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

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 and at risk of poverty, exploitation and social exclusion. In 2017 MRCI provided information and support on 2,155 cases to people from 127 different countries. Of this, 33% were undocumented, and the most common sectors of employment were care and domestic work, restaurants, retail, hospitality and fisheries.

MRCI welcomes the review and consultation on the Guiding Principles to frame the State's Economic Migration Policy. This review takes place in the context of full employment, a buoyant and growing economy and shortages in labour. The review must be underpinned by the State's obligations and responsibilities to human rights and workers' rights as laid out in the relevant national legislation and international treaties and protocols. The review also has the potential to fulfil commitments currently being negotiated under the UN Global Compact on Safe, Orderly and Regular migration.

Migration to Ireland

Census 2016 shows that 810,406 (17.3%) of the population in Ireland is foreign-born, and according to CSO Population and Migration Estimates from April 2017 there were 566,600 (11.8%) non-Irish nationals residing in the country from 200 different nations. In 2017 there were 139,206 Non-EU migrants registered in Ireland which represent 24.6% of the overall migrant population¹.

¹ CSO Migration and Diversity Estimate Sept 2017 <http://www.cso.ie/en/releasesandpublications/ep/p-cp7md/p7md/>

People from a migrant background are integral to the Irish labour market. 14.9% of the workforce is non-Irish nationals. Almost half are employed in Food Services, Manufacturing Industries and Human Health and Social Work. Nearly half (46.9%) are classified as non-manual, manual skilled, semi-skilled or unskilled workers, compared with 39.2% of Irish nationals².

Free Movement and EU Migration

Projections from Eurostat indicate that the workforce across the EU will shrink by 50 million over the next 50 years³. A decline in the number of workers that are potentially available will have a knock-on effect on tax receipts, social welfare and pensions. Without responsive and far-reaching labour migration policies, it will be increasingly difficult to address labour shortages and demographic change. This challenge will be felt across all sectors but particularly in the provision of care for our aging populations.

Ireland's Labour Migration Model for Non-EEA Nationals

Migration is a key feature of all modern societies and labour markets. MRCI recognises the need for migration at all skills levels to Ireland. Having safe, clear and regular channels for migration are necessary to respond to the demands in both skilled and essential areas of the labour market. This is a cornerstone for attracting and retaining people and for reducing irregular migration.

The main mechanism in place for Non-EEA nationals to take up full-time employment in Ireland is through the Employment Permit System, that either grants enhanced or limited rights to migrant workers. Despite many welcome reforms by the government in 2014, the Employment Permit System remains two-tiered and is restrictive for certain categories of workers. This review is an opportunity for the system to take an approach that grants both highly skilled workers and essential skilled workers parity in terms of rights.

Principle 1: EEA Preference

50:50 Rule and Labour Market Needs Test

To date Irish labour market policy has prioritised that general labour and skills needs are met from the workforce in the EEA. The 50: 50 rule and Labour Market Needs Test (LMNT) are used to ensure preference for Irish and EU nationals. EU nationals have full access to the labour market and can technically work in any job or sector they are skilled or qualified for. Yet in a number of sectors in Ireland there are significant challenges in recruiting EEA nationals with relevant skills and employers are looking to the Employment Permit System to address shortages.

² CSO Migration and Diversity Estimate Sept 2017 <http://www.cso.ie/en/releasesandpublications/ep/p-cp7md/p7md/>

³ ECB Economic Bulletin, Issue 2 / 2018 – Articles; The economic impact of population ageing and pension reforms Carolin Nerlich and Joachim Schroth (ECB 2018)
http://www.ecb.europa.eu/pub/pdf/other/ebart201802_02.en.pdf?f3b30b505d07b44d89eac15561e678d

If an employer advertises a job as per the LMNT and fails to recruit a suitably qualified and experienced EEA worker or non-EEA resident then it is reasonable the employer seek to employ a non-EEA worker through the Employment Permit System. The 50:50 rule offers no added value to preference for EEA workers, but can create a barrier for employers seeking to fill shortages through the Employment Permit system. It does not provide any meaningful preferential treatment to EEA workers as an employer can still choose to employ person on stamp two or stamp four residency permission without the department having oversight in the recruitment process. If 50% of employees are from outside the EEA and the employer is struggling to recruit EEA workers the 50:50 rule quickly becomes an arbitrary barrier. The DBEI has not presented any data or research to show the effectiveness of the 50:50 rule or the LMNT. In the absence of data, MRCI questions the effectiveness of such a measure.

Furthermore, EU preference for workers presumes to link EU unemployment and migration. Eurostat estimates that unemployment is at 7.3% across the EU in February 2018⁴. The Eurobarometer covering labour mobility in the European Union shows that 17% of the EU population indicated a willingness to work in a different country in the future, but the majority 60% indicated a non-European country as their intended destination⁵. According to the OECD it can *“be argued that migration intentions are a poor predictor of effective migrations given all the factors that intervene in the migration decision process”*⁶. It is therefore short-sighted to assert that unemployed EEA nationals will necessarily want to come and work in Ireland or another EU country. We cannot assume that all labour market needs will be met by EEA workers.

Principle 2: Labour Market Responsiveness

It is important that Ireland’s labour migration policy is responsive to the different economic cycles - expansion and contraction - within the labour market. It is the experience of MRCI that past and current labour migration policy has not been able to keep pace with these cycles and growth cycles in particular. This has led to serious anomalies within the labour market with undocumented migrants and international students (predominantly English language students) filling labour shortages.

The OECD warns against the increased use of discretionary migration channels to provide for cheap labour supply: *“problems arise when the cumulative impact of those channels cannot be*

⁴ http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics

⁵ Geographical and labour market mobility Summary Pub (June 2010)

http://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_337_sum_en.pdf

⁶ OECD Social, Employment and Migration Working Papers No. 188 - Is the European Union attractive for potential migrants? AN INVESTIGATION OF MIGRATION INTENTIONS ACROSS THE WORLD Flore Gubert, Jean-Noël Senne Pub: June 2016

*monitored and where both the effects on the labour market and the workers cannot be monitored*⁷.

Despite the labour market participation of undocumented migrants and international students these workers are absent from any figures or projections. To avoid these anomalies, the employment permit system must have clear regular channels for migration of workers for all skill levels and to address the critical issues of undocumented workers. To give effect to this, MRCI believes we need to urgently make the employment permits system less rigid and restrictive and to be more open and responsive coupled with a parallel process to address the needs of undocumented workers in particular who are already in the state.

Ineligible Categories Process, Data and Research

Little attention has been given to labour migration policy and projections since the recession. To improve responsiveness and to make this system more transparent, the review process for eligible occupations needs to be overhauled.

It is not clear from the current approach taken by the department what available data sets are considered as part of this review. Where there is available data and when submissions for the review of ineligible categories are made, how these are assessed and what informs the Department's decisions lacks transparency. For example significant studies such as an ESRI report on Projections of demand for healthcare in Ireland, 2015-2030 (October 2017), do not seem to be considered as part of the review of ineligible categories. It is also unclear how evidence from interested parties including worker rights and employer representative bodies are considered.

While it is always favourable to have and develop evidenced based policy there are many limitations with available data sets to capture labour shortages – particularly in sectors of employment with a high incident of migrant labour, such as domestic and care work, hotel and catering and restaurants as data samples are often simply too small to be representative or meaningful. Furthermore, due to the retrospective nature of data, it is also difficult to predict shortages and to identify real time trends. As a result, complementary approaches and supplementary data needs to be considered in determining skills and labour shortages.

Evidence suggests that where labour and skills shortages exist employers will informally employ workers. This is evident from the fishing sector, the employment of au-pairs and undocumented migrants across a range of sectors. This ultimately impacts the labour market and leaves workers more vulnerable to exploitation.

⁷ OECD (2014), International Migration Outlook 2014, OECD (2014), International Migration Outlook 2014, OECD Publishing. D Publishing.

Improving Transparency

The role of the Expert Group on Future Skills Need (EGFSN) is “*to advise Government of skills needs and labour market issues that impact on enterprise and employment growth*”. This group gets its mandate from the Department of Education and is focused on skills deficits and projections for the State. It relies on SOLAS - Skills and Labour Market Research Unit for data, analysis and research. The work of both these groups is vital. However, limited resources impact on determining and responding to the emerging and complex demands of the labour market and a longer term approach to conduct and carry out more comprehensive research.

While the EGFSN’s annual bulletin and thematic and sectoral research is very useful, their work however is limited due to a focus on skills needs over labour demand. Research is therefore limited to categorically predict high and low skilled labour shortages for migration to Ireland. Furthermore, the employment permits system has become over reliant on the ESFGN to identify shortages for the ineligible categories.

This area needs a more robust process. The EGFSN, therefore needs to be given additional resources and expand its remit to have a more balanced focus on labour and skills needs. It also needs to diversify its membership and collaborate with a wider range of interested parties, and put in place a process for input and consultation on labour and skills shortages to rapidly identify emerging gaps and avoid anomalies in the labour market.

Principle 3: Skills Shortages

MRCI believes all skill types need to be considered in Ireland’s Economic Migration Policy. Ireland operates a two-tiered system for high and essential (so-called ‘low’) skilled work. Currently high skilled, highly remunerated labour migration is favoured for people from outside the EEA or for recognised skills shortages which cannot be met through the EEA labour force. Yet defining a hierarchy of skills in relation to qualification level and/or remuneration is problematic. It is ineffective in identifying and filling critical shortages that may be in lower paid sectors.

Furthermore, the over qualification of migrants is a serious problem in Ireland. An analysis of the European Labour Force survey puts the rate of over qualification for migrants in Ireland at 41%, suggesting a cycle of “brain gain, waste and drain.”⁸ Ireland currently has no formal mechanism

⁸ Eurostat European Labour force survey 2011 <http://ec.europa.eu/eurostat/web/microdata/european-union-labour-force-survey>

for the recognition of qualifications of foreign workers. This lack of recognition traps people in low-paid employment and leads to stagnation in the labour market.

Please see Principle 2: Labour Market Responsiveness for additional information

Principle 4: Sector Preferences

To support innovation and economic growth we need to ensure that labour and skills shortages are adequately filled. The Government believes preference should be given to sectors where industry and employers can achieve a net economic (financial) benefit to Ireland. There are many jobs and sectors which are essential to the Irish economy and society yet their impact on economic growth and GDP are difficult to measure.

Economic migration policy must consider sectors and jobs which are essential and valuable. While some schemes exist, which are both social and humanitarian, it is concerning that the Government sees labour migration policy in the main as solely an economic endeavour. It is important to recognise other important benefits for example the importance of care to Irish society and our aging populations. GDP and economic growth should not be the only indicator of success and provide only part of a rationale behind referencing certain occupations and sectors.

Certain sectors are more in need of labour and different working arrangements need a sectoral approach. Two areas which need special consideration in this review are the introduction of transitional measures and sectoral work permits.

Transitional Measures

Undocumented Workers

The employment of irregular migrants is an inevitable consequence of the lack of effective regular channels for migration to respond to the demand for workers. It is inherently an issue of concern for labour migration policy and Ireland is no different to other countries in this regard. MRCI has carried out extensive work to highlight the detrimental effect of irregularity, both for the individual and for the labour market.

Research carried out by MRCI in 2016 with over 1,000 undocumented migrants, found that the overwhelming majority (89%) are in employment, typically (though not always) in sectors where low-paid work is prevalent. The top five sectors of employment are Restaurant & Catering (32%), Domestic Work (29%), and Cleaning and Maintenance (13%). Other sectors include retail, hotel, medical, healthcare and agriculture.

A high proportion of these (66%) have been in their current job for over 2 years and of this 31% have been in the same job for over 5 years. 69% indicated that they are working over 30 hours, with more than half earning over €300 a week⁹.

Currently, an undocumented person employed in Ireland, with qualifications and multiple years' experience working, for example as a carer, cannot currently apply for a work permit. Current economic migration policy does not consider this significant pool of resident workers. This means that the wealth of skills in the state are not being fully utilised.

As part of this review, it is imperative that the state urgent addresses this issue in tandem with other changes and introduce a range of transitional measures or schemes to regularise these workers and to tackle exploitation and non-compliance. The DBEI needs to work with the Department of Justice and Equality (DOJ) to enable experienced and skilled workers already in the State who may be undocumented to formalise their labour market participation.

This requires a proactive and pragmatic approach which will create a level playing field for compliant businesses and for those seeking to formalise their employees' work. This is a practical for several reasons; people already have a connection to the state; they are familiar with the Irish working environment; have a proven track record with an employer; they are in employment; it can reduce costs for employers, including recruitment and initial training; and helps to minimise problems including exploitation.

This approach would recognise the contribution and value of the employment relationships people have developed over many years in the country. It will also provide valuable information on gaps, niches and the needs of the labour market and bring undocumented employees and their employers into the formal economy, generate revenue and tackle exploitation.

This approach could be modelled on the Reactivation Employment Permit (REP) Scheme and 2004 Student Probationary Extension Scheme.

International Students and People Seeking Asylum

The graduate scheme has worked well as a responsive measure to gaps in the labour market and a pragmatic approach for people who have been living in Ireland for a significant period of time. Every year Ireland receives a significant number of migrants on temporary schemes, most significantly through the international student system.

⁹ Ireland is Home Survey 2016: <http://www.mrci.ie/wp-content/uploads/2016/05/Ireland-is-Home-2016-Infographic-FINAL.pdf>

Despite many conditions imposed on their permission to reside, including a residency time limitation, they experience high labour market participation rates and contribute significantly to a range of sectors in our economy. This overreliance on international students demonstrates the need for non-EEA workers which is not currently being met through regular labour migration channels.

While the majority are here for a short period of time, some may want to stay for a longer period. At the same time opportunities to transition to more permanent status are limited for many students. MRCI recommends a pragmatic approach to introduce measures which will help maximise the skills international students bring and the skills and experience they acquire here

The recent Supreme Court judgement confirms the right to work of people seeking asylum. As an interim measure the State granted access to the employment permits system pending the introduction of the 2013 Reception Conditions Directive due to come into force in July 2018. To the best of our knowledge to date no applications have been granted, in part due to the LMNT, the salary threshold and the ineligible categories of employment. MRCI is of the view that people seeking asylum should have been given a more appropriate permission to work. All participation in the labour market should be visible in data collection to assist with determining gaps in labour and skills shortages.

A facilitated entry into the employment permits system by means of a different salary threshold would help increase access to the labour market, compliance in many sectors, reduce irregularity and help employers retain staff. A scheme should be put in place to enable workers already in the State to access an employment permit system with a range of conditions waived for entry.

Sectoral Work Permit

Ireland continues to operate an employment permit system which is demand-driven rather than focusing both on supply and demand. The Green Card with gives full access to the labour market after two years and immediate family reunification rights and the general employment permit which give full access to the labour market after five years or with 60 months reckonable residency. The general employment permit needs to be less rigid and grant worker mobility by making this type of permit a sectoral as opposed to job/employer specific. Due to the changing nature of employment and as a measure to tackle exploitation this is a favourable approach to be adopted by the Government and the department.

Sectors of the labour market where problems arise for general work permit holders are linked to;

1. The lack of labour market responsiveness for clear and regular channels for migration

2. Emerging labour gaps which are filled by unprotected workers such as undocumented workers or more vulnerable workers – such as Roma
3. Unscrupulous employers paying below the minimum wage
4. The changing nature of the workplace – for example people working across multiple locations
5. The lack of mobility for a worker which ties them to an individual workplace and limits bargaining power, ability to realise rights and progression

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. This would require legislative change.

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 as it is the case now for an employment permit could still apply except in exceptional circumstances.

Principle 5: Balanced Approach to Innovation and labour market

Quotas

MRCI does not support the current moves towards to a quota system as can be seen in the Restaurant Industry. We already have a system of complicated labour market tests to ensure there is an established shortage in a sector. This is a further unnecessary layer. In addition, a “quota” is defined as the share of a total; however, there is little or no available data or projections as to what the total is in a given sector or what a share of the total looks like. Quotas or limits need to be validated and verifiable as to their appropriateness and efficiency in responding to the needs of a given sector and be considered in the context of overall policy goals and objectives. According to the OECD “*migration quotas per se tend to be the exception in OECD countries*”¹⁰. Countries are in fact moving away from quotas as they are difficult to manage and hard to predict and are an incomplete or ‘stop gap’ rather than a more considered and comprehensive solution.

¹⁰ Managing Migration – Are Quotas and Numerical Limits the Solution? International Migration Outlook OECD 2006 <https://www.oecd.org/migration/mig/38840304.pdf>

Seasonal Employment Permits

MRCI has concerns about seasonal and temporary employment permits as they can be difficult to monitor, and workers are more vulnerable to exploitation. This approach creates a power imbalance favouring employer needs over worker rights. MRCI has long pointed out that attraction and retention in Ireland is a problem. While we acknowledge that some people may only wish to stay for a short period of time, it is important that a balanced approach is used. The best way to protect workers is to give them from the outset security setting out clear sets rights and responsibilities. It is extremely important that there is a procedure to change to longer term permits if work is available

Principle 6: Net contributor

As previously stated, the OECD warns against the increased use of discretionary migration channels to provide for cheap labour supply¹¹. However, exploring the use of different salary thresholds is a factor to prevent irregularity and undeclared work. Significantly, Employment permits cannot be divorced from the dynamics of the labour market. Ireland is a low wage economy and operates by keeping wages low - one in five workers are in low paid employment. Current labour shortages are emerging in sectors where there is a prevalence of low pay and business in low paid sectors are more likely to pay by the hour than have salary-based systems for labour intensive employment.

Ireland also operates a complex system of social transfers system which can arguably be described as a form of state aid to employers as it substitutes the wages of workers. Until we have a fairer system and are no longer a low pay economy, migrant families should continue to be entitled to the Working Family Payment (WFP).

It is also important to note that family reunification rights are different for different groups of workers (general employment permits and the green card or critical skills employment permit). MRCI is not in favour of a two-tiered approach to family rights. People on lower wages are disproportionately affected by this approach. Furthermore, many migrants who are entitled to the WFP often do not avail of this in their first five years for fear it will impact on their citizenship application, despite being entitled to it.

Salary Threshold

The salary threshold has not been reviewed since its introduction and the labour market in Ireland has changed in this time. Minimum salary thresholds however often become the ceiling

¹¹ OECD (2014), International Migration Outlook 2014, OECD (2014), International Migration Outlook 2014, OECD Publishing. D Publishing

rather than a floor. In addition, wages stagnate without proper bargaining power for workers; this includes a worker's ability to change jobs.

The salary threshold for graduate scheme is €27,000. MRCI would support a move from €30,000 to €27,000 for a general work permit for essential or lower skilled work to facilitate entry to State and labour market.

For labour intensive sectors this needs to be accompanied by other favourable rights through the introduction of sectoral mobility where a worker has the right to move jobs in a sector and family reunification rights as outlined above. This is a proactive approach to protect workers' rights and improve bargaining power and improve integration.

Principle 7: Employment Rights

Preventing Exploitation

Reactivation Employment Permit Scheme

The DBEI operates the Reactivation Employment Permit (REP) Scheme. This REP scheme is designed for situations where a foreign national who entered the State on a valid Employment Permit but who fell out of the system through no fault of their own, or who has been badly treated or exploited in the work place is granted the ability to work legally again.

The first stage in the scheme is for the person to apply to the Irish Naturalisation and Immigration Service (INIS) for "temporary immigration permission", and once approved, this will then allow them to apply for the REP. The application must be on the prescribed application form as detailed below.

The REP has worked well as a proactive and preventative measure to respond to address exploitation and should be retained.

Labour Mobility and Sectoral Work Permits

Over the past 16 years MRCI has conducted research and taken a range of cases to highlight exploitation of migrants in the Irish Labour Market - restaurants, fishers, agriculture and care. Central to our work and research has been the inability of a worker to change employment easily. This lack of mobility leads to exploitation, wage stagnation, and a lack of progression.

Without bargaining power, unscrupulous employers can take advantage of workers. This is compounded by language issues, unfamiliarity with Irish labour laws and isolated work places

with poor transport. Giving a worker bargaining power through being able to choose where they work if problem arises or if they are offered better terms and conditions is critical. This approach mitigates against exploitation. Currently, the system does not allow for sector-based permits e.g. where someone has permission to work in any occupation in the hospitality sector or care sector for example.

Ireland could replicate some recent developments in Sweden and Canada, reforming the work permit system to provide for greater occupational mobility or implementing transitional measures, including sector-based employment permits, to reduce irregularity in the labour market.

Upholding and Enforcing Rights

For a person migrating to Ireland - possibly for the first time - it is imperative that they are informed about their rights and entitlements under Irish labour laws. A copy of Irish labour laws should be provided in a language they can understand and should be issued along with the work permit. This should also include information on the WRC and have signposts to Trade Unions and organisations such as MRCI where they can seek advice and representation.

Principle 8: Legislative Framework and Process

Legislation

The Employment Permits (Amendment) Act 2014 enables an undocumented worker to take a legal case for breaches of their employment rights to the civil courts. To our knowledge no cases have been taken under this provision. Problems arise with the cost of legal representation which presents a significant financial barrier and the burden of proof on the employee to prove that they *took all steps as are reasonably to open to them* to ensure they were legally working in this state. This section needs to be amended to make it clear that cases should come within the remit of Work Place Relations bodies.

MRCI recommends amending the legislation to make provision for the introduction of sectoral work permits and labour mobility.

Summary of MRCI Recommendations

1. Ensure there are broad range of regular channels for labour migration which outline clear rights and responsibilities as a cornerstone for Ireland's labour migration policy and for attracting and retaining workers.
2. MRCI questions the effectiveness of the 50:50 rule and LMNT. We are in favour of the reduced two-week period for advertisements under the LMNT. We would also recommend the DBEI carry out research on EEA preference and the 50:50 rule to better inform policy in this area.
3. Enhance the department's decision making process to provide clarity on how the ineligible lists are determined by government and why measures are not put in place to respond to undocumented workers already in the state.
4. Improve data and evidence collection through expanding the remit of the EGFSN to have a more balanced focus on labour and skills needs to address practical shortages in the labour market. In addition, the EGFSN should collaborate with a range of interested parties and put in place a robust process for input and consultation on labour and skills shortages to identify emerging gaps and anomalies in the labour market. This group should be given additional resources to carry out more research with this task.
5. Introduce transitional measures for undocumented migrants and resident workers in the state
 - a. The DBEI needs to work with the Department of Justice and Equality (DOJ) to enable experienced and skilled workers already in the State who may be undocumented to formalise their employment relations. This approach could be modelled on the Reactivation Employment Permit (REP) Scheme and the 2004 Student Probationary Extension Scheme. This would recognise workers contribution to the state and allow for better responsiveness in the labour market.
 - b. A facilitated entry into the employment permits system by means of a different salary threshold would help increase compliance in many sectors, reduce irregularity and help employers retain staff. A scheme should be put in place to enable experienced and/or skilled workers already in the State to access the labour market.

6. Amend the Employment Permits Act 2014 to introduce sectoral work permits particularly in labour intensive sectors.
7. Remove quotas as LMNT acts as a check to ensure shortage is genuine
8. Migrants on temporary work permits should be given preference to transition into other employment if employment is available.
9. Introduce parity for all workers - high and essential (low) skilled for family reunification rights.
10. Reduce the salary threshold to €27,000 for new applicants on a general employment permit. It is recommended that this is accompanied by granting a (new) sectoral mobility.
11. The DBEI to provide information of Irish labour laws and redress mechanisms in a language the persons can understand when the work permit is issued.
12. Amend the Employment Permits (Amendment) Act 2014 to make clear that cases for undocumented workers should come within the remit of Work Place Relations bodies.

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

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