



**MRCI Submission to the Department of Business, Enterprise and Innovation on  
General Scheme of the Employment Permits (Consolidation and Amendment) Bill  
January 2020**

**MRCI's Three Overarching Recommendations**

- 1. Introduce gradual mobility for all work permit holders, similar to that already in place for Critical Skills Permit holders, to meet labour market needs, improve conditions in low-paid sectors, and allow long-term progression**
- 2. Introduce sectoral work permits so workers are not tied to one employer, to enhance progression, allow for mobility and reduce exploitation**
- 3. Provide clear transitional measures for extension and renewal of temporary permits such as seasonal work permits to combat exploitation and prevent workers becoming undocumented**

**Introduction**

Migrant Rights Centre Ireland (MRCI) is a national organisation working to promote the rights of migrant workers and their families in low paid employment who are at risk of poverty, exploitation and social exclusion. In 2018 MRCI provided information and support on 1,949 cases to people from 111 different countries. Of this, 34% were undocumented, and the most common sectors of employment were care and domestic work, restaurants, retail, hospitality and fisheries. One in ten workers experienced exploitation.

MRCI welcomes the opportunity to make a submission to the Department Business, Enterprise and Innovation. Since its foundation MRCI has raised issues and concerns with the State's employment permit system and economic migration policy particularly in relation to essential<sup>1</sup> skills workers. MRCI continues to be critical of the multi-tiered approach to rights, and the imbalance of power when a worker is tied to an employer as it compounds exploitation.

MRCI agrees the current employment permit system as it stands is too restrictive and there is a need for a streamlined and more responsive approach along with opening it up to more job categories. For

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<sup>1</sup> Essential skills are those which are critical to any economy and labour market such as carers, cleaners, restaurant workers, construction workers, agricultural workers and fishers. Too often jobs like this are referred to as "low skilled" in policy which serves to devalue and undermine the importance of this work and the skilled workers that do it.

workers the current system limits mobility, progression and access to redress, which in turn is creating inequality and segregation in the labour market. This imbalance combined with the State's emphasis on immigration control in the workplace can leave migrant workers in very vulnerable situations. The employment permit system is an integral part of the State's migration policy and must be considered by the State in the context of its responsibilities to provide safe and legal routes for migration to Ireland.

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

MRCI made a submission to the Department of Business, Enterprise and Innovation in April 2018 as part of the Consultation on Proposed Guiding Principles to frame the State's Economic Migration Policy. We were disappointed that minimal consideration was given to MRCI's recommendations and 18 years' experience working with migrant workers on work permits.

In our submission, MRCI recommended the introduction of sectoral employment permits to remove power imbalances between worker and employer so that workers can leave poor working conditions and change employment within a sector to a better job. MRCI recommended parity for all workers on employment permits - high and essential skilled - in respect of mobility and family reunification rights.

MRCI recommended the Department enhance its decision-making process to provide clarity on how the ineligible job category lists are determined and provide measures to respond to resident undocumented workers already in the state. MRCI also recommended amending of the Employment Permits (Amendment) Act 2014 to make clear that complaints for undocumented workers should come within the remit of Workplace Relations Commission and they should be protected from immigration consequences when making a complaint. Additionally, MRCI recommended the DBEI provide information of Irish labour laws, redress mechanisms and the employment permit system in a language the person can understand when a work permit is issued.

### **Proposed Amendments - General Scheme of the Employment Permits (Consolidation and Amendment) Bill**

#### **General Comments**

While MRCI welcomes and acknowledges some positive changes in the General Scheme, there are several areas of concern. There is a lack of clarity and detail in a number of sections with a strong emphasis on increasing Ministerial discretion without corresponding safeguards. We are deeply concerned that the needs of industry and employers are favoured without a similar level of consideration given to the rights and protections of workers. We note with concern that the mobility of workers has not been addressed and that a move towards temporary permits is favoured over giving rights and entitlements to workers necessary in the labour market.

MRCI notes the challenges of making a submission on the General Scheme of the Employment Permits (Consolidation and Amendment) when some sections lack specific detail. The Employment Permit Acts are highly complex covering the entirety of the State's law on the employment conditions of migrant workers in Ireland. There is a need for more clarity and detail on the Minister's proposals.

#### ***Ministerial Discretion and Regulations***

MRCI has significant concerns that the State is solely listening to and relying on the interests of employers and industry in developing policy and legislation relating to the employment of migrant

workers. The General Scheme contains several changes which will give the Minister enhanced discretion and powers through the use of regulations. MRCI is concerned that this discretion is not balanced by enhanced and strengthened protections and rights for workers especially in light of proposals to increase the use of temporary permits. It is unethical and short-sighted to consider workers as temporary labour that can be simply brought into the State and used for short periods of time especially in an economy experiencing full employment.

### ***Remuneration + Exploitation***

Over the past 18 years MRCI has seen how exploitation thrives and is compounded by economic migration policies which focus purely on industry demand and fail to consider the real and dangerous consequences of a restrictive employment permit system on the lives of workers. It is imperative that the State listens to the experience of workers and does not continue an approach that compounds exploitation and undermines terms and conditions and wages in Ireland. We refer to our three-overarching recommendations in this regard. We also note reference to the remuneration review to be conducted and caution an approach which does not meaningfully engage with worker rights representatives and trade unions. This approach needs to be strengthened across the legislation.

### ***Interdepartmental Responsibilities***

It is important to note, that some of the State's economic migration policy falls between DBEI and DOJE and can be contradictory in terms of rights and protections for workers with workers on different permits and working permissions having different entitlements. For example, the Atypical Working Schemes and entitlements of spouses of employment permit holders. It is important that the two Departments work closely and identify how proposed changes interacts with and compares to other existing worker schemes or working permissions under their remit.

## **Head 2 – Employment of foreign nationals**

MRCI believes all workers should have the same protections and access to redress mechanisms if their employments rights are violated. No worker should be subject to criminal offences or adverse consequences such as referral to immigration authorities in the workplace. Such offences and practices are heavy handed, disproportionate and prevent workers from revealing exploitation and forced labour due to a fear and mistrust. MRCI has long advocated for a firewall between labour inspectors and the inspection of employment breaches, and the immigration authorities and inspection of immigration papers including employment permits.

Following the landmark Mohammad Younis High Court case the Government attempted to provide an avenue for redress for undocumented workers through the District Courts in the Employment Permit (Amendment) Act 2014 rather than the Workplace Relations Commission (WRC). To our knowledge no cases have been taken under this provision. Referring undocumented workers to the civil courts instead of the WRC creates problems such as navigating the court process and the cost of legal representation which presents a significant financial barrier. This solution is not working and the law must be amended.

In addition we have seen significant inconsistencies in the Workplace Relations Commission Adjudication Service and Labour Court with some workers having their case fairly heard and receiving awards, while others are being completely denied access to redress due to their immigration status. This is wholly unacceptable and a fundamental injustice

MRCI believe that the WRC and the Labour Court are the most appropriate institutions in the State to deal with exploitation and employment rights breaches for all workers.

No worker is complicit in their own exploitation. State must take a zero tolerance policy on wage theft and exploitation. We need accessible and fair redress for all workers. Blocking workers who fall out of status from the redress mechanisms fails to understand the complexity of the immigration system and bureaucracy that can catch workers.

### **Recommendation:**

- Head 2 to be amended to make clear that all complaints regarding employment rights breaches including those of undocumented workers should come within the remit of the Workplace Relations Commission.

## **Head 4 - Employment Permit Schemes**

### **Equal Treatment + Mobility**

Ireland's Employment Permit system and other work-based immigration permissions have created a multi-tiered segregated labour market with workers on different permits given different entitlements, security and access to legal redress. The Critical Skills Permit gives immediate family reunification rights and access to the labour market after two years without the need to a permit. Spouses of Critical Skills Permit holders are given full access to the labour market on a stamp 1G. The General Employment Permit only gives full access to the labour market after five years and spouses are only given a stamp 3 dependent status and must apply for a General Employment permit to access the labour market which is subject to a limited list of job categories.

MRCI believes as a fundamental principle that all work is valuable, and parity should exist for all employment permit holders. A hierarchy of rights and multi-tiered system penalises essential workers in the labour market. The State must recognise that a carer who looks after our aging population deserves the same employment entitlements, security and rights as an I.T. software developer.

We need to welcome workers who come to Ireland through providing secure rights and protections. It is therefore vital that the State creates policy and legislation that looks to the future and is not based on short term planning and immediate market demands that perpetuate cycles of the use and abuse of workers. The most fundamental way to protect workers is to ensure they have mobility in their employment. Research also shows that having family in the state aids integration and recognises the person not just as a unit of labour but as someone with a social, cultural and political life.

### **Recommendation:**

- **Introduce gradual mobility for all work permit holders, similar to that already in place for Critical Skills Permit holders, to meet labour market needs, improve conditions in low-paid sectors, and allow long-term progression.** MRCI makes this recommendation to simplify and streamline the Employment Permits system and negate the need for a range of schemes, regulations and administrative processes.

## **Head 4 - Employment Permit Schemes**

### **Seasonal Employment Permits**

MRCI has concerns about the introduction of Seasonal Employment Permits, and the proposed increased use of temporary employment permits, without additional accessible measures to enable workers to extend their employment and change employers. Permits of this nature are difficult to

monitor, and workers are more vulnerable to exploitation. Temporary permits provide minimal protection, access to rights and opportunity for mobility. Workers may work very long hours for periods of the year and be forced to leave the State within a limited time period due to the conditions of their permit.

It is very challenging for workers to access information and make complaints especially when they are in the State a short time. MRCI is concerned that increased use of temporary employment permits will compound exploitation in isolated, labour intensive and hard to reach sectors such as agriculture and construction. This approach makes for a more disposable worker and creates a power imbalance favouring employer needs over worker rights.

The EU Seasonal Workers Directive has been widely criticised by the European Trade Union Confederation (ETUC), and across civil society for creating “*inequality between categories of third-country citizens based on their perceived value to the economy as conceptualised by EU legislation most likely infringes the fundamental rights of equality and non-discrimination which are at the heart of the EU integration model and protected by Articles 20 and 21 of the EU’s own Charter of Fundamental Rights*”<sup>2</sup>.

Considering the above, MRCI cautions the uses of seasonal work permits and recommends that these be used at a minimum, that they should have an avenue for extension should another job become available and allow workers to change employer in cases of exploitation and abuse. The Department also must take seriously and properly resource its obligations in ensuring compliance and upholding the rights of these workers, and proactively respond if issues come to light in relation to these type of permits

### **Recommendations:**

- **Provide clear accessible transitional measures for extension and renewal of new temporary permits such as seasonal work permits to combat exploitation and prevent workers becoming undocumented**
- Clarification on full details and plans from the Minister on plans for temporary permits and how will address concerns regarding safeguards and protection of workers

## **Head 4 - Employment Permit Schemes**

### **Introduce New Sectoral Employment Permit**

MRCI believes sectoral employment permits should be introduced to protect workers from dependency on one employer for their immigration status which often leads to an abuse of power and exploitation. Currently if an employment permit holder leaves employment due to a dispute or exploitation they are not allowed to work for a new employer until a new application is made and a new permit issued. Applying for an employment permit can take up to three months. This gap leaves a worker without means and contradicts the State’s own position that people “should not be a burden on the State”. MRCI has experience of this particularly in the fishing industry.

Without bargaining power, unscrupulous employers can take advantage of workers. This is compounded by language barriers, unfamiliarity with Irish labour laws and isolated workplaces with poor transport access. Giving a worker bargaining power through being able to choose where they work if a problem arises or if they are offered better terms and conditions another position is critical.

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<sup>2</sup> The Seasonal Workers Directive: ‘... but some are more equal than others’ (2017) Margarite Helena Zoetewij-Turhan Fribourg University, Switzerland [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/legal-migration/201712\\_article\\_seasonal\\_worker\\_directive\\_legal\\_migration\\_consultation\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/legal-migration/201712_article_seasonal_worker_directive_legal_migration_consultation_en.pdf)

MRCI's experience with the Atypical Working Schemes (short term working permissions that sits with the Department of Justice and Equality), and in particular for Fishers, has shown exploitation and abuse of power thrives when a worker is tied to an employer in industries that are isolated and labour intensive. It is important to note that when this scheme was introduced, we recommended a sectoral approach to prevent exploitation. This was ignored at the time and we now have ample evidence of exploitation in this sector which could have been offset if workers had mobility in their work<sup>3</sup>.

It is with this experience, coupled with responding to these issues for the past 18 years that we strongly recommended a broad approach to mobility of workers is addressed in this legislative review. Currently, the system does not allow for sector-based permits e.g. where someone has permission to work in the hospitality sector or care sector for example. MRCI recommends a sectoral approach to General Employment Permit particularly for labour intensive sectors. This permit would give access across a sector of employment and would be renewable.

### **Recommendations:**

- **Amend legislation to introduce a Sector Based Employment Permit so workers can change employer.**

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

### **Head 4 - Employment Permit Schemes**

#### **Special Circumstances Employment Permits + Spouses**

MRCI is concerned that there is little detail or explanation on what Special Circumstances Employment permits are. We are also concerned that limits on provisions for spouses of all employment permit holders will reinforce gender inequality by restricting the spouses of General Employment Permit holders from accessing the labour market.

### **Recommendations:**

- Clarification from the Minister on full details regarding plans and details of Special Circumstances Employment Permits
- Spouses of all permit holders should be given full access to the labour market on a stamp 1G.

### **Head 6 - Supplemental provisions relating to the grant of employment permit for purpose referred to in section 4(2)(c) + 2(b)**

MRCI notes the inclusion in the General Scheme that all workers carrying out employment duties in the State on a short-term intercountry transfer basis must be paid at least the minimum wage for their work in Ireland regardless if their employer company is registered and operating outside the State.

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<sup>3</sup> Left High and Dry, the exploitation migrant workers in the Irish fishing Industry Dec 2017 <https://www.mrci.ie/wp-content/uploads/2017/12/MRCI-FISHER-REPORT-Dec-2017-2KB.pdf>



MRCI is concerned that companies based outside the State may use intra-country transfer permits to circumnavigate the requirements, rights and entitlements of General Employment Permit holders and employ workers in Ireland at poorer conditions and lower rates than exists in the relevant sector or industry. MRCI is also concerned that changes under this Head will allow workers to be paid indirectly by third parties *“The text has been adjusted to allow for different practices between affiliates, and it may be further adjusted after the remuneration review to be held later this year”*.

#### **Recommendation:**

- Clarification and more information from the Minister on this section and how she proposes to address these concerns.

#### **Head 11 – Application Information**

MRCI welcomes the inclusion in the General Scheme for employer applicants to provide more information to verify accommodation and training offered.

#### **Head 13 – Form of Permit**

MRCI welcomes increased provision of information for employment permit holders. A readable guide on Irish employment laws, the employment permit system and relevant support organisations is fundamental. MRCI has many years’ experience supporting workers who live in accommodation provided by employers. Arrangements like this increase the power imbalance as the immigration status, permission to work and accommodation of a worker are all tied and in the hands of one employer. Information for a worker is critical if they are to understand and access their rights. It is therefore important that workers have information in a language they understand.

#### **Recommendations:**

- Head 13:2(d) is amended to add accommodation after training. *(d) information on training, accommodation, innovation or any other prescribed condition of grant*
- That Head 13 (3) is amended to: *“An employment permit shall include or be accompanied by a guide on the employment rights of an employee including redress mechanism, the employment permits system, Reactivation Employment Permit (REP) Scheme and relevant support organisations in a language they understand.*

#### **Head 17 – Refusal to Grant**

MRCI is concerned that changes in sections (1) (m) restrict the mobility of workers, cementing a policy that certain categories of workers are given less entitlements, protections and effective access to remedy if they experience exploitation.

MRCI is also concerned that the Minister has not considered our previous recommendation regarding the wealth of skills and experience of **resident undocumented workers already in the State**. These workers **should be given an opportunity to apply for a working permission in the State** before employment permits are issued to new workers entering the State for the first time. As part of legislative change, it is imperative that the state urgently addresses this issue and introduce a transitional measure or schemes to regularise these resident workers and to tackle exploitation and non-compliance.

#### **Recommendations:**

- Clarification from the Minister on section (1) (m) from the Head 17 of the General Scheme on who would this apply to.

- The DBEI to work with the Department of Justice and Equality (DOJE) to enable experienced and skilled workers already in the State who may be undocumented to formalise their labour market participation. This approach could be modelled on the Reactivation Employment Permit (REP) Scheme and the recent 2018 Special Scheme for non-EEA nationals who held a Student Permission.

### **Head 19 – Regulations governing grant of employment permit**

### **Head 21 – Criteria for making Regulations**

### **Head 39 – Regulations**

MRCI notes the proposed changes move significantly towards increased Ministerial discretion and the use of regulation in the General Scheme. MRCI is concerned that this level of discretion coupled with the move towards an increase in temporary and restricted employment permits will erode the rights of essential skilled workers and have a detrimental effect on terms and conditions and wages in many sectors. With increased discretion, the Minister must put in place the corresponding safeguards to protect workers' rights. We are also concerned that no consideration is given to consultation with social partners, worker rights representatives and trade unions in the making of regulations that will impact on workers and sectors.

#### **Recommendations:**

- Regulations, remuneration and conditions of employment permits must be decided in agreement with worker representatives' and Trade Union bodies considering current sectoral pay and standards
- Clarification as to what role the eligible list will play considering increased Ministerial discretion

### **Head 34 - Surrender of employment permit**

Similar to Head 2, MRCI believes workers should not face criminal offence or adverse consequences on their immigration status if they or their employer fail to notify the DBEI of a change in circumstances. Too often workers are misled by employers and left without any information on their rights, responsibilities or the administration process of finding new employment and making a new permit application.

#### **Recommendations:**

- Amend to remove criminal offence for employment permit holder in section (3)
- Extend the Reactivation Employment Permit Scheme to all current and future employment permissions given in the State including the Atypical working scheme: Non-EEA crew in Fishing Fleet as a proactive and preventative measure to respond to address exploitation.

#### **ENDS**

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

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