

THE
CORPORATE
IMMIGRATION
REVIEW

TENTH EDITION

Editor
Chris Magrath

THE LAWREVIEWS

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PREFACE

The year 2020 will of course go down in history as one of the most unusual and difficult years the world has faced in modern times. As we prepare this 10th edition of *The Corporate Immigration Review* for print, most of the world's immigration systems have ceased functioning with any semblance of normality.

All over the world, government policies and national strategies have been upended by the threat of covid-19. Macroeconomic policies have been ditched in favour of imposing lockdowns designed to protect public health. Cross-border cooperation and multilateral structures have been replaced by national self-preservation. Fiscal prudence has been sidelined by state intervention on a scale unprecedented in peacetime. The priority of all governments is the fight to protect public health and to keep the number of acute new illnesses within the capacity of national health systems. Everything else is secondary.

In this context, immigration policy development has taken a back seat. Our globalised economies are in the deep freeze, unable to move or trade normally across borders. National immigration laws are responding to the crisis by imposing temporary, and often draconian, controls on the ability of people to move across borders, in a way unthinkable just a few months ago. Strategic, long-term liberal reforms in the interests of global business transactions have been placed on hold while national governments confront the immediate threat from a virus that has zero regard for state boundaries.

It is difficult to know how long this situation will prevail. Economies cannot be locked down for long periods without having a cataclysmic impact on their ability to emerge unscathed, to bounce back with the vigour they benefited from before. Societies face an alarming choice between the dreadful losses inflicted by a virus and those inflicted by broken economies and unemployment.

Hopefully, by the time this edition hits your desks, the storm will have passed and the business world will be in 'bounce-back' territory, people will be moving around the world again for pleasure, business and economic development, and the horrors of the first half of the year will have been replaced by optimism and relief. We hope so.

A year ago, in very different circumstances, Brexit and its constituent brutal political logjam dominated the news agenda for UK legal practitioners and international observers. Back then it was very difficult to see how the country could find a way forward and resolve the pre-eminent political issue of our time. The changes in political leadership in London followed by a decisive general election result have resolved the problem definitively. At least, of course, until the current covid-19 crisis placed the whole project on hold.

Legally the United Kingdom left the EU on 31 January 2020. There is no going back – it is no longer possible to revoke Article 50. The country has entered a transition period until the 'true Brexit' date of 31 December 2020, when the country will leave the EU single market

and separate definitively from the four freedoms contained therein. The year 2020 was set to be one of hard-fought, dynamic negotiations between London and Brussels. The negotiations are expected to place meat on the bones of the skeleton contained within the revised Political Declaration agreed between the parties in December 2019. Given the new rules around social distancing, as well as the fact that some of the principals have themselves tested positive for the virus, it is difficult to see how the timetable can be met. There is a vast range of complex topics to be agreed upon. Before covid-19, there was already doubt about whether the timetable was realistic. Now the time frame appears impossible.

It is now, however, a matter of law – the European Union (Withdrawal Agreement) Act 2020 prevents the United Kingdom from seeking an extension to the timetable. The Johnson government must either deliver on its much stated promise to ‘get Brexit done’ or change the law. It will be interesting to see whether the Prime Minister’s legendary optimism will find a way through this new challenge.

The UK government is in the process of designing a new immigration framework for the country’s future as an independent nation state. At the end of the transition period, the United Kingdom will leave the single market and the cross-border freedom of movement of people will no longer apply. The country will set its own rules regarding the conditions of entry, stay, work and long-term residence of citizens from outside the British Common Travel Area. The purpose of the new framework will be to ensure that the country remains open for business, attracting the skills and attributes needed by key sectors of the economy while at the same time reducing overall migration numbers and boosting the skills and opportunities of local workers.

Meeting all these objectives is a major policy challenge for ministers and their officials. Designing and implementing the legal and administrative architecture required to launch these changes by the end of the year, particularly in the context of the pandemic, is also a gargantuan task for the UK Home Office. By the time the 11th edition of *The Corporate Immigration Review* goes to press a year from now, perhaps the United Kingdom’s new system will act as a template for a modern, innovative, focused immigration programme for dynamic economies around the world. We will have to wait and see.

In the United States and Canada, as elsewhere, long-term immigration reform has taken a backseat while North America grapples with the coronavirus crisis. As the November election approaches, the United States is entering the most intense period of its political cycle. It remains to be seen how presidential campaigns can be run with anything approaching normality in the age of social distancing.

President Trump had hoped to rely on a buoyant economy as the basis of the case he would put to the American people for re-election. That prosperous foundation is now in tatters as unemployment rises and the economy freezes in the shadow of covid-19. The President will undoubtedly deploy new arguments in his attempt to appeal to the US electorate. Among these, if he is true to form, will be an assault on outsiders. He is likely to heap opprobrium on external multilateral organisations, such as the World Health Organization and the United Nations. He is unlikely to offer a liberal approach to business immigration reform as part of his prospectus for the future.

Much will depend on the outcome of that election as the world emerges from the current crisis. Business immigration practitioners from all over the world, including many from the countries whose laws and systems are set out in this book, will be looking towards that emergence with hope. The desire is for a bounce-back based on the fundamental resilience of our global economy and international structures. We hope that businesses will be able mobilise their workforces into a new post-coronavirus dynamism.

As ever, we are grateful for all the outstanding contributions to this text. As we celebrate the 10th edition, we hope the 11th will be produced in the context of a greatly revitalised world.

Ben Sheldrick

Magrath Sheldrick LLP

London

May 2020

IRELAND

*Cían Beecher and Rachel Barry*¹

I INTRODUCTION TO THE IMMIGRATION FRAMEWORK

Ireland has become internationally recognised as the destination of choice for organisations across all industries to establish their operations globally, and more specifically in Europe, the Middle East and Africa. This has been influenced by factors such as Ireland's status as the only English-speaking country in the eurozone, guaranteed access to the European single market and a strong local talent pool. The government's strategy is firmly in favour of supporting this trend, with entities such as IDA Ireland and Enterprise Ireland providing valuable support to foreign and native businesses seeking to establish operations in Ireland.

The establishment of Ireland as an international business hub, as well as its status as an EU Member State and its unique relationship with the United Kingdom, has influenced the natural development of the framework governing the way in which individuals enter, live and work in Ireland. In light of the uncertainty surrounding Brexit, it is expected that the Common Travel Area will become a focus for many businesses seeking to deal with the conundrum of how to continue to do business in the United Kingdom.

Persons seeking to travel to Ireland for business purposes must have permission to enter Ireland, conduct business activities (including working on a long-term basis) and, if relevant, reside in Ireland. These three elements of immigration permission are governed by different rules and, in some cases, the permissions are administered by different departments.

From the outset, it is necessary to identify the nationality of the citizen, the activities proposed to be carried on in Ireland and the length of time for which these activities will be carried on. These factors will determine what types of permissions are needed in the circumstances. For example, EU citizens do not require a visa or employment permit. Non-European Economic Area (EEA) citizens must apply for an employment permit if they wish to work in Ireland, but an agreement may be in place that means they do not need a visa to enter the state (such as the visa waiver programme for citizens of the United States).

Another important factor to take into consideration is the family circumstances of the citizen. Not all working permissions provide for automatic family reunification. Employers who anticipate that this may be an issue for job candidates may wish to structure the role and its associated benefits to ensure that any applicant will be able to obtain a permission that allows for family reunification. An understanding of the rules relating to employment permits is critical to this exercise.

¹ Cían Beecher is a partner and Rachel Barry is an associate at Arthur Cox.

i Legislation and policy

Irish immigration control is governed by a range of legislation. The immigration authorities have a high level of discretion in enforcing these rules. The relevant legislation from a corporate immigration perspective (comprising legislation relating to visa requirements, EU treaty rights and employment permits) is as follows:

- a* Aliens Act 1935 (and related Aliens Orders);
- b* Immigration Acts 1999 to 2004 (and related Immigration Act (Visas) Orders);
- c* Employment Permits Acts 2003 to 2014;
- d* Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States;
- e* European Communities (Free Movement of Persons) Regulations 2015; and
- f* Section 34 of the Civil Law (Miscellaneous Provisions) Act 2011.

On 3 December 2019, a consultation on a proposed consolidation of the Employment Permits Acts commenced.

i The immigration authorities

The main immigration authorities in Ireland are as follows:

- a* Immigrations Service Delivery (ISD), formerly known as the Irish Naturalisation and Immigration Service, an agency of the Department of Justice and Equality (DJE). ISD provides a one-stop shop for the administrative functions of the Minister for Justice and Equality in relation to asylum, immigration, citizenship and visa services. It also controls the registration of immigration permission for people living in Dublin and the greater Dublin area. Local registration outside Dublin is processed through local Garda National Immigration Bureau (GNIB) offices;
- b* the GNIB, an office headed by a detective chief superintendent of An Garda Síochána, the Irish police force. The office is responsible for all police matters relating to immigration nationally, including registrations, granting permission to remain, deportations, border control and investigations relating to illegal immigration;
- c* the Border Management Unit, which maintains the immigration and border controls at Ireland's airports under the direction of ISD;
- d* the EU Treaty Rights Division, a section within ISD that processes applications from persons relating to free movement under Directive 2004/38/EC of the European Parliament and Council;
- e* the investment and start-up section within the DJE, which processes applications from persons seeking residency rights through the Immigrant Investor Programme and the Start-up Entrepreneur Programme;
- f* the Employment Permits Section, a section within the Department of Business, Enterprise and Innovation that administers the employment permits system and the Trusted Partner Initiative;
- g* the Workplace Relations Commission, a state agency whose inspectorate division inspectors enforce employment law legislation, including legislation relating to employment permits;
- h* the Department of Foreign Affairs, which agrees the terms and conditions that apply to working holiday authorisations with the states in question; and
- i* Irish embassies and consulates, which decide on visa applications from local applicants.

iii Exemptions and favoured industries

The rules and conditions governing the grant of employment permits are universally applied across all industries. However, the Department of Business, Enterprise and Innovation (DBEI) has created a list of highly skilled occupations eligible for employment permits. Applicants for roles on this list are eligible to apply for a critical skills employment permit, which has more favourable immigration conditions attached to it, particularly in relation to family reunification. The list includes highly specialised professionals across a range of fields from science to animation and design.

The DBEI has also created a list of ineligible categories of employment. Applications will not be accepted from persons who will fill a role falling within this list.

II INTERNATIONAL TREATY OBLIGATIONS

Article 45 of the Treaty on the Functioning of the European Union provides for the rights of EU citizens to move and reside freely within the territory of EU Member States. The conditions attaching to these rights for EU citizens and any family members who accompany or join them are set out in detail in Directive 2004/38/EC. In Ireland, this is given effect by the European Communities (Free Movement of Persons) Regulations 2015.

Family members and dependants may apply for a residence card to remain in Ireland as a qualifying family member or permitted family member of an EU citizen. The EU Treaty Rights section of the DJE processes these applications. An application may only be made once the EU citizen and non-EEA family member have arrived in Ireland. Temporary permission may be granted to the non-EEA family member to remain in Ireland while a decision is pending on their application.

III THE YEAR IN REVIEW

i Brexit

Brexit continues to cast a shadow over the immigration landscape in Ireland.

Ireland shares both a land border and a joint history of immigration governance with the United Kingdom of Great Britain and Northern Ireland. Given this shared history, a bespoke set of immigration arrangements developed between the two nations, which has since become known as the Common Travel Area (CTA).

The CTA was recognised throughout the EU–UK negotiations. On 8 May 2019, Ireland and the United Kingdom entered into a memorandum of understanding that set out the rights pertaining to Irish and UK citizens in relation to the CTA. The text of the memorandum provides for reciprocal rights for Irish and UK citizens to reside and work, among other related rights. It states that the United Kingdom and Ireland are committed to entering into more detailed bilateral agreements to give effect to specific aspects of the CTA arrangements. However, the memorandum explicitly states that it represents a record of the current understanding of the CTA and does not of itself create legally binding obligation. Further clarification may be necessary on certain aspects of the operation of the CTA in the near to mid-term future.

The Withdrawal Agreement between the EU and the United Kingdom of 19 October 2019 provides, in the Protocol on Ireland and Northern Ireland, that Ireland and

the United Kingdom may ‘continue to make arrangements between themselves relating to the movement of persons between their territories’. Specific legislative developments in this regard are awaited.

Throughout the transition period, immigration arrangements between Ireland and the United Kingdom have not been affected. However, the looming expiry of the transition period on 31 December 2020 is affecting some processes (such as the requirement for applications for EU Treaty rights where the EU applicant is a UK national to be submitted before 31 December 2020). An extension of the transition period, while ruled out by the UK government, would provide welcome breathing space in this regard.

ii Covid-19

Like all nations, Ireland has been affected by the rapid spread of covid-19. The Department of Business, Enterprise and Innovation has published its contingency arrangements for the Employment Permits System throughout this crisis.² This document provides clear guidance regarding engagement with the Department in relation to immigration matters, including the procedures for engaging with the offices by email. There are some delays in processing employment permits as a result of prioritising the permissions of key workers related to covid-19, such as healthcare professionals.

ISD has confirmed that all immigration permissions due to expire between 20 March and 20 May 2020 will be automatically extended for two months. Employees should continue to apply for employment permit renewals, and can continue to work while waiting for their new employment permit. As specific arrangements may apply to the renewal of permissions, stakeholders are encouraged to consult relevant published guidance to ensure that they take appropriate action in relation to the renewal of permissions.

ISD is not accepting any visa applications for tourism or business purposes until further notice, with the exception of certain specified categories (e.g., healthcare professionals, and transport and haulage professionals).

Where employees are eligible to apply for the Covid-19 Pandemic Unemployment Payment in circumstances where their employment has ended or they have been laid off temporarily because of the covid-19 emergency, it has been indicated that claiming this payment will not affect an applicant’s immigration status or future applications for citizenship. Where possible, employers are requested to engage with DBEI if they intend to lay off workers who hold employment permits.

ii Spouses or partners of critical skills employment permit holders

Beyond Brexit, the most significant development this year has been a change to immigration arrangements for spouses and partners of critical skills employment permit holders and researchers under a hosting agreement.³ Previously, these persons were granted permission to reside in Ireland on Stamp 3 conditions (allowing them to reside but not work in Ireland) and had to apply for an employment permit to work in Ireland.

2 <https://dbei.gov.ie/en/Publications/Publication-files/COVID-19-Employment-Permits-System-Contingency-Arrangements.pdf>.

3 As provided for under the EU Third Country Researchers Directive (Council Directive 2005/71/EC).

This requirement has now been removed, and eligible spouses and de facto partners may now obtain permission to reside in Ireland on Stamp 1 conditions. This allows spouses to work. Persons who are resident on Stamp 3 conditions may apply to transfer their permissions.

iii Independent review of the Immigrant Investor Programme and the Start-up Entrepreneur Programme

The DJE has commissioned an independent review of the Immigrant Investor Programme (IIP) and Start-up Entrepreneur Programme (STEP). These programmes allow high-net-worth individuals who invest significant sums of money into approved investment vehicles to receive immigration permissions to reside in Ireland. The schemes do not offer a 'fast track' route to citizenship – investors in receipt of these permissions seeking to obtain Irish citizenship must satisfy the same criteria as all other applicants.

The DJE has announced that both programmes will continue to accept applications pending the outcome of the review and has issued revised application forms and guidelines relating to the operation of the IIP.

iv Short-term visits

The immigration authorities are increasingly aware of the potential for business visitors to structure their travel arrangements in a manner that does not require them to obtain an employment permit. Frequent business travellers should be in a position to demonstrate that they are not seeking to circumvent immigration requirements and, where frequent short-term business visits are anticipated, it is important to ensure that application has been made for the correct permission.

v 'Continuous residence'

In an unusual development, the Irish Court of Appeal considered the meaning of the term 'continuous residence' for the purpose of citizenship applications. This concept is critical, as it is a requirement that citizens be continuously resident in Ireland for the year prior to an application for citizenship. Concerns arose when the High Court concluded that the concept of continuous residence meant 'unbroken residence' – meaning that an applicant could not be absent from the state for even one day in the 365-day period prior to an application. Concerns were immediately raised by a broad range of stakeholders regarding the potentially significant implications of this decision. The Court of Appeal determined that the High Court judge had erred in law and that the words 'continuous residence' do not preclude individuals from leaving the jurisdiction at any time during the relevant year, although it is to be inferred that the legislature attaches significant importance to physical presence within the state during that year.

While the impact of the High Court case did not ultimately affect the eligibility of applicants to apply for citizenship, a backlog in processing applications remains as a result of the suspension of application processing between the High Court decision and the Court of Appeal decision.

vi Removal of requirement for ‘wet-ink’ signatures

The Employment Permits (Amendment) Regulations 2020 SI No. 156 of 2020 came into effect on 1 May 2020 and amended the Employment Permits Regulations 2017 by removing the requirement for the signed signature page to be submitted in hard copy for trusted partner registration applications and trusted partner registration renewal applications. The Regulations also facilitate eligibility for Critical Skills Employment Permits for qualified radiographers.

IV EMPLOYER SPONSORSHIP

Ireland operates an employment permit regime based on job offers in skills shortage areas. The DBEI is responsible for processing employment permit applications. An employment permit is issued by the DBEI following an application by the employing company or the non-EEA national, in prescribed circumstances. A copy of a signed contract of employment must be submitted with all new and renewal employment permit applications.

The processing time for employment permit applications is currently around 12 to 14 weeks, but this fluctuates subject to general demand. Organisations that have a need to process many employment permits (for example, because they require workers with specific skill sets not readily available in Ireland or the EEA) may apply to become a Trusted Partner of the DBEI. This has the significant advantage of having all future applications dealt with as a matter of priority. Obtaining ‘Trusted Partner’ status can substantially expedite the processing time for employment permit applications – these applications generally take three to four weeks to process, subject to fluctuation as determined by general demand.

There are nine types of employment permit governed by the Employment Permits (Amendment) Acts 2003–2014 regime, which are summarised in greater detail below:

- a* the general employment permit (GEP);
- b* the critical skills employment permit (CSEP);
- c* the intra-company transfer employment permit (ICTP);
- d* the dependant, partner or spouse employment permit;
- e* the contract for services employment permit (the services permit);
- f* the internship employment permit (IEP);
- g* the reactivation employment permit (REP);
- h* the exchange agreement employment permit (EAEP); and
- i* the sport and cultural employment permit (SCEP).

Alternative arrangements exist for work or business activities that take place for under three months. These schemes are summarised below and include the following:

- a* the Atypical Working Scheme, which provides permission to work on specific projects for under three months;
- b* Van der Elst immigration permission, which refers to immigration permission for employees of companies based in the EU/EEA or Switzerland who are transferred to Ireland temporarily;
- c* the short-stay ‘C’ business visa; and
- d* 14-day working permission for no-visa-required citizens.

In addition, working holiday authorisations operate between Ireland and certain countries to allow students to visit Ireland for a specified period and work during that period. Such authorisations are permitted on the terms agreed between Ireland and the country in question, and applications are administered by the Department of Foreign Affairs.

i Work permits

For any employment permit to be granted, the following basic requirements must be fulfilled:

- a* the employer must be trading in Ireland and registered with the Irish tax authorities, the Revenue Commissioners, and the Companies Registration Office;
- b* the applicant must have a signed employment contract relating to the role in question;
- c* the applicant must be an employee of the company (except in the case of the ICTP) and must have the relevant qualifications, skills or experience for the job in question;
- d* the role to be filled must not be on the list of ineligible categories of employment for employment permits; and
- e* employers seeking to hire non-EEA nationals must demonstrate compliance with the 50:50 rule: that they maintain a workforce at least 50 per cent of which comprises EEA nationals. There is, however, some flexibility available for start-up companies or non-Irish companies that are seeking to establish operations in Ireland and require the presence of certain key non-EEA nationals.

In addition, both employers and the non-EEA employees must comply with the Labour Market Needs Test (LMNT) in respect of applications for the GEP and the services permit: it must be demonstrated that the role could not have been filled by an EEA national. The LMNT does not apply where the relevant employment is one of the specified shortage occupations (including occupations in healthcare, information technology and financial services), where gross annual remuneration is €60,000 or over, where the application has been recommended by an enterprise development agency (e.g., IDA or Enterprise Ireland), in the case of a former permit holder who has been made redundant, and where a GEP application is in respect of a carer with a proven history of caring for the sick person.

GEP

GEPs are the primary vehicle used in Ireland to attract foreign nationals for occupations experiencing a labour or skills shortage. The key conditions for GEPs are follows:

- a* GEPs are available for occupations with a salary of €30,000 or more and, in exceptional cases, in the salary range below €30,000.
- b* GEPs can be issued for an initial period of up to two years and can then be renewed for up to a further three years. Following the expiry of the five-year period, the employee can register with the Irish immigration authorities directly, and if a Stamp 4 permission is granted, the employee will no longer require an employment permit to work in Ireland.
- c* GEPs can also be secured in relation to offers of employment for under two years.
- d* The LMNT must be complied with, unless an exemption (as detailed above) applies.
- e* The 50:50 rule will apply at both the application and renewal stage.
- f* Family reunification for GEP holders is at the discretion of the DJE and generally workers must have been resident in Ireland for 12 months before family reunification will be granted.

CSEP

CSEPs are designed to attract highly skilled people into the Irish labour market. Applications may be made for a CSEP in respect of two categories of occupation, based on salary level:

- a* where the gross annual salary on offer is €64,000 or more, and the applicant holds a third-level degree or equivalent experience to the relevant job, the CSEP is available for all occupations, other than those which are contrary to the public interest or listed in the ineligible categories of employment; and
- b* CSEPs are available in the gross annual salary range €32,000 to €59,999 for a restricted number of highly skilled occupations specified on the high-skills occupations list. Applicants are required to hold a degree qualification or higher.

Employees must be offered a position with the Irish entity for at least two years on an initial basis. Following the expiry of the two-year period, the employees can register with the Irish Immigration Authorities for permanent residency and, if a Stamp 4 permission is granted, the employee will no longer require an employment permit. Steps must be taken to obtain a support letter from the DBEI (among other documents) prior to the expiry of the two-year period: no LMNT is required, the 50:50 rule will apply and CSEP holders can apply for immediate family reunification from ISD.

ICTP

The ICTP allows for the transfer of senior management, key personnel or trainees who are foreign nationals from an overseas branch of a multinational corporation to its Irish branch subject to the following conditions:

- a* the employee has a minimum gross annual salary of €40,000 and remains on foreign payroll;
- b* the employee must have been working for a minimum period of six months with the overseas company prior to transfer, save where the individual is a trainee – in which case he or she needs to only have been working for the employer for a period of one month prior to the application;
- c* the employee must fall into one of the categories of senior management, key personnel or trainee;
- d* the foreign branch of the organisation in question must be bona fide and engaged in substantive business operations in the foreign country in question; and
- e* the Irish company must have a direct link with the overseas company by common ownership.

There are three parties involved in an ICTP; the foreign employer, the connected person (Irish Entity) and the foreign employee. The application is made by the connected person (Irish entity). The foreign employer is responsible for payment of salary.

After five years, the employee cannot apply for another ICTP, nor is the employee eligible to apply for a Stamp 4 with the immigration authorities. The 50:50 rule will apply. Family reunification for ICTP holders is at the discretion of the DJE.

Contract for services permit

The services permit is designed for situations where a foreign undertaking (the contractor) has won a contract to provide services to an Irish entity (relevant person) on a contract for services basis and to facilitate the transfer of non-EEA employees (the foreign employee) to work on the Irish contract in Ireland. The key conditions for a services permit are:

- a* The application for a services permit is made by the contractor.
- b* The foreign employee must have been working for a minimum period of six months with the overseas branch prior to the transfer.
- c* The duration of the transfer must be at least 90 days. Permission to work for less than 90 days may fall under the Atypical Working Scheme, which is administered by the DJE (described below).
- d* The contractor must be registered with the Revenue Commissioners as an employer and details of the registration must be provided. It must also be registered with the Companies Registration Office/Registry of Friendly Societies, if applicable.
- e* The services permit may be issued for an initial period for up to two years and may be extended at renewal stage for a further three years. The employee of the contractor may only remain in Ireland for a maximum of five years and is not eligible to apply for a Stamp 4 with the immigration authorities.
- f* The 50:50 rule will apply for new and renewal applications and can be satisfied by either the contractor or the relevant person.
- g* LMNT is required, but waivers may apply (as outlined above).

IEP

IEPs are designed to facilitate the paid employment in Ireland of foreign nationals who are full-time students enrolled in a tertiary education institution outside Ireland and pursuing a degree course or higher. They are designed to facilitate employees gaining work experience and the conditions are as follows:

- a* The Irish entity must provide an offer of employment to the intern.
- b* The occupation to which the intern is temporarily assigned must be on the highly skilled occupations list.
- c* The course of study of the intern must be wholly concerned with the skills shortages identified on the highly skilled occupation list and completing the internship must be a requirement for the completion of the intern's course of study.
- d* The intern's salary must be equivalent to Ireland's national minimum wage or higher.
- e* There is no requirement for the employing entity to conduct a LMNT.
- f* The 50:50 rule will apply.
- g* IEPs are issued for a maximum period of 12 months and are non-renewable. At the end of the internship, the employee must leave Ireland and return to the tertiary education institution to complete his or her course of study.

REP

The REP is designed to assist non-EEA nationals who fall out of the employment permits system through no fault of their own. Applicants can only avail themselves of this permit if they originally entered the labour market legally on an employment permit; hold a temporary Stamp 1 and have a 'Reactivation EP' letter from the DJE; have a salary equivalent to the

national minimum wage or higher; and are not working illegally and have a real offer of employment. Additionally, the DJE must be satisfied that the circumstances of the case merit consideration for an employment permit.

EAEP

The EAEP allows reciprocal international arrangements facilitating the exchange of Irish nationals and non-EEA nationals (e.g., trade agreements including labour transfers and research or student-exchange agreements).

SCEP

The SCEP allows non-EEA nationals with sporting or cultural expertise to work in Ireland (e.g., professional sportspersons).

Dependent spouse or partner employment permit

This permit is no longer required for the vast majority of applicants and it is being phased out.

Alternative permissions

For short-term assignments (generally under three months), it may not be possible to obtain an employment permit. In these circumstances, the following permissions should be considered:

The Atypical Working Scheme

This scheme is designed to deal with skills shortages that are not covered by the employment permits regime. Applications must be made from outside the state and permission, if granted, will last for a maximum of 90 days. It will be necessary to identify a specific skill shortage. The 50:50 rule applies to these applications. Only one permission may be allowed per individual in a 12-month period. Private medical insurance is a requirement.

Van der Elst

This permission derives from a ruling of the European Court of Justice.⁴ It allows non-EEA nationals who are employed by EU companies to provide services on a temporary basis to another EU company on behalf of his or her employer without requiring a work permit.

Short-stay 'C' business visa

This visa allows persons to travel to Ireland for up to 90 days for activities relating to a person's job, including to attend meetings, negotiate or sign agreements or contracts and work for 14 days or less in a single 14-day period. Immigration authorities will closely examine the activities of individuals relying on this visa to cover their working activities in Ireland. Navigating this area can pose difficulties for employers – if numerous short-stay visas are applied for, the immigration authorities may request that the person concerned apply for an employment permit, despite the fact that there is not always an appropriate permission available for such persons.

⁴ *Raymond Van der Elst v. Office des Migrations Internationales* (C-43/93).

Working for a 14-day period

Non-EEA nationals who do not require a visa to enter the country may be granted leave to enter Ireland to carry out activities relating to their jobs if the work starts and ends within a single 14-day period. Persons seeking to carry out business activities in these circumstances should be in a position to demonstrate that they are genuinely seeking entry to work for a period not exceeding 14 days and will leave Ireland at the end of the visit. They must be in a position to maintain and accommodate themselves and any dependants without using public funds and be able to meet the cost of the return or onward journey. On arrival in Ireland, applicants will usually be requested to provide evidence demonstrating that these conditions have been complied with. Business visitors may avail themselves of this permission once every 90 days; however, frequent use of this permission may be scrutinised by the immigration authorities as this may indicate that the individual should apply for an employment permit.

ii Labour market regulation

Compliance with employment law requirements, including right to work requirements, is monitored by the Workplace Relations Commission (WRC). The inspectorate division of the WRC has the power to investigate employers, which may involve, but is not limited to, examining or removing books, records and documents, procuring information from – and conducting interviews with – current and former employees and employers. Inspectors may enter any place of work or premises (if necessary by the use of reasonable force) if they have reasonable grounds for believing there are employees or employees' records on the premises. There is no requirement for the WRC to suspect that wrongdoing has occurred or may occur. Advance notice of an inspection is not required.

The Border Management Unit and the GNIB will also enforce immigration law at the point of entry into the country. Immigration officers have extensive discretion to determine whether individuals enter the country at all or, if they are allowed to enter, the conditions of entry (e.g., if they must leave the country within a certain period of time owing to a failure to demonstrate that they have permission to enter the country). The GNIB is responsible for other enforcement matters, such as deportation and investigations relating to illegal immigration.

The Employment Permits Acts 2003 to 2014 permit the Minister to revoke employment permits and to bring and prosecute summary (i.e., less serious) proceedings for criminal offences under the Acts. The decision to prosecute more serious criminal offences under the Acts falls within the remit of the Director of Public Prosecutions.

iii Rights and duties of sponsored employees

Employees who obtain a work permit must book an appointment with the GNIB to allow them to register with the GNIB on their arrival into Ireland. The GNIB will place a stamp in their passport and subsequently issue them with an Irish residence permit (IRP), which indicates the stamp applying to that individual. This stamp indicates the permissions attaching to their right to remain in Ireland.

Employees must remain in Ireland in accordance with their employment permit and IRP conditions. It is possible for employees to obtain long-term residency in Ireland and, ultimately, Irish citizenship, provided that they have satisfied the conditions applying to acquiring these rights. Sponsored employees seeking to obtain either long-term residency

rights or citizenship must be in a position to provide documentary evidence demonstrating their remaining in Ireland for a specified time period in accordance with the terms of their permission.

V INVESTORS, SKILLED MIGRANTS AND ENTREPRENEURS

The DJE sponsors two programmes: the IIP and STEP. Successful applicants to these programmes will receive permission to reside for an initial two years, which may be extended for a further period of three years provided the applicant continues to meet the conditions of the scheme. After this initial five-year period, the investor will be free to apply for residence indefinitely in five-year tranches (subject to the conditions relevant to such permission).

i IIP

The purpose of the IIP is to enable non-EEA nationals and their families who commit to an approved investment in Ireland to acquire permanent residency in Ireland. Applications are accepted in a number of windows communicated to applicants by the DJE.

There are two components to an IIP application: the person and the investment. The investment will be carefully assessed to ensure that it meets the aims of the IIP and is commercially viable. Applicants may invest a specific sum of money in four categories of investments as follows:

- a* enterprise investment (€1 million);
- b* investment fund (€1 million);
- c* real estate investment trust (€2 million); or
- d* endowment (€500,000, or €400,000 each if more than five investors apply together).

The DJE will also assess the character and personal information applying to the investor, paying particular attention to the source of the investor's funds.

ii STEP

STEP is in many respects similar to the IIP. It is suitable for entrepreneurs who have secured some funding for the purposes of a high-potential start-up. The application form and guidelines for STEP are currently undergoing review and it is expected that some changes will be made in this area.

VI OUTLOOK AND CONCLUSIONS

Whilst the state's priorities are fixed on dealing with the covid-19 pandemic, it remains difficult to predict how matters will develop this year. The completion of certain government departments' long-term projects, such as the consolidation of the Employment Permits Acts and the review of the IIP and STEP schemes, may be affected by the need to focus resources on dealing with the immediate issues arising from the pandemic crisis.

Apart from this, the most pressing issue from an Irish immigration perspective is the position after Brexit. Certainty regarding the CTA is required, as well as clarification regarding the position of frontier workers. Time is running out to provide that certainty and immigration practitioners will monitor with interest the status of negotiations between the United Kingdom and the EU and, in particular, whether the United Kingdom will seek an extension to the transition period.

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