered a response to this submission, the main aspects of which have been summarised below:

### **Contract for Services Work Permits**

EFC expressed concerns as to certain of the requirements to be fulfilled by both the Irish based company and the applicant employee before an Employment Permit will be issued in a Contract for Services context namely:

- a) A labour market needs test carried out in circumstances where the employee's salary is between €30,000 and €40,000. The DJEI have made it clear that no labour market needs test will be applied where the application relates to an occupation included on the Highly Skilled Occupations List. These are occupations which have been identified as in short supply and include an extensive range of IT, engineering and medical positions as well as some positions in the scientific and financial sectors;
- b) The employee in question must have at least 12 months employment with the organisation prior to their transfer to Ireland. The DJEI has confirmed that an employee who is the subject of a Contract for Services Work Permit application is now required to have an employment history of just 6 months or more with the foreign undertaking;
- c) The duration of the employee's transfer to Ireland must exceed 90 days. The DJEI has acknowledged that it is entirely possible that an indigenous Irish company which identifies a lack of key knowledge and experience amongst its workforce and within Ireland in general will seek to source competitively priced key know-how from non-Irish suppliers for a period of less than 90 days. As a consequence, the Minister for Justice and Equality has recently launched the Atypical Working Scheme pursuant to which permissions may be issued for employment assignments of less than 90 days.

### **The number of pre-existing non-EEA nationals in a firm**

Section 10 of the Employment Permits Act 2006 makes it clear that an Employment Permit cannot issue where a consequence of granting the permit would be that more than 50% of the employees in a firm would be non-EEA nationals. The DJEI have confirmed that the new legislation will provide for waivers to the 50% rule "*in very limited circumstances*".

### **Intra-Company Transfer ("ICT") Work Permits**

Previous DJEI guidance on ICT Work Permit applications stated that in most circumstances, the number of ICT transferees should not exceed 5% of the total Irish workforce in a firm. In exceptional circumstances such as small firms or start-up companies, a higher percentage may be permitted on a strictly temporary basis (with an absolute limit of 50% of non-EEA staff). EFC requested that any reference to this 5% requirement in the new legislation should clarify the circumstances in which the DJEI will be permitted to waive this requirement. It was also suggested that the requirement be waived completely where the Irish host organisation is involved in a particular industry (such as Information Technology or Aircraft Leasing) which are of major benefit to the Irish economy. The DJEI has now confirmed that the 5% requirement will no longer apply to ICT Work Permit applications.

### **Green Card Permits**

The guidelines issued by the DJEI on Green Card Permits make it clear that the foreign national concerned must possess the relevant qualifications, skills or experience that are required for the employment. From our experience, particular emphasis will be placed by the DJEI on the necessary qualifications set out in the letter of offer from the employer and those which the employee has obtained, often in complete disregard of the employee's prior relevant experience. EFC has therefore sought greater flexibility from the DJEI (in terms of those individuals who may not have the exact academic qualification required but who have more than enough practical experience to do the job) as well as a legislative structure which encourages this flexibility. The DJEI have acknowledged that where the vacancy in question attracts a salary of over €60,000, *"there may be individuals who would meet the qualification requirements by virtue of their extensive experience"*. However in the case of those occupations salaried at €30,000 and over and which are listed on the Highly Skilled Occupations List, the DJEI have stated that *"it is unlikely that such roles could be adequately filled by a candidate with no qualifications in the relevant field"*. It would appear therefore that if the salary on offer is between €30,000 and €60,000, the applicant for an Employment Permit must possess academic qualifications which are relevant to the particular vacancy.

### **Salary Bands**

Many of the Employment Permit schemes in existence in the State today make reference to salary bands and minimum salary requirements which must be satisfied before a particular Employment Permit application will be considered by the DJEI. EFC has sought a reduction in the salary threshold for IT graduates, graduates who work in technical sales with foreign language skills and other areas in which skills shortages have been identified. In response to this the DJEI made reference to the fact that the minimum annual remuneration for new Employment Permits to ICT graduates and Specialist Language Support & Technical/Sales Support (with fluency in a non-EEA language) in companies supported by the Enterprise Development Agencies (the IDA etc.) has recently been reduced from €30,000 to €27,000.

### **Information Technology Employment Permits**

The DJEI has acknowledged that the ICT sector is, in a global sense, experiencing demand pressure in terms of skilled labour but is of the opinion that the current system (incorporating the Highly Skilled Occupations List which includes a very broad range of occupations within the ICT in order to facilitate demand and in order to make such positions attractive to highly skilled and qualified ICT professionals) coupled with the proposed changes to the Employment Permit schemes under the new legislation will obviate the need for an Information Technology Employment Permit scheme.

### **Administration of Employment Permit applications**

EFC has suggested a number of alterations to the current system of administering and processing Employment Permit applications which it is hoped would streamline the process such as:

- An appropriately tailored online application process which will enable EFC to continue to assist its clients in the preparation and submission of Employment Permit applications;
- Better and clearer explanations from the DJEI when an Employment Permit application is rejected;
- A 'trusted partner' registration system which would provide for pre-registration of prospective employers who regularly submit Employment Permit applications to the DJEI.

The DJEI has confirmed that an online application system is currently being developed which will combine electronic and paper elements. As an interim measure, an [eForm](#) is being employed on a trial basis. This form will electronically guide the applicant through the making of an application and will *“simplify the process by only requiring the applicant to complete relevant questions for the particular permit type”*. Further, the DJEI has reiterated its commitment to providing more detailed explanations of the reasons for refusals and to continue working on a ‘trusted partner’ registration scheme.

Having reviewed the response of the DJEI to the EFC submission in detail, it is clear that the proposed changes will go some way towards streamlining and increasing the flexibility of the various Employment Permit schemes. However EFC will continue to monitor the progress of this draft legislation and to press for the changes necessary to meet the requirements of our global corporate client base.

For further information on this topic please contact:  
David Cantrell, Partner, Head of Immigration E: [dcantrell@efc.ie](mailto:dcantrell@efc.ie)  
Jessica Loughnane, Solicitor, Immigration E: [jloughnane@efc.ie](mailto:jloughnane@efc.ie)  
David Heneghan, Solicitor, Immigration E: [dheneghan@efc.ie](mailto:dheneghan@efc.ie)