

Submission 28

Brown Bag Films (BBF) Response to Proposed Guiding Principles to Frame the State's Economic Migration Policy

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 LMNT is not relevant to our hiring needs. BBF are currently supported by IDA in all of our work permit applications and so are not required to carry out a LMNT. However were this to change, it would prove to be too restrictive and wouldn't target the relevant audience. Advertising 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 wouldn't prove to be fruitful for us as candidates predominantly search industry websites for work

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?

BBF would be in favour of a less restrictive regime when the labour market is tightening or is at full employment. Whilst job seeker choice is an issue there are also issues of not having enough qualified experienced candidates within the Irish or EEA pool in an industry that is growing rapidly.

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?

BBF receive a lot of support from the IDA as we are in a fast growth sector. There would need to be IDA involvement in creation of the lists, if that is not happening already.

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?

It's understood and agreed that to remove an employment from the ineligible list requires some supporting evidence. Within the animation and gaming industry there is evidence that both industry and education are adapting curriculums (to point 'a' of the question) however the time taken for this to result in a large pool of talent does not meet immediate needs or needs within the next 2 years. Any business case needs to be looked at on the basis of immediate as well as future needs.

Currently IDA supported companies are competing with EI supported companies for talent.

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?

In 2017, Brown Bag Films was issued with 31 work permits which was the highest amount of work permits for any animation studio in Ireland. As some context, we hired 107 new positions in 2017 so over 30% ended up being employed on work permits.

The following roles were recently added to the Highly Skilled Eligible Occupations List (HSEOL), relevant to the animation industry:

- Art Director in 2D or 3D animation, with at least one year's experience in the role
- Location Designer in 2D or 3D animation, with at least one year's experience in the role
- Character Designer in 2D or 3D animation, with at least one year's experience in the role
- Prop Designer in 2D or 3D animation, with at least one year's experience in the role
- Animation Layout Artist in 2D or 3D animation, with at least one year's experience in the role
- Animation Background and Design Artist in 2D or 3D animation, with at least one year's experience in the role

However we have in excess of 60 types of role that are linked to animation (i.e. excluding all back office and management functions) and our average time to hire has increased significantly in the last 12 months due to a lack of candidates in Ireland and the EEA.

We would suggest that the HSEOL list relevant to the animation industry therefore is extended to cover more technical roles or that the salary threshold & contract duration required for a critical skills work permit is reduced.

Currently for roles outside of those listed above therefore, we would need to offer over €60,000 to meet the criteria for a critical skills work permit. The salary threshold of €60,000 is too high. We struggle to fill mid-level positions from within the EEA and we cannot meet the threshold of €60,000 for these level roles. Non EU candidates wishing to bring family to Ireland, are often ruled out for roles because we cannot offer them the required €60,000. Also, the minimum contract duration of 2 years for a critical skills permit is too restrictive. Due to the contract nature of the industry, it is not always possible to secure such a contract. We hire per project and often, we cannot guarantee a 2 year contract should the project be scheduled to finish sooner than 2 years.

Question 4.1

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

Yes, the system needs to give preference to fast growth industries or those that are being specifically targeted by the IDA and other groups to come to Ireland.

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?

No, this information needs to be generally held by those reviewing the submission. Adding it to the administrative burden of creating a business case will result in more delays and issues. The relevant government body should be required to provide this information not the industry supplying the business case.

Question 4.3

Can you recommend any other verifiable data/evidence?

Where submissions are being made by industry then verifiable data could include internal time to hire data.

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?

It's unclear in this question to who or what does the 'regime' apply to.

If a sector has been identified for future growth potential then this needs to be reviewed at least every 12-18 months to ensure relevancy.

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?

A quota could be a useful way of managing low skilled workers. This quota would need to be based on industry data. E.g. for animation - what roles were recruited across the industry in the last 12 months, how many were recruited on work permits, what factor of increase in recruitment is forecast for the next 12 months

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?

Time limits need to apply across all permits not just those of low skilled workers.

Question 6.1

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

As outlined in our response to question 3.1 we believe the current salary threshold for a Critical Skills Work Permit needs to be reduced.

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?

Although the Dependant/Partner/Spouse Employment Permit is available to spouses of Critical Skills permit holders, it has been noted that it is restrictive in that in order to apply for this permit, the spouse/dependent/partner must have a job offer first. It has been noted that some spouses of our Critical Skills permit holders have struggled to secure employment because they need a work permit. Although it's free, not all employers are open or eligible to apply for this type of permit. Were the spouse/dependent/partner able to apply for this permit before having a job offer, they would have a better chance of getting work.

Question 6.3

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

N/A

Question 6.4

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

As an employer we already have a responsibility and carry the financial cost of any such circumstances.

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?

N/A

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?

It is unlikely that there will be representatives of the State who have expertise in every relevant sector. Partnership with industry leaders and large employers is essential

Question 7.1

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

No. As an employer our policy is to ensure all employees are treated fairly and consistently and within the law regardless of employment permit status.

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?

Yes, more flexibility is required. E.g. the placement of job adverts in newspapers is outdated, time consuming and carries unnecessary cost to a business.

Question 8.2

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

The online system is far more efficient than the paper-based application system and has proven to work well for us. However the UK system is even easier and less cumbersome and we would welcome a move to a similar system.

General comments relating to the Proposed Guiding Principles to frame the State's Economic Migration Policy

Department of Business, Enterprise and Innovation

18 April 2018

INTRODUCTION

The American Chamber of Commerce Ireland represents companies large and small in the fastest growing sectors of the global economy. The American Chamber's priority is that **Ireland remains a unique transatlantic trade and investment gateway and a location of choice for US inward investment to Europe**. Ireland is home to 700 US firms which are creating products and services that are saving and enhancing lives around the world and transforming how we live and work. Today, over 155,000 people are directly employed by US companies in Ireland. These are people from all walks of life in Ireland, as well as those who have joined us from overseas to make Ireland their home. It is vital that Ireland continues to produce, retain and attract the talent needed to fill the growing number of opportunities available within our member companies and across the broader growing economy.

AN ISLAND OF TALENT AT THE CENTRE OF THE WORLD

The American Chamber's vision is Ireland as an 'Island of Talent at the Centre of the World'. With challenges like Brexit and the changes in global trading blocs, the American Chamber believes now is the time to plan with ambition. Ireland must protect and enhance its hard-earned international reputation for its talent pool and as a location of innovation. These factors are at the heart of FDI decision making.

The American Chamber wishes to acknowledge the network of existing Government action plans all seeking to align the demand for talent with supply, consistent with the ambition to grow employment levels as laid out in Enterprise 2025. Indeed, the American Chamber's input into the forthcoming ICT Action Plan, in addition to the current STEM Education Implementation Plan, the Action Plan for Education, the Action Plan for Jobs and the Digital Strategy for Schools, are all working towards this common aim.

The American Chamber strongly supports the strategic thinking underpinning the all-of-system approach to the generation of ICT talent. The Expert Group on Future Skills Needs (EGFSN) performs a crucial role in quantifying the demand and supply for ICT talent under a number of economic scenarios. The Chamber welcomes efforts to address skills gaps in existing and upcoming action plans by (a) seeking to generate those skills and competencies from the pipeline of talent in the education and training system (b) activating those already in the workforce to transition into the ICT sector and (c) where these measures are forecast to fall short, and talent from the EU/EEA does not bridge gaps, being proactive in migration policy by encouraging critical skills to come to Ireland to work and live. These three elements are integral to a joined-up approach to what is a global talent challenge.

EDUCATION SYSTEM

Relevance and excellence must always be at the centre of our education system, aligned with our industry base, to ensure our economy grows in a sustainable direction. **Ensuring that the talent pipeline in Ireland has the key STEM skills to fill roles within the innovative companies which are located here is a priority.** To keep the existing workforce relevant to technology-driven change, work and study must continue to become more integrated through curriculum reform that recognises, not just internships and cooperative education, but fully formed work-study models of learning from 21st century apprenticeships up to and including doctorates. Lifelong learning programmes are also vital to ensure all adults can continuously upgrade their skills and qualifications.

MEETING THE SKILLS SHORTAGE

In tandem with ensuring the necessary skills are taught at various levels within the Irish education system, it is also crucial that we have an economic migration system which is fit for purpose. The American Chamber welcomes the current review of the economic migration policy which frames the employment permits system. Indeed, as stated in the 2018 Action Plan for Jobs, “Inward migration is an important source of skills for Irish business”.

There are a number of current practices and policies within the employment permit system which are **working well** and that the **Chamber would like to acknowledge and welcome:**

- ❖ The **consultative and collaborative approach** which the Economic Migration Policy Unit has adopted with industry. The ability to input into this important review, for example, is welcome.
- ❖ The **Employment Permits Online System (EPOS)** which has shortened processing times.
- ❖ The **Trusted Partner Initiative (TPI)** which has streamlined the application process and reduced the administrative burden.
- ❖ The **bi-annual review** of the Highly Skilled Eligible Occupations List (HSEOL) and the Ineligible Categories of Employment List (ICEL) in order to consider the relevance of these listed occupations to the needs of the economy.

There are a number of **challenges** within the employment permit system which the Chamber would be keen to see reflected and addressed in the review of the state's economic migration policy:

- ❖ Continued **resourcing** of Ireland's permit system with the aim of making Ireland's regime the international benchmark in terms of alignment with forecasted skills needs.
- ❖ Continued investment in **IT infrastructure** and its ease of access and interaction with client users in order to reflect Ireland's tech and innovation credentials.
- ❖ Demonstration of a **consistency in policy and application** to promote confidence and certainty in the system for the employer and applicant.
- ❖ Enhancement of the overall '**customer service**' experience. The adoption of a reliable and frequent communications mechanism could offer assurance to the applicant.
- ❖ Rollout of a **unified system** to allow for work, residence and entry permission under one petition. The current division of work, residence and entry permissions necessitates extensive effort, time and cost.
- ❖ **Recognition within the Highly Skilled List of non-typical roles.** Currently the Critical Skills Employment Permit is catered more towards "traditional" roles.
- ❖ Adoption of international practice whereby the **dependent** is either authorised to work on the dependant's permit or has an open permit to allow employment or self-employment. Currently, this permit can only be utilised once the dependant foreign national has received a job offer.

In keeping with the American Chamber's vision of Ireland as an 'Island of Talent at the Centre of the World', the Chamber is advocating for **investment in a continuous long-term promotion of Ireland** as an attractive destination for talent within the EU/EEA. This would ensure that 'brand' Ireland is a clear positive for career prospects and a destination of choice for a high quality of life. A similar programme is required in target countries outside the EU/EEA jurisdiction from which key skills are sought.

CONCLUSION

The American Chamber strongly advocates for all aspects of our education and employment systems to work in tandem to ensure that the companies which choose to make Ireland their home are equipped with the necessary talent. This is integral to realising the Chamber's vision of an Island of Talent at the Centre of the World.

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?

Fáilte Ireland supports the value of the 50:50 rule and LMNT in that a balance must be maintained which does not disadvantage job seekers within the workforce of Ireland, EU/EEA.

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?

From a tourism and hospitality perspective, a lack of available skills will hinder growth in the sector and impact on the visitors experience.

It is our view that the employment permit regime should be less restrictive where the labour market is approaching full employment. Skills needs may primarily be urban driven and should be evidenced based.

Fáilte Ireland welcomes the recent Employments Permits (Amendment) Regulations 2018 and the quota which was granted to address the shortage of qualified chefs in the short-term and supports Irish labour market policy that aims to ensure that general labour and skills needs are met from within the workforce of the EEA.

Question 2.2

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

Question 2.3

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

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?

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?

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?

Question 4.3

Can you recommend any other verifiable data/evidence?

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?

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?

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?

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?

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?

Question 6.3

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

Question 6.4

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

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?

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?

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?

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?

Question 8.2

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

When making your submission please provide the following information:

a. Name of individual, firm or organisation

Fáilte Ireland

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

As the National Tourism Development Authority, one of the general functions of Fáilte Ireland is to encourage, promote and support the recruitment, training, and education and development, of persons for the purposes of employment in connection with the tourism industry in the State.

Economic Migration Policy Unit

21 March 2018

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

There are in the region of 360,000 family carers in the Republic of Ireland¹. Many of these family carers are not in a position to provide full-time care to the person in need of support, due to work or other commitments. Therefore, to adequately care for a dependent family member, paid care workers are needed to supplement the unpaid care provided by the wider family/neighbours and friends. The demand for care and support in the home is evidenced to be increasing yearly. Demand for all day/daily informal home care by people aged 65 and over with disabilities is predicted to expand by 23,500 in the Republic of Ireland by 2021, representing a 57% increase over a decade². Thus, the need for care is intensifying at the same time as families find it increasingly difficult to provide care in the home. As a consequence, there is a growing demand for state governed and market-based and voluntary care services³. More people are being cared for at home now, who have more complex care support needs. The economics of the inappropriate use of expensive acute hospital beds shifts the pressures to the home care area.

It is clear, therefore, that there is a mutual interest between home care workers and family carers to create safe, equitable and positive environments to provide care. We are aware that many families choose to engage with home care workers privately (either through a formal employment contract, an agency or through the 'black market'), as their need for homecare support tends to exceed that provided formally by the state. We are aware of some families hiring 'live-in' home care workers who are qualified but who are living here 'undocumented' – and therefore have no access to legal protections, limited access to training and further education, and who currently have no recourse to gain work permits for their existing undocumented work through the existing systems.

¹ Central Statistics Office, 'CSO Releases Irish Health Survey Results', 16 November 2016, <http://cso.ie/en/media/csoie/newsevents/documents/pressreleases/IHS2015.pdf>.

² Maev-Ann Wren et al., 'Towards the Development of a Predictive Model of Long-Term Care Demand for Northern Ireland and the Republic of Ireland' (Centre for Health Policy and Management, Trinity College Dublin, 2012).

³ C Murphy and T Turner, 'Organising Non-Standard Workers: Union Recruitment in the Irish Care Sector', *Industrial Relations Journal*, 2014.

This submission raises three points which need to be addressed by the Departments proposed Guiding Principles to frame the State's Economic Migration Policy. This should not be seen as an exhaustive list of concerns, nor as being representative of a collective opinion of the membership of Care Alliance Ireland. We anticipate that a number of our member organisations will make their own submissions on this topic.

1) Need to focus on social and health benefits of migrant workers

We are disappointed that the core focus of the guiding principles continually refer in a linear and narrow quantitative way when reviewing the economic impact of incoming migrant workers. Whilst this is an important factor in deciding upon migrant worker strategy, it should not be the sole marker. As mentioned above, the demand for care in the home is increasing steadily with our ageing population. Having readily available care workers to provide quality, skilled and compassionate care is a critical component of a well-functioning liberal democracy with a welfare state model approach to society's well-being. Furthermore, their availability to provide the care work often enables the family members of working age (in particular women) to remain in the paid workforce, generally on wages significantly above the average wage. The reality across the globe is that in relatively wealthy countries, foreign care workers are relied upon significantly to provide care. Whilst EEA labour is likely to continue to play a key role in care worker availability, we also need to be open to facilitating more non-EEA labour to provide an increasing level of that care. The ageing demographics of the three key 'labour source' countries named in the departments document, namely Poland, Lithuania and Romania are not conducive to a significant and consistent long-term supply of care workers.

Family carers are at heightened risk for experiencing poor mental and physical health, loneliness, social isolation, broken sleep and other challenges in comparison to members of the general population. Having access to qualified, documented home care workers in the private or public home care system can go some distance to alleviate these challenges. The benefits of having access to these services cannot be overstated.

2) Migrant home care workers and family carers

Following from the above point, the relationship between family carers and home care workers is a critically important one. Family carers wish to be able to access the extra care and support that their family member requires, and to do so safely and with the security of knowing that the home care worker will be available with consistency.

Various enablers to quality relationships between home care support workers and family members have been identified, including, but not limited to: common goals; spending time together; continuity; honest communication; mutual respect; compassion; friendliness; reciprocity; and shared values. Conversely, numerous barriers to positive relationships between home care support workers and family members have also been identified, including, but not limited to: lack of contact; disregard for expertise; unrealistic expectations; and the structure and approaches of associated professional services⁴. It is clear to see that continuing to unnecessarily put barriers in the way of cultivating strong, mutually respectful relationships between migrant home care workers in particular is not going to benefit those in need of care, and their families and loved ones.

3) Access to work permits for migrant home care workers

A major point of concern for Care Alliance Ireland is the continual refusal to open up the work permits scheme to home care workers themselves. The scheme for work permits continues to be 'employer-led', which cuts out a large section of those family carers seeking to employ a home care worker to provide care in the home independently of organisations. We are aware of many individual family carers who are forced into the 'black market' of accessing care workers for their family members. This in turn disbars them from accessing such schemes as tax relief for monies paid for home care.

⁴ Care Alliance Ireland, 'Literature Review on the Relationship between Family Carers and Home Care Support Workers', 2014.

Background Information on Care Alliance Ireland

There are in the region of 360,000 family carers in the Republic of Ireland. Family carer support is provided by a number of organisations, including those dedicated solely to carer support and others who support carers as part of their response to individuals with specific conditions.

Care Alliance Ireland is the National Network of Voluntary Organisations supporting family carers. Our vision is that the role of family carers is fully recognised and valued by society in Ireland. We exist to enhance the quality of life of family carers. We achieve this by supporting our 85+ member organisations in their direct work with family carers through the provision of information, developing research and policy, sharing resources, and instigating opportunities for collaboration.

Our legitimacy derives from our membership base which includes carer organisations and virtually all of the disease/disability-specific organisations currently providing services to Ireland's family carers. Our membership comprises organisations both large and small, and both regional and national.

We work with organisations in order that they can enhance the information and supports they provide to family carers. We provide them with opportunities to collaborate on initiatives including National Carers Week, a multi-agency and multi-disciplinary Family Carer Research Group, and joint policy submissions. We actively encourage collaboration in all our projects. We provide cohesion to those organisations working to support family carers. We commission relevant research that supports quality interventions in the lives of family carers.

By focusing on these functions we enable more of our member's resources to go directly to coal face services.

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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?

The majority of farming enterprises are sole traders. Few enough would employ more than one person.

The dairy farming sector is expanding and will require additional labour to cater for larger herds. However, in the early stages of growth, this is unlikely to be more than one or two employees being sought.

Studies by Teagasc and Bord Bia, referenced by IFA in detail in our earlier submissions for last year's reviews of the Highly Skilled Eligible Occupations and the Ineligible Categories of Employment for Employment Permits lists have identified and quantified the labour shortages, especially in the dairy and horticulture sectors. Work by the People in Dairy Stakeholders Group and the Horticulture Industry Forum have shown the difficulties of finding and retaining candidates for available jobs and set out strategies to improve the attractiveness of the sectors, including to workers from outside the EEA.

It is therefore important that a waiver to the 50:50 rule applies for farmer employers, and that the LMNT would be reviewed in light of almost full employment on the Irish jobs market, and rapidly improving economies in the EEA.

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?

IFA believes that it is imperative that the employment permit regime in agriculture is made less restrictive. A failure to remove agriculture from the ineligible employment list will not only restrict the ability of the sector to achieve its growth targets over the next decade but also lead to the demise of some sectors particularly in the horticulture area.

In comparison, the employment permit regime operated in other EU countries such as Spain, the Netherlands and Poland allows non-EEA workers in as this is deemed necessary to supply the necessary labour for the success and development of their agricultural sectors. This is putting the Irish agriculture sectors at a significant competitive disadvantage.

IFA has been campaigning for over a year now, for a less restrictive and more responsive regime and would therefore be in favour of a less restrictive regime in the context of full employment and improving EEA economies. We believe this is essential to ensure our sectors can fulfil the targets set out for them under Food Wise 2025, thereby optimising their contribution to the Irish economy.

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?

Official bodies such as the EGFSN and the SLRMU in SOLAS are on record as not having the necessary market intelligence for the primary agriculture sector as referenced in their report (April 2017) Entitled 'Update on Future Skills Needs in the Food and drink sector'. So certainly the review of the lists process can be improved and the following are some suggestions

The IFA have requested DBEI to include a representative from the primary agriculture sector on the EGFSN.

As many farmers are advertising for workers outside the country these vacancies may not be registered by the SLRMU in SOLAS and this needs to be addressed.

Relevant bodies such as Teagasc, Bord Bia and DAFM as well as industry stakeholder groups should be consulted and their information used in the absence of market intelligence from the other agencies mentioned above.

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?

IFA supports this business case/evidence based approach. Our commitment is evidenced by our participation with our lead Department, the Department of Agriculture, Food and the Marine and has been involved in the People in Dairy and other sector-specific agri-stakeholders groups to outline the efforts made to deliver on (a), (b) and (c).

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?

IFA supports the principle of having permits for skilled and experienced personal.

However, agriculture is a low-income sector. The Teagasc National Farm Survey 2016 shows the average farm income across all sectors for that year to be €23,848 per enterprise. While there are variations between sectors, all operate on extremely tight, and in some cases very volatile, margins.

We would therefore encourage the Department to retain a realistic remuneration threshold, even for the CSEP.

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 organized 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?

IFA's focus is on the delivery of work permits for the primary agriculture sector. Within that, some particularly labour-intensive and labour-starved sectors should be prioritised, namely horticulture, dairy, pigs and poultry.

Question 4.2

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

Submissions should include all relevant and up to date information available from the all sectoral agencies best placed to address labour needs (see our answer to Question 2.2).

Question 4.3

Can you recommend any other verifiable data/evidence?

For the agricultural sector, data from Teagasc and Bord Bia, also DAFM and sectoral industry bodies such as Dairy Industry Ireland, Meat Industry Ireland and others (see answer to Question 2.2)

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?

Ensure the agencies and stakeholders (mentioned previously) most directly involved in the sector are consulted and included in the decision-making process.

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?

The agriculture sector is working hard on every avenue to upskill / identify / train local labour, but it is already clear that there will still be some requirement for labour permits from outside the EEA.

A seasonal / short-term requirement needs to be filled particularly in the Dairy and Horticulture sectors, therefore a maximum quota is unlikely to be necessary.

Should DBEI however decide to apply a maximum quota in the first year of an employment being removed from the ineligible list, this must be set at a level which ensures it is sufficient to address the immediate labour needs of the sector involved and is reviewed annually.

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?

Some agricultural activities are seasonal (calving, fruit picking...) but the sector itself is resilient and sustainable, not cyclical like construction for example. In fact, it weathered the bust which followed the financial crash of 2008 better than many.

The end of the EU milk quota regime has allowed the dairy sector to develop a strong expansion plan to deliver on its long-restrained potential. This was enshrined first in Food Harvest 2020, and now in Food Wise 2025.

The labour gap in the agricultural sector exists due to the lack of both skilled workers and general workers and issues which arise are more due to the cyclical nature of the economy and not just the sector itself. When the economies of the EEA countries inevitably contract again and unemployment rates rise as a consequence, more Irish/EU/EEA general labour may again become available. However certain skills particularly within the dairy sector for example, may remain in short supply within the EEA countries and may still require the permit system to meet the needs of the sector.

Due to the diverse nature of the agricultural sector any review of the work permit regime will need to cover both seasonal work such as fruit picking and full-time workers required on a year-round basis. Therefore, for example, some permits may operate on a 6 to 10-month basis while longer time periods will also be necessary. There are examples of these type of permit systems in operation in many other EU countries.

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?

IFA generally supports the remuneration of employees as provided for in national legislation, and is not seeking to deviate from the minimum wage provisions.

However, due to the low margins and revenues in the agriculture sector, our members would have some difficulties with the income thresholds for the General Employment Permit (GEP) which would be the most relevant for the agricultural sector.

Simply put, with average agricultural incomes under €25,000 (less than the GEP income threshold!), the majority of our members would be unable to pay farm operatives or other unskilled positions the levels of payments as they currently apply to the GEP.

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?

The General Employment Permit would suit the needs of the of the agri sector provided they cater for shorter term seasonal workers and year-round employees.

As mentioned above we have an issue with the remuneration thresholds.

Finally, other forms of permits (Exchange agreements...) may also have their place to fulfil some types of labour needs while allowing for quality work experience for the recipients in the Irish agri sector as a centre of excellence for sustainable production.

Question 6.3

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

The minimum threshold should be set at the National Minimum Wage notwithstanding that many employers are currently paying above this level. If the threshold was set higher it would lead to wage inflation as obviously those already employed in a business would look for a similar wage to those entering on employment permits.

The minimum wage has increased by over 10% in the past two years, and labour accounts for 45% of costs in horticulture, impacting the viability of this sector.

Retailers dominate the fruit and vegetable market, and below cost selling of fresh produce is increasingly the norm, so that Irish producers have had to absorb the entire cost of wage increases in their businesses.

Irish producers are in direct competition with other producers within the EU both in our domestic and international markets. However, we have the second highest minimum wage within the EU which leaves our growers at a competitive disadvantage as things stand. This is very evident in the UK market where our mushroom producers compete against Polish mushrooms for market share. The minimum wage in Poland is currently only €3.83/hr compared to our €9.55/hr. In a sector, where labour accounts for 45% of total input costs this represents a significant disadvantage to Irish producers.

In the domestic market our vegetable and fruit producers compete against imports from the UK and Spain in particular. The minimum wage in these countries are circa €9.08/hr (over 25's) and €4.76/hr respectively, which again illustrates our disadvantage in relation to competitiveness on input costs in a so called single market.

Question 6.4

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

If the permit system is managed through quotas and reviewed on a yearly basis, taking economic and other factors into consideration, there should be no shock to the market.

The farming sector is dealing on an on-going basis with fluctuating markets and produce prices. Hence its ability to remunerate hired labour can vary substantially from sector to sector and year to year.

In addition, as referred above, the agriculture sector is unfortunately generally a low pay sector. Therefore we expect no wage deflationary pressure, while good experienced workers will receive remuneration well above the NMW.

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?

IFA believes, that ideally the thresholds should be adequate to ensure that the migrant employee can meet their basic social care needs without recourse to the State's resources. However, the ability of the sector to pay and compete as outlined above depends on market and economic

factors which are beyond the control of the primary producer, and these issues must also be considered.

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?

To establish the necessity of lower remuneration thresholds the relevant state agencies and Government Departments should be fully consulted in establishing labour shortages.

The DAFM and Teagasc as the representatives of the state that have expertise in the agri sector should lead this negotiation. Therefore any lower threshold would only be deployed where there is evidence of a labour shortage presented by the state agencies.

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?

The IFA and farmers fully support the employment rights of employment permit holders as referred to in the safeguards above, notwithstanding our proposal on the 50:50 rule as referred to in Question 1 above.

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?

In general we have few issues with the act apart from the remuneration thresholds which we have mentioned above. We acknowledge the flexibility in the act and we hope that this is applied to the agri sector.

IFA also think that the newspaper advertising element should not be compulsory where employers solely use online advertising as a means of recruiting.

Question 8.2

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

Obviously our members have yet to use this system but we are confident it will not be an issue.

When making your submission please provide the following information:

a. Name of individual, firm or organisation

The Irish Farmers' Association
Irish Farm Centre
Bluebell
Dublin 12

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

The Irish Farmers' Association (IFA) is the main representative body for farmers in Ireland. It is a largely voluntary structure and comprises committees representing all of the major commodities, ranging from the main farming sectors of beef and dairy to smaller scale, more labour-intensive sectors, including fruit, vegetables, pigmeat, poultry, potatoes, mushrooms and the hardy nursery stock sector.

We have protected and defended the interests of Irish farmers in all sectors for more than 60 years, at home and in Europe, lobbying and campaigning for improved conditions and incomes for farm families.

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? – We are in favour of both the 50:50 rule and the reduced advertising period for the LMNT

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.

<p>Question 2.1</p> <p>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? We are in support of any less restrictive employment permit regime that ensures a steady flow of workers, avoiding shortages that an adversely impact Irish labour costs</p>
<p>Question 2.2</p> <p>While EU-level analysis shows that Ireland is ahead of most EU member states in terms of linking market intelligence to labour migration policy, can the review of lists process described above be improved upon? How? The review of lists process and invitations like these to contribute to public policy are maximized by consultation with industry “end-users” regularly (at least annually)</p>
<p>Question 2.3</p> <p>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? All three are good criteria but we would like to see an either / or option and not a requirement for evidence of all three.</p>

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? **We agree in principle but would like to see an index-linked increase to the average industrial wage**

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? **Yes, but always with the option to review sectors and categories**

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? **This data is certainly worth including but not as the only data point.**

Question 4.3

Can you recommend any other verifiable data/evidence?

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? **Staying relevant depends on regular and ongoing collaboration between the DBEI and industry: these types of regular public consultations, annual reviews of sector requirements, and annual DBEI organized meetings / opportunities to discuss the issues with stakeholder companies.**

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? Any permits we have requested have been for skilled professionals, so unable to comment.

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? Same as above

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? **The €30,000 threshold should be index-linked to ensure its relevance in not becoming unrealistically low to the market**

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? **No**

Question 6.3

What should the minimum threshold for low skilled workers in occupations removed from the ineligible list be set at? **Same as for Critical skills**

Question 6.4

How do we mitigate against unnecessary shocks to the labour market or deflationary pressure on wages? **Index-link wages to market or to CSO data**

Question 6.5

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

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? **A collaborative partnership between Government and industry best ensures appropriate thresholds**

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? **They are fair**

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? No input

Question 8.2

Do you have any views on the EPOS and any recommendations to improve? To date, we have not utilized EPOS first-hand

When making your submission please provide the following information:

a. Name of individual, firm or organisation

SolarWinds Software Europe Ltd

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

SolarWinds deliver management and monitoring software products and technology solutions to over 250,000 customers worldwide – from Global 1000 enterprises to small businesses across all industries (telecoms, finance, energy, etc.)

Economic Migration Policy Unit

21 March 2018