



Number 26 of 2014

Employment Permits (Amendment) Act 2014



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EMPLOYMENT PERMITS (AMENDMENT) ACT 2014

CONTENTS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title, collective citation, construction and commencement
2. Interpretation

PART 2

AMENDMENT OF ACT OF 2003

3. Amendment of section 2 of Act of 2003
4. Insertion into Act of 2003 of new sections 2B and 2C

PART 3

AMENDMENT OF ACT OF 2006

5. Amendment of section 1 of Act of 2006
6. Insertion into Act of 2006 of new section 1A
7. Insertion into Act of 2006 of new sections 3A, 3B, 3C, 3D, 3E and 3F
8. Amendment of section 4 of Act of 2006
9. Application for employment permit: information to be provided
10. Amendment of section 8 of Act of 2006
11. Amendment of section 9 of Act of 2006
12. Amendment of section 10 of Act of 2006
13. Insertion into Act of 2006 of new section 10A
14. Amendment of section 11 of Act of 2006
15. Amendment of section 12 of Act of 2006
16. Amendment of section 13 of Act of 2006
17. Amendment of section 14 of Act of 2006
18. Insertion into Act of 2006 of new section 14A

19. Amendment of section 15 of Act of 2006
20. Amendment of section 16 of Act of 2006
21. Amendment of section 17 of Act of 2006
22. Amendment of section 19 of Act of 2006
23. Amendment of section 20 of Act of 2006
24. Insertion into Act of 2006 of new sections 20A, 20B, 20C and 20D
25. Amendment of section 23 of Act of 2006
26. Amendment of section 24 of Act of 2006
27. Amendment of section 27 of Act of 2006
28. Amendment of section 28 of Act of 2006
29. Amendment of section 29 of Act of 2006
30. Amendment of section 30 of Act of 2006
31. Amendment of section 31 of Act of 2006
32. Amendment of section 37 of Act of 2006
33. Amendment of Schedule 1 to Act of 2006

PART 4

AMENDMENT OF ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000

34. Amendment of Illegal Immigrants (Trafficking) Act 2000

PART 5

AMENDMENT OF IMMIGRATION ACT 2004 AND ALIENS ORDER 1946

35. Amendment of Immigration Act 2004
36. Amendment of Aliens Order 1946

PART 6

MISCELLANEOUS

37. Amendment of Taxes Consolidation Act 1997
38. Repeals
39. Savings and transitional provisions

ACTS REFERRED TO

Aliens Act 1935 (No. 14)
Civil Law (Miscellaneous Provisions) Act 2011 (No. 23)
Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (No. 24)
Companies Act 1963 (No. 33)
Companies Acts
Diplomatic Relations and Immunities Act 1967 (No. 8)
Employment Permits Act 2003 (No. 7)
Employment Permits Act 2006 (No. 16)
Employment Permits Acts 2003 to 2013
European Union (Accession of the Republic of Croatia) (Access to the Labour Market) Act 2013
(No. 21)
Friendly Societies Acts 1896 to 1977
Health Insurance Act 1994 (No. 16)
Illegal Immigrants (Trafficking) Act 2000 (No. 29)
Immigration Act 1999 (No. 22)
Immigration Act 2003 (No. 26)
Immigration Act 2004 (No. 1)
Industrial and Provident Societies Acts 1893 to 1978
Interpretation Act 2005 (No. 23)
Limited Partnerships Act 1907 (c.24)
Protection of Employees (Part-Time Work) Act 2001 (No. 1)
Protection of Employment Act 1977 (No. 7)
Redundancy Payments Act 1967 (No. 21)
Refugee Act 1996 (No. 17)
Registration of Business Names Act 1963 (No. 30)
Social Welfare Consolidation Act 2005 (No. 26)
Taxes Consolidation Act 1997 (No. 39)
Trade Union Acts 1871 to 1990
Unfair Dismissals Acts 1977 to 2005
Unfair Dismissals Acts 1977 to 2007



Number 26 of 2014

EMPLOYMENT PERMITS (AMENDMENT) ACT 2014

An Act to amend the Employment Permits Act 2003, to provide a defence to a foreign national in certain proceedings under that Act, to provide for civil proceedings to recompense certain foreign nationals for work done or services rendered in certain circumstances; to amend and extend the Employment Permits Act 2006; to make further provision for the grant of employment permits; to amend the Illegal Immigrants (Trafficking) Act 2000; to amend the Immigration Act 2004; to amend the Aliens Order 1946; to amend the Taxes Consolidation Act 1997; and to provide for related matters.

[27th July, 2014]

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL

Short title, collective citation, construction and commencement

1. (1) This Act may be cited as the Employment Permits (Amendment) Act 2014.
- (2) The Employment Permits Acts 2003 to 2013 and this Act, other than *Parts 4* and *5*, may be cited together as the Employment Permits Acts 2003 to 2014.
- (3) The Employment Permits Acts 2003 to 2013 and this Act, other than *Parts 4* and *5*, shall be construed together as one.
- (4) This Act, other than *Parts 4* and *5*, shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.
- (5) *Parts 4* and *5* shall come into operation on such day or days as the Minister for Justice and Equality may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Interpretation

2. In this Act—

“Act of 2003” means the Employment Permits Act 2003;

“Act of 2006” means the Employment Permits Act 2006;

“Minister” means the Minister for Jobs, Enterprise and Innovation.

PART 2

AMENDMENT OF ACT OF 2003

Amendment of section 2 of Act of 2003

3. Section 2 of the Act of 2003 is amended—

(a) in subsection (1A), by inserting the following paragraph after paragraph (a):

“(aa) the foreign national being employed outside the State by a foreign employer and being required by the foreign employer to carry out duties for, or participate in a training programme provided by, a person in the State who is connected to the foreign employer,”

(b) by inserting the following subsection after subsection (2B):

“(2C) A person shall not permit a foreign national who is employed outside the State by a foreign employer to carry out duties for, or participate in a training programme provided by, that person where that person is connected to the foreign employer, except in accordance with an employment permit granted by the Minister under section 8 of the Employment Permits Act 2006 that is in force.”

(c) in subsection (3)—

(i) by substituting “, (2) or (2C)” for “or (2)”, and

(ii) in paragraph (b), by substituting “(2) or (2C)” for “(2)”,

(d) by inserting the following subsection after subsection (3):

“(3A) It shall be a defence for a person charged with an offence under subsection (3) consisting of a contravention of subsection (1) to show that he or she took all such steps as were reasonably open to him or her to ensure compliance with subsection (1).”

(e) in subsection (4), by substituting “subsection (2) or (2C)” for “subsection (2)” in each place where it occurs,

(f) by inserting the following subsections after subsection (10A):

“(10B) Without prejudice to any other provision of this Act, this section does not apply—

(a) to a foreign national who is in the State pursuant to the Diplomatic Relations and Immunities Act 1967, and

- (b) where the Minister for Foreign Affairs and Trade has certified in writing that the foreign national referred to in paragraph (a) falls within a reciprocal arrangement that permits a foreign national who is a member of the family of an assigned person, forming part of his or her household, to be in employment in the State.
- (10C) A foreign national referred to in subsection (10B) shall be entitled to be in employment in the State without an employment permit for the duration of the assignment to official duties in the State of the assigned person concerned.
- (10D) In subsections (10B) and (10C)—
- ‘assigned person’ means a person who is assigned, by a government of another state, to carry out official duty in the State on behalf of the government of that other state;
- ‘reciprocal arrangement’ means an arrangement (whether in the form of a memorandum of understanding or otherwise) that is entered into by the Government with another state.”,
- and
- (g) by substituting the following subsection for subsection (15):

“(15) In this section—

‘connected’ has the meaning assigned to it by the Employment Permits Act 2006;

‘foreign employer’ has the meaning assigned to it by the Employment Permits Act 2006;

‘place’ includes any dwelling or any building or part of a building.”.

Insertion into Act of 2003 of new sections 2B and 2C

4. The Act of 2003 is amended by inserting the following sections after section 2A:

“Civil proceedings

2B. (1) This section applies to a foreign national who, in contravention of section 2(1)—

(a) had entered the service of an employer in the State, or

(b) was in employment in the State,

without an employment permit granted by the Minister under section 8 of the Act of 2006 that was in force and who is no longer in such service or employment.

(2) Where an employer referred to in section 2(1)(a) or, in the case of employment referred to in section 2(1)(b), a person referred to in section 2(1A)(a) or a contractor referred to in section 2(1A)(b)—

- (a) has not paid a foreign national to whom this section applies an amount of money in respect of work done or services rendered during the period for which the foreign national was in the employment or service without an employment permit, or
- (b) has paid an amount of money that was, having regard to the work done or services rendered during such period, an insufficient amount of money,

the foreign national or, in accordance with subsection (5), the Minister, may institute civil proceedings for an amount of money to recompense the foreign national for such work done or services rendered.

- (3) Where, in proceedings under subsection (2), a court before which the proceedings are brought is satisfied that the foreign national took all steps as were reasonably open to him or her to comply with section 2(1), it may make an order that in recompense for such work done or services rendered an amount of money shall be paid to the foreign national by the employer who employed the foreign national, or, as the case may be, the person referred to in section 2(1A)(a) or the contractor referred to in section 2(1A)(b).
- (4) The amount of money to be paid, pursuant to an order under subsection (3), to a foreign national in recompense for work done or services rendered shall be—
 - (a) in a case where no amount of money was paid in respect of work done or services rendered during the period for which the foreign national was in the employment without an employment permit, an amount equal to the greater of—
 - (i) an amount calculated by reference to the national minimum hourly rate of pay, or
 - (ii) an amount equal to an amount of pay for the work done or services rendered which is fixed under or pursuant to any enactment,or
 - (b) in a case where an amount of money was paid in respect of work done or services rendered during the period for which the foreign national was in the employment without an employment permit, an amount equal to the difference between—
 - (i) the amount paid, and
 - (ii) an amount equal to the greater of—
 - (I) an amount calculated by reference to the national minimum hourly rate of pay, or
 - (II) an amount equal to an amount of pay for the work done or

services rendered which is fixed under or pursuant to any enactment.

- (5) The Minister may, at his or her discretion, institute civil proceedings under subsection (2) in the name, and on behalf, of the foreign national with the consent of that foreign national.
- (6) Subject to subsection (10), proceedings under this section shall not be brought after the expiration of 2 years from the day on which the foreign national ceased his or her employment or service with the employer, a person referred to in section 2(1A)(a) or contractor referred to in section 2(1A)(b).
- (7) Proceedings under this section shall not be brought in respect of any work, or services, done or rendered more than 6 years prior to the day on which the foreign national ceased his or her employment or service with the employer, a person referred to in section 2(1A)(a) or a contractor referred to in section 2(1A)(b).
- (8) Subsection (7) shall apply to proceedings under this section whether the work was done or the services were rendered before or on or after the coming into operation of *section 4* of the *Employment Permits (Amendment) Act 2014*.
- (9) Without prejudice to subsection (6), proceedings under this section shall not be brought where—
 - (a) the foreign national, in respect of any right of action he or she may have and whether such right of action arises pursuant to any enactment or otherwise, has—
 - (i) instituted proceedings in relation to the same, or substantially the same, work done or services rendered as referred to in this section, or
 - (ii) otherwise commenced an action or other claim in relation to the same, or substantially the same, work done or services rendered as referred to in this section,
 - and
 - (b) those proceedings have, or that action or claim has, not been finally determined or have, or has, not been discontinued before being finally determined.
- (10) Where—
 - (a) before the day on which this section comes into operation a foreign national had instituted proceedings or otherwise commenced an action or other claim for work done or services rendered that are, or is, wholly or substantially in respect of work done or services rendered—

(i) during the period in which the foreign national was in the service of an employer in the State, or in employment in the State, without an employment permit referred to in subsection (1), and

(ii) for which he or she has not been paid or has been paid an insufficient amount of money,

and

(b) the foreign national—

(i) has, on or after the day on which this section comes into operation, discontinued the proceedings, action or claim before those proceedings are, or that action or claim is, finally determined, or

(ii) has not, when those proceedings are, or such action or claim is, finally determined, been awarded any amount of money in recompense for such work done or such services rendered,

the foreign national may institute proceedings under this section not later than 2 years from the day on which the proceedings were, or the action or claim was, discontinued or on which such determination was made in respect of such work done or such services rendered during a period of 6 years prior to the day on which he or she ceased his or her employment or service with the employer, a person referred to in section 2(1A)(a) or a contractor referred to in section 2(1A)(b).

(11) In proceedings instituted by the Minister under this section the court shall not award costs in favour of the foreign national but may award costs in favour of the Minister.

(12) The amount of money paid to a foreign national pursuant to an order under subsection (3) shall not be treated as reckonable emoluments within the meaning of the Social Welfare Consolidation Act 2005 for the purposes of that Act.

(13) In proceedings instituted by the Minister pursuant to subsection (5), the foreign national shall not be liable for costs but the court before which the proceedings are brought may order that any costs that might otherwise have been awarded against the foreign national shall be paid by the Minister.

(14) Subsection (5) shall not be in derogation of any right of a foreign national to institute proceedings under this section on his or her own behalf.

(15) In this section—

‘Act of 2006’ means the Employment Permits Act 2006;

‘enactment’ has the meaning assigned to it by the Act of 2006;

‘national minimum hourly rate of pay’ has the meaning assigned to it by the Act of 2006.

Section 2B: supplemental provisions

- 2C.** (1) The District Court has jurisdiction to hear and determine proceedings under section 2B where the amount claimed in the proceedings does not exceed €15,000.
- (2) The jurisdiction of the District Court under this section shall be exercised by the judge of the District Court for the time being assigned to the district court district in which the person against whom the proceedings are brought resides or carries on business.
- (3) The Circuit Court has jurisdiction to hear and determine proceedings under section 2B where the amount claimed in the proceedings does not exceed €75,000.
- (4) The jurisdiction of the Circuit Court shall be exercised by the judge of the Circuit Court for the time being assigned to the circuit in which the person against whom the proceedings are brought resides or carries on business.”.

PART 3

AMENDMENT OF ACT OF 2006

Amendment of section 1 of Act of 2006

5. Section 1(1) of the Act of 2006 is amended—

(a) by inserting the following definitions:

“ ‘Act of 1963’ means the Registration of Business Names Act 1963;

‘Act of 1967’ means the Redundancy Payments Act 1967;

‘Act of 1997’ means the Taxes Consolidation Act 1997;

‘Act of 2010’ means the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

‘civil partner’ means a civil partner within the meaning of the Act of 2010;

‘civil partnership registration’ has the meaning assigned to it by the Act of 2010;

‘connected’, in relation to the connection between a connected person and a foreign employer, means—

- (a) the connected person is a subsidiary of the foreign employer,
(b) the foreign employer is a subsidiary of the connected person,

- (c) the connected person and the foreign employer are both subsidiaries of a holding company that carries on business in the State or outside the State, or
- (d) the connected person and the foreign employer have entered into an agreement with another person whereby each of them agree to carry on business or provide services with each other in more than one state and to carry on business or provide services in the manner provided for in the agreement;

‘connected person’ means a person carrying on business in the State who is connected to a foreign employer;

‘contractor’ shall be construed in accordance with section 2(1A)(b) of the Act of 2003;

‘contract service agreement’ means the agreement referred to in section 2(1A)(b) of the Act of 2003;

‘date of dismissal’, in relation to a foreign national who is dismissed by reason of redundancy, has the meaning assigned to it by section 2 of the Act of 1967;

‘dependant’ means a foreign national who—

- (a) has been determined by the Minister for Justice and Equality to be a dependant of a primary permit holder or a research project researcher,
- (b) has, since he or she landed in the State, resided in the State on a continual basis,
- (c) is not in full-time education, and
- (d) resides with the primary permit holder or the research project researcher referred to in paragraph (a);

‘Directive 2005/71/EC’ means Council Directive 2005/71/EC¹ of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research;

‘dismissed by reason of redundancy’ means—

- (a) the dismissal by an employer from employment within the meaning of section 9 of the Act of 1967, and
- (b) the dismissal is—
 - (i) attributable wholly or mainly to the condition specified in paragraph (a), (b), (c), (d) or (e) of section 7(2) of the Act of 1967, or
 - (ii) a dismissal referred to in section 21 of the Act of 1967;

¹ OJ L 289, 3.11.2005, p.15.

‘enactment’ has the meaning assigned to it by the Interpretation Act 2005;

‘enterprise development agency’ means Enterprise Ireland or the Industrial Development Agency (Ireland);

‘exchange agreement’ means an agreement, including an international agreement to which the State is a party, that provides for the reciprocal employment—

- (a) of citizens, or certain citizens, in the state in which a contracting party is located, and
- (b) in the State, of foreign nationals, or certain foreign nationals, of a contracting party;

‘foreign employer’ means a person carrying on business outside the State;

‘health insurance’ means insurance providing for the costs and charges of medical treatment;

‘health insurer’ means a person entered in the Register of Health Benefits Undertakings referred to in section 14 of the Health Insurance Act 1994;

‘holding company’ has the meaning assigned to it by section 155 of the Companies Act 1963;

‘medical treatment’ includes medical services or medical care;

‘primary permit holder’ means a foreign national to whom an employment permit in respect of the purpose referred to in section 3A(2)(a)—

- (a) has been granted and is in force, or
- (b) had been granted and has expired and following such expiration the foreign national has been given the permission referred to in section 2(10)(d) of the Act of 2003 to remain in the State and who is in employment in the State pursuant to the condition, referred to in section 2(10)(d) of the Act of 2003, of that permission;

‘registered with the Revenue Commissioners’ means registered with the Revenue Commissioners in accordance with regulations under section 986 of the Act of 1997;

‘relevant person’ means the person referred to in section 2(1A)(b) of the Act of 2003 with whom a contractor has made the contract service agreement;

‘research project researcher’ means a foreign national—

- (a) who, pursuant to Directive 2005/71/EC, has been granted permission by the Minister for Justice and Equality to be in the

State to carry out research pursuant to the Directive, or

- (b) who, having been granted the permission referred to in paragraph (a), has been given the permission referred to in section 2(10)(d) of the Act of 2003 to remain in the State and who is in employment in the State pursuant to the condition, referred to in section 2(10)(d) of the Act of 2003, of that permission;

‘subsidiary’ has the meaning assigned to it by section 155 of the Companies Act 1963.”

- (b) by deleting the definition of “application by a foreign national”,
- (c) in the definition of “employer”, by deleting paragraph (b),
- (d) in the definition of “public interest”, by substituting the following paragraphs for paragraph (c):
 - “(c) the need to protect and strengthen the labour market, and
 - (d) supporting the economic growth of the State;”
- (e) by substituting the following definition for the definition of “remuneration”:
 - “ ‘remuneration’ shall be construed in accordance with section 1A;”
- (f) by deleting the definition of “employment regulation order”, and
- (g) by deleting the definition of “registered employment agreement”.

Insertion into Act of 2006 of new section 1A

6. The Act of 2006 is amended by inserting the following section after section 1:

“Definition of ‘remuneration’

1A. (1) In this Act ‘remuneration’ means—

- (a) subject to paragraph (b), the total amount of—
 - (i) the salary that is paid to the foreign national, the hourly rate of which shall not be less than the national minimum hourly rate of pay or, where appropriate to the employment in respect of which the application is made, the hourly rate referred to in section 12(6)(b), and
 - (ii) a payment for health insurance in respect of a foreign national should he or she require medical treatment for illness or injury during the period for which the employment permit is in force and which is made to a health insurer by the person who made the offer of employment,

or

- (b) in respect of an employment permit granted for the purposes

referred to in section 3A(2)(d) and 3A(2)(e), the total amount of—

- (i) the salary that is paid to the foreign national, the hourly rate of which shall be not less than the national minimum hourly rate of pay or, where appropriate to the employment in respect of which the application is made, the hourly rate referred to in section 12(6)(b),
- (ii) a payment for board and accommodation, or either of them, or the monetary value of board and accommodation directly provided by the connected person, foreign employer or contractor, and
- (iii) a payment for health insurance in respect of a foreign national should he or she require medical treatment for illness or injury during the period for which the employment permit is in force and which is made by the foreign employer or the connected person or both of them or by the contractor to—
 - (I) a health insurer, or
 - (II) a person outside the State who provides insurance for medical treatment in respect of the foreign national that has the same, or similar, effect as the health insurance provided by a health insurer.

(2) In this Act—

- (a) references to remuneration in relation to an application for the grant of an employment permit and the consideration of such application by the Minister shall be construed as the remuneration, specified in that application, that is proposed to be paid by—
 - (i) the person who has made the offer of employment in respect of which the application is made,
 - (ii) in the case of an employment permit for the purpose referred to in section 3A(2)(d), the foreign employer, in accordance with section 3D and the payments in respect of the remuneration to be paid, in accordance with section 3D, by the connected person, or
 - (iii) in the case of an employment permit for the purpose referred to in section 3A(2)(e), the contractor in accordance with section 3E,

and

- (b) references to remuneration after a permit has been granted shall be construed as the remuneration paid to the holder of the permit by an employer, a foreign employer in accordance with section 3D, a connected person in accordance with section 3D, or a contractor in accordance with section 3E, during the period for which the employment permit has been granted in respect of the employment for which the employment permit was granted.”.

Insertion into Act of 2006 of new sections 3A, 3B, 3C, 3D, 3E and 3F

7. The Act of 2006 is amended by inserting the following sections after section 3:

“Different purposes in respect of which an employment permit may be granted

3A. (1) Subject to any requirement that this Act specifies is to be satisfied in respect of the grant of an employment permit, an employment permit granted under section 8 shall be granted in respect of a purpose specified in subsection (2).

- (2) The purposes for which an employment permit may, subject to any requirement referred to in subsection (1), be granted are:

- (a) to ensure that appropriately skilled foreign nationals with skills that are required—

(i) in enterprises in an economic sector that is of importance for the economic and social development of the State, and

(ii) in employments that are essential to the development and growth of those enterprises or economic sector,

and that are in critical short supply in the State, are encouraged to become available for employment in the State, in such enterprises and employments and the Minister is satisfied that where such enterprises are unable to recruit such appropriately skilled persons, or there is a shortage of such persons, the inability to recruit or such shortage is likely to hinder—

(I) the development and growth of such enterprises, and

(II) the economic development of, and the development of industry, technology and enterprise in, the State and the services which support such development;

- (b) to provide for the employment of a foreign national who is—

- (i) the spouse or civil partner, referred to in section 3C(2), of a foreign national who has, or had, been granted an employment permit in respect of the purpose referred to in paragraph (a) and to certain dependants, referred to in section 3C(2), of that foreign national to whom an employment permit for that purpose has, or had, been granted, so as to encourage foreign nationals referred to in paragraph (a) to take up employment in the State, and
 - (ii) the spouse or civil partner, referred to in section 3C(3), of a research project researcher who, pursuant to Directive 2005/71/EC, has, or had, been granted the permission by the Minister for Justice and Equality to be in the State to carry out research pursuant to the Directive, and to certain dependants, referred to in section 3C(3), of that researcher so as to facilitate the carrying out of research in the State pursuant to that Directive;
- (c) where the Minister is satisfied that a person in the State has been unable to recruit an employee for a vacancy for an employment, to provide for the recruitment of a foreign national who has the required knowledge and skills for the employment and, where appropriate, the qualifications and experience as may be required for that employment;
- (d) to provide for a foreign national who is employed by a foreign employer outside the State to carry out duties for, or participate in a training programme provided by, a connected person—
- (i) in employments that are the same, or substantially the same, employments in which the foreign national is employed, outside the State, by the foreign employer, or
 - (ii) in employments that require the foreign national to participate in such training programme,
- where the foreign national is required, pursuant to his or her employment with the foreign employer, to carry out those duties for the connected person or participate in such training programme;
- (e) in the case of a contract service agreement, to provide for the employment in the State of certain foreign nationals referred to in section 3E who are employed by a contractor, so that such foreign nationals may perform duties in the State that arise out of such contract service agreement;
- (f) to provide for the employment in the State of a foreign national—
- (i) to whom an employment permit had been granted and the permit is no longer in force,
 - (ii) who is not in employment, or in the service of an employer, in the State,

- (iii) who has received permission from the Minister for Justice and Equality to be in the State for the purposes of making an application for an employment permit, and
- (iv) in respect of whom an offer of employment has been made in respect of an employment for which an employment permit is required;
- (g) to provide for the employment in the State of foreign nationals, to whom an exchange agreement, that is specified in regulations under section 14, applies in employments that are referred to in the exchange agreement or to which the exchange agreement applies;
- (h) to provide for the employment in the State of foreign nationals who have the required knowledge and skills and, where appropriate, qualifications and experience as may be required, for the development and operation of sporting or cultural activities in the State;
- (i) to provide for the employment in the State of a foreign national who is—
 - (i) a full-time student, including a post-graduate student, enrolled in a course of study in a third-level institution outside the State,
 - (ii) pursuing a course of study that is wholly or substantially concerned with the qualifications or skills referred to in section 15(1)(c) and the Minister is satisfied, having regard to section 15(1)(d), there is a shortage of those skills or qualifications, and
 - (iii) required, for the completion of that course of study, to obtain experience in the practice of those skills or qualifications with which the course of study is concerned for a period of not more than 12 months in an employment that requires the practice of those skills or qualifications,and at the end of the period of 12 months the foreign national is to return to that institution outside the State to complete that course of study.

Recommendation by enterprise development agency

- 3B.** (1) An enterprise development agency may make a recommendation in writing to the Minister in respect of an application for—
- (a) the grant of an employment permit, or
 - (b) the renewal of an employment permit referred to in section 20(11) (b),
- that the employment permit that is the subject of the application be granted, or renewed, in respect of the employment concerned and to the foreign national concerned.

- (2) The Minister shall have regard to a recommendation referred to in subsection (1).
- (3) Nothing in subsection (2) shall be construed as requiring the Minister to grant or renew an employment permit on foot of a recommendation referred to in subsection (1).

Spouses, civil partners and certain dependants relating to section 3A(2)(b)

- 3C.** (1) An application for an employment permit for the purpose referred to in section 3A(2)(b) may be made, under section 4, in respect of a foreign national referred to in subsection (2) or (3).
- (2) An employment permit for the purpose referred to in section 3A(2)(b) may, subject to this Act, be granted, in accordance with section 8, to a foreign national who is—
 - (a) the spouse, civil partner or dependant of a primary permit holder and at the time the application for the employment permit is made—
 - (i) the employment permit granted to the primary permit holder is in force, and
 - (ii) that primary permit holder is in the employment specified in that employment permit,
 - or
 - (b) the spouse, civil partner or dependant of a primary permit holder and at the time the application for the employment permit is made the employment permit has expired and the primary permit holder is in employment in the State pursuant to the permission referred to in section 2(10)(d) of the Act of 2003 and the condition, referred to in that section, of that permission,and such spouse, such civil partner or such dependant—
 - (i) has obtained permission to land, and reside, in the State by virtue of being the spouse, civil partner or dependant of a primary permit holder referred to in paragraph (a) or (b), and
 - (ii) is in the State pursuant to, and in compliance with, the permission referred to in paragraph (i) at the time the application for the employment permit is made.
 - (3) An employment permit for the purpose referred to in section 3A(2)(b) may, subject to this Act, be granted, in accordance with section 8, to a foreign national who is—
 - (a) the spouse, civil partner or dependant of a research project researcher and at the time the application for the employment permit is made—

- (i) the permission granted, pursuant to Directive 2005/71/EC, to him or her by the Minister for Justice and Equality to carry out research in the State has not expired, and
 - (ii) the research project researcher is carrying out research pursuant to Directive 2005/71/EC,
- or
- (b) the spouse, civil partner or dependant of a research project researcher and at the time the application for the employment permit is made the research project researcher is in employment in the State pursuant to the permission referred to in section 2(10)(d) of the Act of 2003 and the condition, referred to in that section, of that permission,
- and such spouse, such civil partner or such dependant—
- (i) has obtained permission to land, and reside, in the State by virtue of being the spouse, civil partner or dependant of the research project researcher referred to in paragraph (a) or (b), and
 - (ii) is in the State pursuant to, and in compliance with, the permission referred to in paragraph (i) at the time the application for the employment permit is made.

Supplemental provisions relating to the grant of employment permit for purpose referred to in section 3A(2)(d)

- 3D.** (1) Where a foreign employer requires a foreign national employed by him or her outside the State to carry out duties for, or participate in a training programme provided by, a connected person without prejudice to any other requirement under this Act or to the employment outside the State of the foreign national—
- (a) notwithstanding that the remuneration, in so far as it relates to salary is to be paid by the foreign employer, it shall be a condition of the grant of the employment permit for the purpose referred to in section 3A(2)(d) that, in respect of the remuneration, in so far as it relates to the salary to be paid to the foreign national by the foreign employer for the period for which the employment permit is granted, the hourly rate of that salary shall be not less than the national minimum hourly rate of pay or, where appropriate to the employment in respect of which the application is made, the hourly rate referred to in section 12(6)(b),
 - (b) in respect of the payment of the remuneration to the foreign national in so far as it relates to—
 - (i) board and accommodation, or either of them, the payment may be made by the foreign employer and the connected person or by either of them, and

- (ii) health insurance, the payment may be made by the foreign employer and the connected person or by either of them,
and
- (c) it shall be a condition of the grant of the permit that the statement of earnings provided by the foreign employer to the foreign national during the period for which the employment permit is in force shall, in addition to the information on the gross amount of the remuneration and the deductions made from it, specify—
 - (i) the amount of the additional payment referred to in subsection (4)(b),
 - (ii) the total amount referred to in subsection (4)(c), and
 - (iii) the amount of the deductions referred to in subsection (4)(d).
- (2) Where—
 - (a) in respect of the remuneration, in so far as it relates to the salary, to be paid to a foreign national in respect of whom an application for the grant of an employment permit for the purpose referred to in section 3A(2)(d) is made, and
 - (b) in respect of the condition referred to in subsection (1)(a),
the hourly rate of the salary paid outside the State by the foreign employer to the foreign national is less than the national minimum hourly rate of pay, the foreign employer shall, in respect of that condition, make an additional payment to the foreign national for the period for which the employment permit is in force so that the hourly rate of the salary to be paid by the foreign employer to the foreign national during the period for which the employment permit is in force is not less than the national minimum hourly rate of pay.
- (3) Where, in respect of the remuneration, in so far as it relates to the salary, to be paid to a foreign national in respect of whom an application for the grant of an employment permit for the purpose referred to in section 3A(2)(d) is made and the condition referred to in subsection (1)(a)—
 - (a) the appropriate hourly rate of pay for the employment in respect of which the application is made is the hourly rate referred to in section 12(6)(b), and
 - (b) the hourly rate of the salary paid outside the State by the foreign employer to the foreign national is less than that hourly rate of pay,

the foreign employer shall, in respect of that condition, make an additional payment to the foreign national for the period for which the employment permit is in force so that the hourly rate of the salary to be paid by the foreign employer to the foreign national during the period for which the employment permit is in force is not less than the hourly rate referred to in section 12(6)(b).

(4) Without prejudice to section 6, the connected person shall, when making an application pursuant to section 4(2)(b), provide, in addition to the information required under section 6(e), information and documents, including any information and documents as may be specified in regulations under section 29, in respect of—

(a) the amount of the salary that is paid, on the day the application is made, by the foreign employer to the foreign national in respect of whom the application is made, in such form as may be specified in regulations under section 29,

(b) where, having regard to the amount of salary referred to in paragraph (a) and the number of hours worked by the foreign national, the hourly rate of that amount of salary is less than—

(i) the national minimum hourly rate of pay and an additional payment referred to in subsection (2) is to be made, or

(ii) where appropriate, an hourly rate referred to in subsection (3), and an additional payment referred to in subsection (3) is to be made,

the amount of the additional payment to be made by the foreign employer to the foreign national for the period for which the employment permit is in force, in such form as may be specified in regulations under section 29,

(c) the total amount of the amounts referred to in paragraphs (a) and (b) in such form as may be specified in regulations under section 29,

(d) all deductions to be made by the foreign employer to—

(i) the amount referred to in paragraph (a), and

(ii) where an additional payment referred to in paragraph (b) is required to be made, the amount of that additional payment, referred to in paragraph (b),

(e) the total amount referred to in paragraph (c), the amount to be paid to the foreign national during the period for which the employment permit is in force after the deductions referred to in paragraph (d) have been made, in such form as may be specified in regulations under section 29,

- (f) the payment of board and accommodation, or either of them, and where either or both are provided directly by the connected person or the foreign employer, or both of them, the monetary value of the board and accommodation, or, as the case may be, either of them, and
 - (g) the arrangements for making the additional payment referred to in paragraph (b)(i) or (b)(ii).
- (5) A foreign national referred to in section 3A(2)(d) shall be employed by the foreign employer concerned for a period that is not less than the minimum period of employment specified in regulations made under section 14 before an application for an employment permit may be made in respect of him or her.
- (6) In this section ‘statement of earnings’ means the statement of the remuneration paid by a foreign employer to a foreign national—
- (a) that is provided to the foreign national by the foreign employer to demonstrate that the foreign employer has paid the foreign national his or her remuneration, and
 - (b) that accompanies the periodic payment of that remuneration and specifies in writing the gross amount of the remuneration paid and any deductions made from that gross amount.

Supplemental provisions relating to the grant of employment permit for purpose referred to in section 3A(2)(e)

- 3E.** (1) Where, pursuant to the employment outside the State by a contractor of a foreign national, the contractor requires the foreign national to carry out duties in the State that arise out of a contract service agreement without prejudice to any other requirement under this Act or to the employment outside the State of the foreign national—
- (a) notwithstanding that the remuneration in so far as it relates to salary, is paid to the foreign national outside the State, it shall be a condition of the grant of the employment permit for the purpose referred to in section 3A(2)(e) that, in respect of the remuneration, in so far as it relates to the salary to be paid to the foreign national by the contractor for the period for which the employment permit is granted, the hourly rate of that salary shall be not less than the national minimum hourly rate of pay or, where appropriate to the employment in respect of which the application is made, the hourly rate referred to in section 12(6)(b), and
 - (b) it shall be a condition of the grant of the permit that the statement of earnings, within the meaning of section 3D, provided by the contractor to the foreign national during the period for which the employment permit is in force shall, in addition to the information on the gross amount of the remuneration and the deductions made from it, specify—

- (i) the amount of the additional payment referred to in subsection (4)(b),
 - (ii) the total amount referred to in subsection (4)(c), and
 - (iii) the amount of the deductions referred to in subsection (4)(d).
- (2) Where—
- (a) in respect of the remuneration, in so far as it relates to the salary, to be paid to a foreign national in respect of whom an application for the grant of an employment permit for the purpose referred to in section 3A(2)(e) is made, and
 - (b) in respect of the condition referred to in subsection (1)(a),
the hourly rate of the salary paid outside the State by the contractor to the foreign national is less than the national minimum hourly rate of pay, the contractor shall, in respect of that condition, make an additional payment to the foreign national for the period for which the employment permit is in force so that the hourly rate of the salary to be paid by the contractor to the foreign national during the period for which the employment permit is in force is not less than the national minimum hourly rate of pay.
- (3) Where, in respect of the remuneration, in so far as it relates to the salary, to be paid to a foreign national in respect of whom an application for the grant of an employment permit for the purpose referred to in section 3A(2)(e) is made and the condition referred to in subsection (1)(a)—
- (a) the appropriate hourly rate of pay for the employment in respect of which the application is made is the hourly rate referred to in section 12(6)(b), and
 - (b) the hourly rate of the salary paid outside the State by the contractor to the foreign national is less than that hourly rate of pay,
the contractor shall, in respect of that condition, make an additional payment to the foreign national for the period for which the employment permit is in force so that the hourly rate of the salary to be paid by the contractor to the foreign national during the period for which the employment permit is in force is not less than the hourly rate referred to in section 12(6)(b).
- (4) Without prejudice to section 6, the contractor shall, when making an application pursuant to section 4(2)(a), provide, in addition to the information required under section 6(e), information and documents, including any information and documents as may be specified in regulations under section 29, in respect of—

- (a) the amount of the salary that is paid, on the day the application is made, by the contractor to the foreign national in respect of whom the application is made, in such form as may be specified in regulations under section 29,
 - (b) where, having regard to the amount of salary referred to in paragraph (a) and the number of hours worked by the foreign national, the hourly rate of that amount of salary is less than—
 - (i) the national minimum hourly rate of pay and an additional payment referred to in subsection (2) is to be made, or
 - (ii) where appropriate, the hourly rate referred to in subsection (3), and an additional payment referred to in subsection (3) is to be made,

the amount of the additional payment to be made by the contractor to the foreign national for the period for which the employment permit is in force, in such form as may be specified in regulations under section 29,
 - (c) the total amount of the amounts referred to in paragraphs (a) and (b) in such form as may be specified in regulations under section 29,
 - (d) all deductions to be made by the contractor to—
 - (i) the amount referred to in paragraph (a), and
 - (ii) where an additional payment referred to in paragraph (b) is required to be made, the amount of that additional payment, referred to in paragraph (b),
 - (e) the total amount referred to in paragraph (c), the amount to be paid to the foreign national during the period for which the employment permit is in force after the deductions referred to in paragraph (d) have been made in such form as may be specified in regulations under section 29,
 - (f) the payment of board and accommodation, or either of them, and where either or both are provided directly by the contractor, the monetary value of the board and accommodation, or as the case may be, either of them, and
 - (g) the arrangements for making the additional payment referred to in paragraph (b)(i) or (b)(ii).
- (5) A foreign national referred to in section 3A(2)(e) shall be employed by the contractor concerned for a period that is not less than the minimum period of employment specified in regulations made under section 14 before an application for an employment permit may be made in respect of him or her.

Consultation by Minister

3F. The Minister may, in the case of an application for an employment permit in respect of the purpose referred to in section 3A(2)(h), consult with any person who, the Minister is satisfied, has knowledge of or expertise in the sport or cultural activity concerned.”.

Amendment of section 4 of Act of 2006

8. (1) Section 4 of the Act of 2006 is amended in subsection (1)—

- (a) by inserting “, subject to subsection (3),” after “foreign national may”, and
- (b) in paragraph (b), by deleting “subject to subsection (3),”.

(2) Section 4 of the Act of 2006 is amended—

(a) by substituting the following subsection for subsection (2):

“(2) In a case—

- (a) where the application is made in respect of the purpose referred to in section 3A(2)(e), the application shall be made by the contractor concerned,
- (b) where the application is made in respect of the purpose referred to in section 3A(2)(d), the application shall be made by the connected person concerned, or
- (c) falling within section 2(1A)(c) of the Act of 2003, the application shall be made by the person party to the arrangement concerned.”,

(b) in subsection (3)—

- (i) by substituting “Subject to section 10A, an application under this section shall not be made” for “A foreign national may not make an application under this section in respect of his or her employment in the State”, and
- (ii) by substituting “to a foreign national” for “to him or her”,

and

(c) by inserting the following subsections after subsection (3):

“(3A) An application—

- (a) referred to in subsection (2)(a), shall be made in respect of the employment that is the subject of the contract service agreement,
- (b) referred to in subsection (2)(b), shall be made in respect of the employment in the connected person, and
- (c) in the case of the arrangement referred to in subsection (2)(c), shall be made in respect of the employment that is the subject of the arrangement,

and references in this Act to an offer of employment insofar as such references refer to an application referred to in paragraph (a), (b) or (c) shall be construed accordingly.

- (3B) When making an application for the grant of an employment permit, the person making the application shall specify the purpose, referred to in section 3A(2), in respect of which the employment permit concerned may be granted.
- (3C) An application under this section for an employment permit in respect of the purpose referred to in section 3A(2)(a) shall not be made unless the duration of the employment, in respect of which the application is made, is for a period of not less than 2 years.”.
- (3) Section 4 of the Act of 2006 is amended by inserting the following subsections after subsection (4):
- “(5) An application shall not be made for the grant of an employment permit in respect of an employment where, in the 6 months preceding the day on which the application is made—
- (a) a person was employed in the employment that is the subject of the application, and
 - (b) that person was dismissed by reason of redundancy from that employment within that period of 6 months.
- (6) Where—
- (a) an employment permit is in force immediately before the coming into operation of *section 7* of the *Employment Permits (Amendment) Act 2014*,
 - (b) following the coming into operation of *section 7* of the *Employment Permits (Amendment) Act 2014*, the spouse, civil partner or dependant of the foreign national to whom that permit has been granted applies for an employment permit in respect of the purpose referred to in section 3A(2)(b), and
 - (c) the Minister is satisfied that having regard to the employment in respect of which the employment permit referred to in paragraph (a) has been granted, that permit would, had it been granted after the coming into operation of *section 7* of the *Employment Permits (Amendment) Act 2014*, have been granted in respect of the purpose referred to in section 3A(2)(a),
- the foreign national to whom the employment permit referred to in paragraph (a) has been granted may be treated as the primary permit holder concerned—
- (i) for the purposes of section 3C,
 - (ii) for the purposes of the application referred to in paragraph (b), and

- (iii) where pursuant to such application an employment permit is granted under section 8, the grant of that employment permit.”.

Application for employment permit: information to be provided

9. The Act of 2006 is amended by substituting the following section for section 6:

“Application for employment permit: information to be provided

6. An application for an employment permit shall—

- (a) provide a full and accurate description of the employment in respect of which the application is made (the ‘employment concerned’) and the terms and conditions, including the hours of work in each week, and the duration, of the employment concerned,
- (b) provide information in respect of the qualifications, skills, knowledge and experience that are required for the employment concerned,
- (c) provide information and, where required, any relevant documents in respect of the qualifications, skills, knowledge or experience of the foreign national concerned,
- (d) specify the place at or in which the employment concerned is to be carried out and, where the employment concerned is to be carried out in more than one place, specify each such place,
- (e) specify the remuneration and any deductions, where agreed, for board and accommodation or either of them in respect of the employment concerned,
- (f) in respect of the foreign national concerned—
 - (i) specify whether or not he or she has sought permission to land in the State on a previous occasion or has been in the State on a previous occasion without permission to land,
 - (ii) where he or she is in the State at the time of the application, provide information and documents, where required by the Minister, relating to the permission granted to him or her to be in the State,
 - (iii) where he or she is in employment in the State at the time of the application, provide information and documents, where required by the Minister, relating to the permission granted to him or her to be in such employment, and
 - (iv) provide information as to whether he or she was at any time prior to such application in employment in the State and, where requested by the Minister, provide any information and documents relating to the permission granted to him or her to be in such employment, or, as the case may be, an employment

- permit granted in respect of that employment,
- (g) provide such other information, documents and evidence to verify such information and documents—
 - (i) as may be prescribed, or
 - (ii) which the Minister may request and which, in the Minister's opinion, might materially assist in the making of a decision on the application,
 - (h) without prejudice to the generality of paragraph (g), provide information and documents, as the Minister may request, concerning the offer of employment referred to in section 4(3), and
 - (i) provide information, documents and evidence in respect of the requirement under section 4(5) in relation to—
 - (i) the employment, in the period referred to in section 4(5), of any person in the employment that is the subject of the application, and
 - (ii) the confirmation that such person was not, within such period, dismissed by reason of redundancy from that employment.”.

Amendment of section 8 of Act of 2006

10. (1) Section 8 of the Act of 2006 is amended in subsection (1) by substituting “sections 3A, 10, 10A, 12, 14, 20A and 20B” for “sections 10, 12 and 14,”.

(2) Section 8 of the Act of 2006 is amended by substituting the following subsection for subsection (2):

“(2) The employment permit so granted shall operate to permit the employment in the State of the foreign national—

(a) in the employment specified in the application by—

- (i) the person, specified in the application, who made the offer of employment,
- (ii) in the case of an application referred to in section 4(2)(a), the contractor concerned, or
- (iii) in the case of an application referred to in section 4(2)(c), the person party to the arrangement referred to in that section who made the application,

or

(b) in the employment specified in the application in respect of which, in the case of an application referred to in section 4(2)(b), the foreign national is to carry out duties for, or participate in a training programme provided by, the connected person specified in that application.”.

- (3) Section 8 of the Act of 2006 is amended by inserting the following subsection after subsection (4):
- “(4A) An employment permit granted for the purpose referred to in section 3A(2)(d) shall specify the period for which the foreign national concerned may carry out duties for, or participate in a training programme provided by, the connected person, pursuant to the permit and the permit shall, subject to the provisions of this Act, remain in force for that period accordingly.”.
- (4) Section 8 of the Act of 2006 is amended in subsection (5) by—
- (a) substituting “shall, subject to subsections (6) and (7),” for “for that purpose shall”, and
- (b) substituting “or on the date specified in such permit, as the date on which it is to come into force” for “or such longer period as may be specified by regulations under section 14”.
- (5) Section 8 of the Act of 2006 is amended by inserting the following subsections after subsection (5):
- “(6) The period that shall be specified in an employment permit granted for the purpose referred to in section 3A(2)(b) shall be the lesser of—
- (a) the period referred to in subsection (5), or
- (b) the period beginning on the date of the grant of the permit or on the date specified in such permit as the date on which it is to come into force and ending on the date of the expiry of—
- (i) the employment permit granted to the primary permit holder referred to in section 3C(2)(a),
- (ii) the permission, referred to in section 3C(2)(b), given to the primary permit holder referred to in section 3C(2)(b) to remain in the State and be in employment in the State,
- (iii) the permission referred to in section 3C(3)(a), given to the research project researcher referred to in section 3C(3)(a), or
- (iv) the permission referred to in section 3C(3)(b), given to the research project researcher referred to in section 3C(3)(b) to remain in the State and be in employment in the State.
- (7) The period that shall be specified in the employment permit granted in respect of the purpose referred to in—
- (a) section 3A(2)(d), in respect of an employment referred to in section 3A(2)(d)(ii), or
- (b) section 3A(2)(i),
- shall not exceed 12 months.

- (8) Where in the case of a transfer to which the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) applies, that takes effect during the period for which an employment permit is in force and pursuant to that transfer there is a change to the name of—
- (a) the employer or, as the case may be, the connected person, specified in the employment permit—
- (i) the employer or, as the case may be, the connected person, shall notify the Minister of that change of name, and
- (ii) the Minister may amend the employment permit to reflect that change of name of the employer or, as the case may be, the connected person and may request such information and documents, as may be specified in regulations under section 29, in respect of such change of name,
- or
- (b) the relevant person—
- (i) the contractor shall notify the Minister of that change of name, and
- (ii) the Minister may amend the employment permit to reflect that change of name of the relevant person and may request such information and documents, as may be specified in regulations under section 29, in respect of such change of name.
- (9) Nothing in subsection (6) shall be construed as preventing the specification of a period, in accordance with subsection (5), that is less than the period specified in subsection (5) in an employment permit referred to in subsection (6) in circumstances other than those specified in subsection (6).”.

Amendment of section 9 of Act of 2006

- 11.** (1) Section 9(1) of the Act of 2006 is amended by substituting the following paragraph for paragraph (b):

- “(b) a copy of the permit so granted to be issued to—
- (i) the person referred to in section 8(2)(a)(i),
- (ii) in the case of an application referred to in section 4(2)(a), the contractor referred to in section 8(2)(a)(ii),
- (iii) in the case of an application referred to in section 4(2)(c), the person referred to in section 8(2)(a)(iii), or
- (iv) in the case of an application referred to in section 4(2)(b), the connected person referred to in section 8(2)(b).”.

- (2) Section 9(2) of the Act of 2006 is amended—
- (a) by substituting “shall specify the following information:” for “shall include the following information:”,
 - (b) in paragraph (a), by deleting “if the permit has been granted other than on foot of an application by a foreign national,”,
 - (c) by deleting paragraph (b),
 - (d) in paragraph (c), by substituting “section 23;” for “section 23; and”,
 - (e) in paragraph (d), by substituting “to 2014; and” for “and 2006.”, and
 - (f) by inserting the following paragraph after paragraph (d):
 - “(e) any other information that, in the opinion of the Minister, is appropriate.”.
- (3) Section 9(3) of the Act of 2006 is amended by substituting “an employee” for “the employee”.

Amendment of section 10 of Act of 2006

12. (1) Section 10 of the Act of 2006 is amended by substituting the following subsections for subsection (2):
- “(2) Subject to subsections (2A) and (2B), an employment permit shall not be granted unless the Minister is satisfied that on the date the application for the employment permit was made 50 per cent or more of the employees of—
 - (a) the person who has made the offer of employment,
 - (b) in the case of an application referred to in section 4(2)(a), the contractor or the relevant person concerned,
 - (c) in the case of an application referred to in section 4(2)(b), the connected person concerned, or
 - (d) in the case of an application referred to in section 4(2)(c), the person party to the arrangement referred to in that section who made the offer of employment,are nationals of any of the following:
 - (i) one or more Member States of the EEA;
 - (ii) the Swiss Confederation;
 - (iii) a combination of any of the states referred to in paragraphs (i) and (ii).
 - (2A) In the case of an application for an employment permit in respect of the purpose referred to in paragraph (a), (c) or (d) of section 3A(2), subsection (2) shall not apply to such application where—

- (a) the person who has made the offer of employment or, as the case may be, the connected person has been registered with the Revenue Commissioners for a period not exceeding 2 years on the day the application is made,
 - (b) an enterprise development agency has made a recommendation referred to in section 3B in respect of that application, and
 - (c) the Minister is satisfied that, having regard to such recommendation, granting the employment permit that is the subject of the application concerned, will contribute to the further development of employment in the State.
- (2B) In the case of an application for an employment permit in respect of the purpose referred to in paragraph (b), (c), (f) or (h) of section 3A(2), subsection (2) shall not apply to such application where—
- (a) on the day on which the application is made the person referred to in subsection (2)(a) has no employees,
 - (b) the foreign national in respect of whom the application for the grant of the employment permit is made will be the sole employee of the person referred to in subsection (2)(a) on the date on which the employment that is the subject of the application is to commence, and
 - (c) the Minister is satisfied that having regard to the employment in respect of which the application is made, the foreign national concerned will be the sole employee of the employer concerned,
- and the person making the application shall, in addition to any information required under section 6 or as may be specified in regulations under section 29 in respect of an application, provide the Minister with any information and documents the Minister may require to satisfy himself or herself of the matters specified in paragraphs (a) to (c).”.
- (2) Section 10(3) of the Act of 2006 is amended—
- (a) by substituting “This section and section 10A are” for “This section is”,
 - (b) by substituting the following paragraph for paragraph (a):
 - “(a) in respect of section 10A, supplementary to Regulation (EU) No. 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union²,”,
- and
- (c) in paragraph (b), by substituting “and are” for “and is”.

² O.J.L141, 27.5.2011, p. 1.

Insertion into Act of 2006 of new section 10A

13. The Act of 2006 is amended by inserting the following section after section 10:

“Establishing need for grant of certain employment permits

10A. (1) This section applies to an application for an employment permit in respect of the purpose specified in section 3A(2)(c) or 3A(2)(e).

(2) Subject to subsections (6) and (7), the Minister shall not grant an employment permit referred to in subsection (1) unless the Minister is satisfied that a notice of the offer of the employment that is the subject of the application has been published in accordance with this section before the application referred to in subsection (1) is made and the application is made within the period referred to in subsection (5).

(3) Where an application referred to in subsection (1) is made—

(a) the person who makes the offer of employment concerned, or

(b) in the case of an application under section 4(2)(a), the contractor,

shall satisfy the Minister that he or she has, before making the application, offered the employment in respect of which the application is made to—

(i) a citizen, or

(ii) a foreign national referred to in any of paragraphs (a) to (d) of section 2(10) of the Act of 2003 or a person entitled to be in employment in the State pursuant to the European Union (Accession of the Republic of Croatia) (Access to the Labour Market) Act 2013,

by causing a notice of the offer of the employment concerned to be published in accordance with subsection (4).

(4) The person referred to in subsection (3)(a) or, as the case may be, the contractor referred to in subsection (3)(b)—

(a) shall cause the notice referred to in subsection (3) to be published—

(i) in at least one national newspaper circulating in the State,

(ii) on one or more websites, as may be specified in regulations under this section, the principal purpose of which is to publish offers of employments to citizens and foreign nationals referred to in subsection (3)(ii), and

(iii) in, or on, one of the following:

(I) at least one newspaper circulating in the area in which the employment is to be carried out, or

(II) at least one website, other than a website referred to in subparagraph (ii), the principal purpose of which is to

- publish offers of employment,
- (b) shall, in respect of the publication of that notice on a website referred to in paragraph (a)(ii), place the notice referred to in subsection (3) for publication with one or more persons, as may be specified in regulations under this section,
 - (c) shall publish the notice referred to in subsection (3) in accordance with paragraph (a) for a period that is not less than the period, as may be specified in regulations under this section, for which the notice is to be published, and
 - (d) may, in addition to the publication under paragraphs (a), (b) and (c), publish the notice in such other manner as may be specified in regulations under this section.
- (5) Where, following the publication of the notice referred to in subsection (3), an application referred to in subsection (1) is made under section 4, that application shall be made within the number of days, as may be specified by the Minister in regulations under this section, from the day on which that notice was first published on a website referred to in subsection (4)(a)(ii).
- (6) Subsection (2) shall not apply to an application referred to in subsection (1) where—
- (a) an enterprise development agency has made a recommendation referred to in section 3B in respect of the application, and
 - (b) the Minister is satisfied that, having had regard to such recommendation, granting the employment permit that is the subject of the application concerned will contribute to the further development of employment in the State.
- (7) Subsection (2) shall not apply to an application referred to in subsection (1) where—
- (a) the Minister is satisfied that, having regard to section 15(1)(d), there is a shortage of the skills referred to in section 15(1)(d) required for that employment and the Minister has, in regulations made under section 14(6), specified the employment as an employment to which subsection (2) shall not apply,
 - (b) the application is made in respect of a foreign national to whom section 20B applies and is an application referred to in section 20B(4), or
 - (c) the application is made in respect of an employment—
 - (i) for a carer of a person with exceptional medical needs and—
 - (I) the foreign national, in respect of whom that application is made, has been providing care to the person before the

application was made, and

(II) that person has developed a high level of dependence on that foreign national,

and

(ii) that is not specified in regulations under section 14 as an employment for which, or a category of employment in respect of which, an employment permit shall not be granted,

and the Minister is satisfied that, having regard to the circumstances of that person and that foreign national, it is not appropriate to publish a notice of the offer of that employment.

(8) The Minister may, without prejudice to the generality of section 29(1), make regulations under this subsection for the publication of the notice referred to in subsection (3), that is required to be carried out before an application for the grant of an employment permit referred to in subsection (1) is made, to provide for—

(a) one or more persons with whom such notice shall be placed for publication on a website referred to in subsection (4)(a)(ii) where such person or persons own or operate the website or publish notices on such website,

(b) one or more websites, referred to in subsection (4)(a)(ii), on which such notice is to be published,

(c) the duration of the period, referred to in subsection (4)(c), for which such notice shall be published—

(i) in a newspaper referred to in subsection (4),

(ii) on a website referred to in subsection (4)(a)(ii) which shall be not less than 14 days, and

(iii) on a website referred to in subsection (4)(a)(iii),

which the Minister considers to be sufficient to afford an opportunity to citizens and the foreign nationals referred to in subsection (3)(ii) to apply for the employment concerned,

(d) the publication referred to in subsection (4)(d) of such notice, including the period for the publication of such notice, and different provision may be made for different classes of publication for any such notice including publication by electronic means and different provision may be made for such publication of the offer of employment to citizens and foreign nationals referred to in subsection (3)(ii),

(e) the form, procedure for and the manner in which the publication of the offer of employment, referred to in subsection (2), to citizens and foreign nationals referred to in subsection (3)(ii) is to be made,

- (f) the number of days within which the application referred to in subsection (1) shall be made after the day the notice referred to in subsection (3) is first published on a website referred to in subsection (4)(a)(ii),
 - (g) information and documents as the Minister may require to satisfy himself or herself that the notice was published in accordance with this section and the application was made within the period referred to in subsection (4) and without prejudice to the generality of the foregoing such information and documents may include—
 - (i) information and documents demonstrating that the notice was placed with the persons specified by the Minister in regulations under that section, and
 - (ii) documents identifying that the notice was published in a newspaper and a website as required under that section,and
 - (h) evidence that the Minister may reasonably require in order to verify any information or documents to be furnished to the Minister pursuant to this section.
- (9) Before publishing a notice referred to in subsection (3) the person who makes the offer of employment, or, as the case may be, the contractor, shall ensure that the employment is specified in regulations under this Act as being an employment for which an employment permit may be granted.
- (10) The Minister may make enquiries to satisfy himself or herself that the person referred to in subsection (3)(a) or the contractor referred to in subsection (3)(b) has complied with subsection (3).
- (11) Section 10(3) applies to this section.”.

Amendment of section 11 of Act of 2006

14. Section 11 of the Act of 2006 is amended in subsection (1)—

(a) by substituting the following paragraph for paragraph (b):

“(b) whether the knowledge and skills and, where appropriate, the qualifications and experience referred to in section 6(b) are required for, or relevant to, the employment concerned,”

(b) in paragraph (c)—

(i) by deleting “or, as the case may be, section 7”, and

(ii) by substituting “the application,” for “the application, and”,

(c) in paragraph (d), by substituting “or paragraphs, and” for “or paragraphs.”, and

(d) by inserting the following paragraph after paragraph (d):

“(e) the different purposes, specified in section 3A(2) for which an employment permit may be granted.”.

Amendment of section 12 of Act of 2006

15. (1) Section 12 of the Act of 2006 is amended in subsection (1)—

(a) in paragraph (a) by inserting “or has failed to provide any information, documents or evidence required by or under this Act in respect of the application within the period specified in regulations under section 29” after “(the ‘application’)”;

(b) by substituting the following paragraph for paragraph (c):

“(c) the foreign national or the person who made the offer of employment, or in the case of an application referred to—

(i) in section 4(2)(a), the contractor or the relevant person,

(ii) in section 4(2)(b), the connected person, or

(iii) in section 4(2)(c), the person party to the arrangement referred to in that section who made the application,

has been convicted of an offence under this Act, the Act of 2003, the Immigration Act 2004 or an enactment specified in Schedule 1, during the period of 5 years ending on the date of the application,”

(c) by substituting the following paragraph for paragraph (e):

“(e) the following 2 conditions are satisfied namely:

(i) a period of less than 12 months has elapsed since the foreign national concerned first commenced employment in the State pursuant to an employment permit granted to him or her; and

(ii) the application is made within the period referred to in subparagraph (i) and on the date of the application—

(I) the employment permit referred to in subparagraph (i) is in force, or

(II) the foreign national has surrendered, in accordance with section 24, the employment permit referred to in subparagraph (i), within the period referred to in subparagraph (i),”

(d) by inserting the following paragraphs after paragraph (i):

“(ia) the foreign national in respect of whom the application is made—

(i) has landed in the State with the permission of the Minister for Justice and Equality but has not been given the permission referred to in section 2(10)(d) of the Act of 2003 by the Minister for Justice and Equality, and

- (ii) was, on the date the application was made—
 - (I) employed by the person who made the offer of employment that is the subject of the application, or
 - (II) employed by another person on that date,
 without an employment permit or the permission referred to in section 2(10)(d) of the Act of 2003,
- (ib) the foreign national in respect of whom the application is made had been in employment in the State prior to the making of the application without an employment permit or permission of the Minister for Justice and Equality referred to in section 2(10)(d) of the Act of 2003,
- (ic) the foreign national in respect of whom the application is made has landed in the State with the permission of the Minister for Justice and Equality and that permission is granted on the condition that the foreign national concerned shall not be in employment in the State,”
- (e) in paragraph (j), by substituting “standard working week remuneration,” for “standard working week remuneration, or”,
- (f) by substituting the following paragraph for paragraph (k):
 - “(k) the skills, knowledge, and where appropriate, qualifications and experience, referred to in section 6(b), are not required for, or relevant to, the employment concerned, or”,
 and
- (g) by inserting the following paragraph after paragraph (k):
 - “(l) if he or she is satisfied that the foreign national concerned does not possess the qualifications, knowledge or skills for the employment concerned or the foreign national concerned does not have the appropriate level of experience required for the employment.”.
- (2) Section 12 of the Act of 2006 is amended by inserting the following subsections after subsection (1):
 - “(1A) The Minister may refuse to grant an employment permit where the application in respect of an employment that, having regard to the different purposes referred to in section 3A(2), does not fall within the purpose in respect of which the application was made or is an employment that is specified in regulations under section 14 in respect of a different purpose.
 - (1B) In the case of an application in respect of the purpose referred to in section 3A(2)(d)—
 - (a) the Minister shall, subject to subsection (1C), refuse to grant an

employment permit if the Minister is satisfied that—

- (i) without prejudice to subsection (1G)(a)(ii), the connected person is not engaged in substantive business operations in the State,
 - (ii) the foreign employer is not engaged in substantive business operations in the place, outside the State, in which it is established, or
 - (iii) the connected person is not connected with the foreign employer,
- (b) the Minister may refuse to grant an employment permit if, in the opinion of the Minister, the connected person or the foreign employer has not, or both of them have not, made appropriate arrangements—
- (i) to provide appropriate accommodation and board (or either of them) for the foreign national during the period in which he or she is in the State to carry out duties for, or participate in a training programme provided by the connected person, or
 - (ii) to provide appropriate health insurance, in respect of the foreign national should he or she require medical treatment for illness or injury during the period for which he or she will be in the State pursuant to the employment permit,
- (c) the Minister may refuse to grant an employment permit if the Minister is satisfied that the health insurance provided by the person referred to in paragraph (b)(iii)(II) of section 1A(1) does not have the same, or similar, effect as the health insurance provided by a health insurer, or
- (d) the Minister may refuse to grant the employment permit if he or she is satisfied that the carrying out of the duties, or the participation in the training programme, by the foreign national is not appropriate to the requirements of the connected person.
- (1C) Subsection (1B)(a)(i) shall not apply to the connected person where the connected person carrying on those business operations has been registered with the Revenue Commissioners for a period not exceeding 2 years on the date the application is made.
- (1D) The Minister shall refuse to grant an employment permit in respect of the purpose referred to in section 3A(2)(e) where the Minister has reasonable grounds to believe that the foreign national concerned may not be employed by the contractor concerned during the period for which the employment permit is to be granted.
- (1E) In the case of an application in respect of the purpose referred to in section 3A(2)(e), the Minister—

- (a) may refuse to grant an employment permit if, in the opinion of the Minister, the contractor has not made appropriate arrangements—
 - (i) to provide appropriate accommodation and board, or either of them, for the foreign national while he or she is in the State to perform the duties arising from the contract service agreement, or
 - (ii) to provide appropriate health insurance in respect of the foreign national should he or she require medical treatment for illness or injury during the period for which he or she will be in the State pursuant to the employment permit,or
 - (b) may refuse to grant an employment permit if the Minister is satisfied that the health insurance provided by a person referred to in paragraph (b)(iii)(II) of section 1A(1) does not have the same, or similar, effect as the health insurance provided by a health insurer.
- (1F) In the case of an application for an employment permit for the purpose referred to in section 3A(2)(i), the Minister may refuse to grant an employment permit where—
- (a) the Minister is satisfied that—
 - (i) the foreign national concerned is not a full-time student enrolled in a third-level institution outside the State,
 - (ii) the course of study concerned is not wholly or substantially concerned with the qualifications or skills referred to in section 3A(2)(i), or
 - (iii) the employment in respect of which the application is made is not wholly or substantially concerned with the skills or qualifications referred to in subparagraph (ii),
 - (b) the Minister is not satisfied that there is a shortage of those qualifications or skills, or
 - (c) the Minister is satisfied there are reasonable grounds for believing that, at the end of the 12 month period, the foreign national may not return to the institution outside the State in which he or she is enrolled to complete the course of study concerned.
- (1G) The Minister shall refuse to grant an employment permit where—
- (a) the person who has made the offer of employment—
 - (i) is not registered with the Revenue Commissioners, and
 - (ii) where such person is carrying on a business, the Minister is satisfied that such person is not engaged in substantive business operations in the State,

or

- (b) in the case of an application referred to in—
 - (i) section 4(2)(a), the contractor concerned is not registered with the Revenue Commissioners,
 - (ii) section 4(2)(b), the connected person is not registered with the Revenue Commissioners, or
 - (iii) section 4(2)(c), the person referred to in that section who made the application referred to in that section, is not registered with the Revenue Commissioners.
- (1H) The Minister may refuse to grant an employment permit if he or she is satisfied that the person who made the offer of employment concerned—
 - (a) where such person is a company within the meaning of the Companies Acts, does not comply with any requirement relating to the registration of the company pursuant to those Acts,
 - (b) does not comply with any requirement relating to the registration of the business name of that person pursuant to the Act of 1963,
 - (c) where such person is a limited partnership referred to in the Limited Partnerships Act 1907, does not comply with any requirement relating to the registration of the limited partnership under that Act,
 - (d) where such person is an industrial and provident society within the meaning of the Industrial and Provident Societies Acts 1893 to 1978, does not comply with any requirement relating to the registration of the society pursuant to those Acts,
 - (e) where such person is a friendly society within the meaning of the Friendly Societies Acts 1896 to 1977, does not comply with any requirement relating to the registration of the society pursuant to those Acts, or
 - (f) where such person is a trade union within the meaning of the Trade Union Acts 1871 to 1990, does not comply with any requirement relating to the registration of that trade union under those Acts.
- (1I) In the case of an application for the purpose referred to in—
 - (a) section 3A(2)(f), the Minister may refuse to grant an employment permit where—
 - (i) an employment permit in respect of that purpose had been granted and had expired before the application was made and no application for renewal was made in respect of that employment permit, and

- (ii) the Minister is satisfied that it is in the public interest to refuse to grant the employment permit,
 - (b) section 3A(2)(h), the Minister may refuse to grant an employment permit where, in accordance with section 3F, having consulted with a person referred to in section 3F, the Minister is satisfied that the employment that is the subject of the application concerned is not appropriate for the development and operation of sporting, or, as the case may be, cultural activities in the State,
 - (c) section 3A(2)(g), the Minister may refuse to grant an employment permit where the Minister is satisfied that—
 - (i) the exchange agreement concerned does not apply to the foreign national in respect of whom the application is made, or, without prejudice to subsection (3), the employment in respect of which the application is made, or
 - (ii) without prejudice to subsection (3), the employment in respect of which the application is made does not come within the exchange agreement,
- and
- (d) section 3A(2)(b), the Minister may refuse to grant an employment permit where, in the opinion of the Minister, the requirements of section 3C(2) or, as the case may be, section 3C(3) have not been met.
- (1J) The Minister, in the case of an application for an employment permit for the purpose referred to in paragraph (d) or (e) of section 3A(2), shall—
- (a) without prejudice to subsection (1)(j), refuse to grant an employment permit if the Minister is satisfied that the hourly rate of the remuneration, in so far as it relates to the salary to be paid to the foreign national, is less than the national minimum hourly rate of pay or, where appropriate to the employment in respect of which the application is made, the hourly rate referred to in subsection (6) (b),
 - (b) without prejudice to subsection (1)(a), refuse to grant an employment permit where the connected person did not provide the information and documents referred to in section 3D(4) or the contractor did not provide the information and documents referred to in section 3E(4), or
 - (c) refuse to grant an employment permit where the Minister is not satisfied with the arrangements for the additional payment referred to in section 3D(4)(g) or, as the case may be, section 3E(4)(g).

- (1K) The Minister shall refuse to grant an employment permit where he or she is satisfied that in the 6 months preceding the day on which the application was made—
- (a) a person was employed in the employment that is the subject of the application, and
 - (b) that person was dismissed by reason of redundancy from that employment.”.
- (3) Section 12(2) of the Act of 2006 is amended by—
- (a) substituting “Subsections (1) to (1K) are” for “Subsection (1) is”, and
 - (b) substituting “sections 10 and 10A” for “section 10(2)”.
- (4) Section 12(3) of the Act of 2006 is amended by substituting “Subject to sections 20A(5) and 20B(5), the Minister shall” for “The Minister shall”.
- (5) Section 12(5) of the Act of 2006 is amended by—
- (a) inserting “or withdrawn” after “refused”, and
 - (b) inserting “or a person referred to in subsection (5A)” after “to the applicant”.
- (6) Section 12 of the Act of 2006 is amended by inserting the following subsection after subsection (5):
- “(5A) An applicant referred to in subsection (5) may in the application made by him or her nominate a person to whom the portion of the fee is to be returned.”.
- (7) Section 12 of the Act of 2006 is amended in subsection (6) by substituting the following for paragraph (b):
- “(b) if the hourly rate of pay fixed under or pursuant to any enactment that applies to the employment concerned is greater than the national minimum hourly rate of pay, the hourly rate of pay that is fixed under or pursuant to that enactment.”.

Amendment of section 13 of Act of 2006

16. Section 13 of the Act of 2006 is amended—

- (a) in subsection (2), by substituting “28 days” for “21 days”,
- (b) by inserting the following subsection after subsection (2):

“(2A) Where—

- (a) following a decision to refuse to grant an employment permit—
 - (i) the Minister receives information or documents relating to the application for the employment permit concerned,
 - (ii) the information is, or documents are, received within 28 days from the date the decision is notified under section 12 to the

- applicant, and
- (iii) the applicant has not submitted the decision for a review, in accordance with subsections (1) and (2),
- and
- (b) the Minister, having considered such information or documents, is satisfied that having regard to all the circumstances that it is appropriate to review that decision and to take such information or documents into account in such review, the Minister—
- (i) may direct that the decision to refuse to grant the employment permit concerned be reviewed under this section, and
- (ii) where he or she so directs, shall notify the applicant of the review.”,
- (c) in subsection (3), by inserting “referred to in subsections (1) and (2A)” after “A review under this section of a decision”,
- (d) in subsection (4), by substituting “In the case of a review of a decision referred to in subsection (1), the person so appointed” for “The person so appointed”, and
- (e) by inserting the following subsection after subsection (4):
- “(5) In the case of a review of a decision referred to in subsection (2A), the person so appointed, having taken into account the information or documents referred to in that subsection and afforded the applicant for the employment permit concerned an opportunity to make representations in writing in relation to the matter, may—
- (a) confirm the decision (and, if the person does so, shall notify such applicant in writing of the reasons for the confirmation), or
- (b) cancel the decision and grant to the foreign national concerned the employment permit the subject of the application to which the review relates.”.

Amendment of section 14 of Act of 2006

17. (1) Section 14 of the Act of 2006 is amended by substituting the following subsection for subsection (1):

“(1) The Minister may, having regard to sections 3A and 14A and the matters specified in section 15, make regulations providing for a class of employment permit for each purpose specified in paragraphs (a) to (i) of section 3A(2) and may, for each such class of employment permit, provide for one or more of the matters specified in subsection (1A) and may, in such regulations, make different provision for such classes of employment permit and such matters in relation to different cases and different classes of cases and different circumstances or different classes of circumstances.”.

- (2) Section 14 of the Act of 2006 is amended by inserting the following subsections after subsection (1):

“(1A) The matters referred to in subsection (1) are:

- (a) the maximum number of employment permits that may be granted in respect of the purpose concerned or specified employments or categories of such employments and such employments or such categories may be provided for on the basis of one or more economic sectors into which they fall;
- (b) the employments for which an employment permit may be granted and such employments may be provided for by reference to categories of employments for which an employment permit may be granted and by reference to one or more economic sectors into which they fall;
- (c) the employments for which an employment permit shall not be granted and such employments may be provided for by reference to categories of employments for which an employment permit shall not be granted and to one or more economic sectors into which they fall;
- (d) economic sectors in respect of which employment permits for any employment that falls into such sector shall not be granted;
- (e) the minimum amount of remuneration that shall be payable in respect of an employment as a condition for the grant of an employment permit in respect of it, and without prejudice to the generality of the foregoing, in respect of such minimum amount of remuneration—
 - (i) in so far as it relates to the salary referred to in paragraphs (a)(i) and (b)(i) of section 1A(1), the hourly rate for the salary shall be not less than the national minimum hourly rate of pay, or where appropriate to the employment or the category of employment, the hourly rate of pay referred to in section 12(6)(b), and
 - (ii) in so far as it relates to the payments for board and accommodation, referred to in section 1A(1)(b)(ii) and the payments for health insurance referred to in paragraphs (a)(ii) and (b)(iii) of section 1A(1), a maximum amount that may be paid in respect of those payments or the maximum amount of the value of such board and accommodation that are directly provided;
- (f) the qualifications or skills that a foreign national, in respect of whom an application for an employment permit is made, is required to possess in order for a grant of the permit to be made;
- (g) the minimum number of hours of work that are required to be worked in each week for an employment as a condition for the

grant of an employment permit in respect of it;

- (h) the minimum period of experience required for an employment, or a category of employment, as a condition for the grant of an employment permit in respect of it including different periods of experience by reference to different levels of remuneration;
 - (i) the minimum period for which an employment permit may be granted.
- (1B) Without prejudice to the generality of subsection (1A)(e), when specifying the minimum amount of remuneration, pursuant to that subsection, that shall be payable in respect of an employment as a condition for the grant of an employment permit in respect of it, the Minister may specify—
- (a) a minimum annual remuneration which shall be the minimum amount of remuneration to be paid to a foreign national for 39 hours of work in each week for 52 weeks,
 - (b) the minimum hourly rate for the minimum annual remuneration referred to in paragraph (a) that shall be payable where the hours of work for an employment or category of employment exceed 39 hours, and
 - (c) a minimum hourly rate for remuneration other than that referred to in paragraph (a) or (b),

in respect of any class of employment permit, employment or category of employment, and may, without prejudice to the generality of subsection (1), make different provision for any such class, employment or category in relation to different cases and different classes of cases and different circumstances or different classes of circumstances.

- (1C) The Minister may in regulations under subsection (1), when providing for the class of employment permit for—
- (a) the purpose referred to in section 3A(2)(a), make different provision for a foreign national to whom section 20A applies, and
 - (b) the purpose referred to in section 3A(2)(c), make different provision for a foreign national to whom section 20B applies,

and may make different provision for such foreign nationals in respect of any matter to be provided for under subsection (1A) and without prejudice to subsections (1) and (1B), when providing for remuneration under subsection (1A)(e), such provision may include different amounts of remuneration in respect of such class or any employment or category of employment and different provision may be made for different cases in relation to different classes of cases and different circumstances or different classes of circumstances.

- (1D) When making regulations under subsection (1) in respect of the class of employment permit provided under that subsection for the purpose referred to in section 3A(2)(g), the Minister, in addition to providing for any of the matters specified in subsection (1A) for that class of employment permit—
- (a) shall specify in those regulations each exchange agreement in respect of which an employment permit may be granted, and
 - (b) may, without prejudice to subsections (1) and (1A), specify the employments referred to in that exchange agreement, or to which that exchange agreement applies, in respect of which an employment permit may be granted for that class of employment permit,
- and when specifying the exchange agreement may, without prejudice to subsection (1), make different provision for such different exchange agreements in relation to different cases and different classes of cases and different circumstances or different classes of circumstances.
- (1E) In regulations under subsection (1) in relation to any class of employment permit or any matter specified under subsection (1A), the Minister may, when providing for any such class or matter, make provision in respect of a recommendation referred to in section 3B, and may, in respect of such recommendation, make different provision for such classes or such matter in relation to different cases and different classes of cases and different circumstances and different classes of circumstances.
- (1F) When specifying in regulations under subsection (1) the qualifications, referred to in subsection (1A)(f), of a foreign national, the Minister may provide, in respect of such qualifications, for one or both of the following:
- (a) a requirement that the foreign national be registered with—
 - (i) a regulatory body, or
 - (ii) any Minister of the Government regulating the entry to or carrying on of any profession or employment in the State;
 - (b) a requirement that the qualifications of a foreign national be recognised by—
 - (i) a regulatory body, or
 - (ii) any Minister of the Government regulating the entry to or carrying on of any profession or employment in the State.
- (1G) The Minister may, in regulations under subsection (1), provide for the names of the different classes of employment permits provided for under that subsection.

- (1H) Without prejudice to the generality of subsection (1A)(b), when specifying the employments for which an employment permit may be granted, including employments specified by reference to categories of employments and to one or more economic sectors, the Minister may specify such employments by reference to employments that require qualifications, experience or skills, referred to in section 15(1)(c), that are required for the proper functioning of one or more economic sectors and the Minister is satisfied that there is a shortage, referred to in section 15(1)(d), of those skills, experience or qualifications.
- (1I) The Minister may, having regard to section 3A and the matters specified in section 15, make regulations providing that no permits shall be granted in respect of any purpose referred to in section 3A(2) for a period as the Minister shall specify in the regulations.
- (1J) Where the Minister has made regulations under this section he or she shall from time to time carry out a review of the regulations having regard to section 15 and, without prejudice to the generality of the foregoing, the shortages and surpluses referred to in section 15(1)(d) in respect of the matters specified in the regulations pursuant to this section.
- (1K) Where under subsections (1) and (1A)(a), the Minister makes regulations providing for the maximum number of employment permits that may be granted in respect of a purpose or specified employments or categories of employments, whether the maximum number is provided for on the basis of an economic sector or otherwise, the Minister shall specify a period during which that maximum number of employment permits shall be granted.”.
- (3) Section 14 of the Act of 2006 is amended by substituting the following subsections for subsection (2):
- “(2) In regulations under subsection (1) the Minister may, having regard to sections 3A and 14A and the matters specified in section 15, provide, in respect of each class of employment permit referred to in subsection (1), for—
- (a) one or more of the matters specified in subsection (1A) other than the matters specified in paragraphs (a), (c) and (d) of that subsection, and
- (b) any matter specified in subsections (1B) and (1D) to (1H),

in relation to the renewal, under section 20, of an employment permit and may, for each such class of employment permit in such regulations, make provision for such classes of employment permit in relation to any of the matters specified in paragraphs (a) and (b) in relation to such renewal that is different to the provision made by the Minister in relation to the grant of an employment permit under section 8 and may, in such regulations, make different provision for such classes of employment permit and such matters in relation to different cases and different classes of cases and different circumstances or different classes of circumstances.

- (2A) The following modifications apply in respect of the regulations referred to in subsection (2):
- (a) the substitution of references to an application for the renewal of an employment permit for references to an application for the grant of an employment permit;
 - (b) the substitution of references to a condition for the grant of the renewal of an employment permit for references to a condition for the grant of an employment permit;
 - (c) the substitution of references to the grant of the renewal of an employment permit for the grant of an employment permit.”
- (4) Section 14 of the Act of 2006 is amended by substituting the following subsection for subsection (3):
- “(3) Where regulations under subsection (1) are in force, the relevant powers of the Minister under this Act in relation to employment permits shall, subject to this Act, be exercised subject to, and in accordance with, those regulations.”
- (5) Section 14(4) of the Act of 2006 is amended—
- (a) by deleting “, during a period such as is referred to in subsection (3),” and
 - (b) by inserting “, subject to this Act,” after “be granted”.
- (6) Section 14 of the Act of 2006 is amended by inserting the following subsections after subsection (4):
- “(5) The Minister may, having regard to paragraphs (d) and (e) of section 3A(2), section 14A and the matters specified in section 15, make regulations specifying—
- (a) the minimum period of employment for which a foreign national referred to in section 3D is employed with the foreign employer before an application for an employment permit may be made in respect of him or her, which period shall be not less than 1 month, and

(b) the minimum period of employment for which a foreign national referred to in section 3E is employed by the contractor before an application for an employment permit may be made in respect of him or her, which period shall be not less than 1 month.

(6) Where—

(a) the Minister is satisfied that, having regard to section 15(1)(d), there is a shortage of the skills referred to in section 15(1)(d), and

(b) those skills are required for an employment, or a category of employment, specified in regulations under this section as an employment or a category of employment for which an employment permit may be granted in respect of the purpose referred to in paragraphs (c) or (e) of section 3A(2),

the Minister may specify in regulations under this section the employments or categories of employments to which section 10A(2) shall not apply—

(i) in respect of—

(I) an employment, and

(II) a category of employment or an employment falling into a category of employment,

specified in regulations under this section as employments or categories of employment for which an employment permit may be granted for the purpose referred to in section 3(2A)(c), and

(ii) in respect of—

(I) an employment, and

(II) a category of employment or an employment falling into a category of employment,

specified in regulations under this section as employments or categories of employment for which an employment permit may be granted for the purpose referred to in section 3(2A)(e).

(7) In this Act, ‘regulatory body’ means a body which is concerned with regulating the entry to or the carrying on of, a profession or an employment in the State and includes a body established by or under any enactment.”.

Insertion into Act of 2006 of new section 14A

18. The Act of 2006 is amended by inserting the following section after section 14:

“Remuneration relating to employments

- 14A.** (1) When specifying, in regulations made under section 14, an amount of remuneration for an employment or a category of employment, the Minister may have regard to the amounts of remuneration paid in respect of different employments and categories of employment.
- (2) Where—
- (a) regulations under section 14 specify a minimum annual remuneration referred to in section 14(1B)(a) that shall be payable in respect of an employment as a condition for the grant of an employment permit, and
 - (b) the number of hours of work in each week for an employment in respect of which an employment permit may be granted as a condition for the grant of an employment permit in respect of it is—
 - (i) less than 39 hours in each week, the minimum annual remuneration specified in regulations under section 14 in respect of an employment as a condition for the grant of an employment permit for that employment shall not be reduced in accordance with the lesser number of hours to be worked in each week, or
 - (ii) greater than 39 hours in each week, the minimum annual remuneration specified in regulations under section 14 in respect of an employment as a condition for the grant of an employment permit for that employment shall be increased in proportion to the minimum hourly rate specified for the employment concerned in accordance with the number of hours, or any portion of an hour, that exceed, or exceeds, 39 hours.”.

Amendment of section 15 of Act of 2006

- 19.** (1) Section 15(1) of the Act of 2006 is amended—
- (a) in paragraph (a) by—
 - (i) inserting “, experience” after “qualifications”, and
 - (ii) deleting “in the period to which the regulations concerned under section 14 will relate (the ‘relevant period’),”
 - (b) in paragraph (c) by—
 - (i) inserting “, experience” after “qualifications”, and
 - (ii) deleting “in the relevant period”,and
 - (c) in paragraph (d) by—
 - (i) deleting “during the relevant period,”, and

- (ii) inserting “, experience” after “qualifications”.
- (2) Section 15 of the Act of 2006 is amended by substituting the following subsection for subsection (2):
- “(2) References in subsection (1) to qualifications, experience or skills are references to qualifications, experience or skills of employees.”.

Amendment of section 16 of Act of 2006

- 20.** (1) Section 16 of the Act of 2006 is amended in subsection (1)—
- (a) in paragraph (a), by inserting “or connected person” after “the employer”,
 - (b) in paragraph (b)—
 - (i) by inserting “, connected person or relevant person” after “the employer”,
and
 - (ii) by inserting “the Act of 2003, the Immigration Act 2004 or an enactment specified in Schedule 1,” after “this Act,”,
and
 - (c) by inserting the following paragraphs after paragraph (d):
 - “(da) in the case of an employment permit granted for the purpose specified in section 3A(2)(b)—
 - (i) the primary permit holder referred to in section 3C(2)(a) has been redundant within the meaning of section 7(2) of the Act of 1967 for a period exceeding 6 months,
 - (ii) the employment permit granted to the primary permit holder referred to in section 3C(2)(a) has been revoked, or
 - (iii) the primary permit holder referred to in section 3C(2)(b) or the research project researcher referred to in section 3C(3)(b) no longer has the permission referred to in section 2(10)(d) of the Act of 2003,
 - (db) in the case of an employment permit granted in respect of the purpose specified in section 3A(2)(d), in the opinion of the Minister the connected person or the foreign employer has failed to—
 - (i) provide appropriate accommodation and board (or either of them) for the foreign national while he or she is in the State to perform duties for, or participate in a training programme provided by, the connected person, or
 - (ii) provide appropriate health insurance in respect of the foreign national during some or all of the period for which the employment permit has been in force should he or she require medical treatment for illness or injury during such period,

- (dc) in the case of an employment permit granted in respect of the purpose specified in section 3A(2)(e), in the opinion of the Minister the contractor has failed to—
 - (i) provide appropriate accommodation and board (or either of them) for the foreign national while he or she is in the State to perform the duties arising from the contract service agreement concerned, or
 - (ii) provide appropriate health insurance in respect of the foreign national during some or all of the period for which the employment permit has been in force should he or she require medical treatment for illness or injury during such period,
 - (dd) the foreign national is not, in the opinion of the Minister—
 - (i) employed in the employment specified, in accordance with section 9(2), in the employment permit,
 - (ii) employed by the person referred to in section 8(2)(a)(i), or, as the case may be, the contractor referred to in section 8(2)(a)(ii), or the person referred to in section 8(2)(a)(iii), or
 - (iii) employed by the foreign employer or is not carrying out the duties for, or participating in a training programme provided by, the connected person referred to in section 8(2)(b),
 - (de) in the opinion of the Minister, the remuneration paid, insofar as it relates to the salary referred to in paragraphs (a)(i) and (b)(i) of section 1A(1), to the foreign national is less than the national minimum hourly rate of pay or the hourly rate referred to in section 12(6)(b),
 - (df) without prejudice to paragraph (de), in the opinion of the Minister, the remuneration paid to the foreign national, during the period for which the employment permit has been in force, is less than the remuneration stated, pursuant to section 9(2), in the employment permit, or the deductions referred to in section 9(2), stated pursuant to that section in the employment permit, were different to the deductions made by the employer,
 - (dg) the statement of earnings, referred to in section 3D or section 3E, does not comply with the requirements of section 3D(1)(c) or, as the case may be, section 3E(1)(b),”.
- (2) Section 16 of the Act of 2006 is amended in subsection (2)—
- (a) by inserting “or, as the case may be, the connected person” after “the employer”, and
 - (b) in paragraph (c), by substituting “the holder or the employer or both of them, or, as the case may be, the holder or the connected person, or both of them, may” for “either or both of them may”.

Amendment of section 17 of Act of 2006

21. Section 17 of the Act of 2006 is amended in subsection (1) by substituting “the holder of the permit, the employer or the connected person” for “the holder of the permit or the employer”.

Amendment of section 19 of Act of 2006

22. Section 19 of the Act of 2006 is amended—

(a) in subsection (1)—

(i) by deleting “(other than on foot of an application by a foreign national)”, and

(ii) by inserting “or the connected person” after “the employer”,

and

(b) in subsection (2) by substituting the following paragraph for paragraph (c):

“(c) use the employment permit to enter into a contract of employment in respect of an employment other than the employment in respect of which it has been granted.”.

Amendment of section 20 of Act of 2006

23. (1) Section 20 of the Act of 2006 is amended—

(a) in subsection (1) by—

(i) substituting “Subject to subsection (1A), the Minister” for “The Minister”, and

(ii) deleting “on application of the employer or, if the permit was granted on foot of an application by a foreign national, the holder of it,”,

(b) by inserting the following subsection after subsection (1):

“(1A) An employment permit granted in respect of the purpose referred to in—

(a) section 3A(2)(d) in respect of an employment referred to in section 3A(2)(d)(ii), and

(b) section 3A(2)(i),
shall not be renewed.”,

and

(c) by inserting the following subsection after subsection (2):

“(2A) An application for the renewal of an employment permit—

(a) may be made by the holder of the employment permit concerned or the employer, or

(b) where the application for the grant of the employment permit was

made—

- (i) in accordance with section 4(2)(a), in respect of an employment referred to in subsection (3B) shall be made by the contractor concerned,
 - (ii) in accordance with section 4(2)(b), in respect of an employment referred to in subsection (3A) shall be made by the connected person concerned, or
 - (iii) in accordance with section 4(2)(c), shall be made by the person referred to in section 4(2)(c).”.
- (2) Section 20(3) of the Act of 2006 is amended by—
- (a) substituting “subsections (3A), (3B), (4), (11)(b), (12) and (13)” for “subsection (4)”, and
 - (b) deleting “or such longer period as may be specified in regulations under section 14”.
- (3) Section 20 of the Act of 2006 is amended by inserting the following subsections after subsection (3):
- “(3A) In the case of the renewal of an employment permit granted in respect of an employment referred to in section 3A(2)(d)(i), where the Minister is satisfied that the duties to be carried out for the connected person will not be completed on the date of the expiration of the permit that is the subject of the application for renewal, the Minister may, subject to subsection (3C), renew the permit in accordance with this section, for the period referred to in subsection (3) or where the remaining period in which those duties are to be completed is less than the period referred to in subsection (3), for the lesser period.
 - (3B) In the case of the renewal of an employment permit granted in respect of the purpose referred to in section 3A(2)(e), where the Minister is satisfied that the duties to be performed in the State pursuant to the contract service agreement will not be completed on the date of the expiration of the permit that is the subject of the application for renewal, the Minister may, subject to subsection (3C), renew the permit, in accordance with this section, for the period referred to in subsection (3) or where the remaining period in which those duties are to be completed is less than the period referred to in subsection (3), for the lesser period.
 - (3C) The period for which an employment permit referred to in subsections (3A) and (3B) shall be in force whether granted or renewed, shall not exceed a period of 5 years from the date on which it was first granted.”.
- (4) Section 20(4) of the Act of 2006 is amended by substituting “Subject to subsection (4B), if, at the date” for “If, at the date”.

- (5) Section 20 of the Act of 2006 is amended by inserting the following subsections after subsection (4):

“(4A) The person making the application for the renewal of an employment permit shall—

- (a) provide, with the application for renewal, information, documents and evidence as may be specified in regulations under section 29 in respect of the renewal of an employment permit, and
- (b) without prejudice to the generality of paragraph (a), in the case of an application for the renewal of an employment permit referred to in subsection (3A) or, as the case may be, subsection (3B), provide, with the application for renewal, information, documents and evidence as may be specified in regulations under section 29, in respect of the payment of the additional payment referred to in section 3D(2) or 3D(3) or, as the case may be, section 3E(2) or 3E(3), during the period for which the employment permit, that is the subject of the application for renewal, has been granted.

(4B) Subsection (4) shall not apply to the renewal of an employment permit referred to in subsections (3A), (3B) and (13).”.

- (6) Section 20 of the Act of 2006 is amended—

- (a) in subsection (6)(a) by deleting “or 7, as appropriate”, and
- (b) in subsection (8) by substituting “Sections 10, 11, 12 and 13” for “Sections 11 to 13”.

- (7) Section 20 of the Act of 2006 is amended by inserting the following subsection after subsection (8):

“(8A) In addition to, pursuant to subsection (8), the grounds specified in section 12 for refusing an application for renewal, the Minister may refuse to renew an employment permit if—

- (a) the foreign national is not, in the opinion of the Minister—
 - (i) employed in the employment specified, in accordance with section 9(2), in the employment permit,
 - (ii) employed by the person referred to in section 8(2)(a)(i), or, as the case may be, the contractor referred to in section 8(2)(a)(ii), or the person referred to in section 8(2)(a)(iii), or
 - (iii) employed by the foreign employer or is not carrying out duties for, or participating in a training programme provided by, the connected person referred to in section 8(2)(b),

- (b) in the opinion of the Minister, the remuneration paid to the foreign national, during the period for which the employment permit has been in force, is less than the remuneration stated, pursuant to section 9(2), in the employment permit or the deductions referred to in section 9(2), and stated, pursuant to that section, in the employment permit, were different to the deductions made by the employer,
 - (c) the foreign national has spent a continuous period of not less than 3 months outside the State during the period for which the employment permit has been in force that was not connected to his or her employment,
 - (d) without prejudice to the generality of the foregoing, the granting of the application to renew the permit would contravene regulations under section 14 in so far as those regulations make provision for, pursuant to section 14(2), the renewal of an employment permit, or
 - (e) the information, documents and evidence referred to in paragraphs (a) and (b) of subsection (4A) were not provided as required under those paragraphs.”.
- (8) Section 20(9) of the Act of 2006 is amended by inserting the following paragraph after paragraph (a):
- “(aa) in respect of section 10, construing references to—
 - (i) the date of the application for an employment permit as references to the date of the application for the renewal of an employment permit, and
 - (ii) the person who made the offer of employment as references to the employer of the foreign national in respect of whom the application for the renewal of an employment permit is made,”.
- (9) Section 20 of the Act of 2006 is amended by inserting the following subsections after subsection (9):
- “(10) Notwithstanding the application, under subsection (8), of section 12 to the renewal of an employment permit, the Minister may, notwithstanding section 12(3), renew an employment permit in respect of an employment that—
 - (a) at the date of the grant of such permit was an employment, specified in regulations under section 14, in respect of which an employment permit may have been granted or fell within a category of employment specified in regulations made under section 14 for which an employment permit may have been granted, and
 - (b) at the date of the application for the renewal, is an employment, or falls within a category of employment, specified in regulations made under section 14 as an employment or category of

employment for which an employment permit shall not be granted.

- (11) Where an application is made for the renewal of an employment permit granted in respect of the purpose specified in paragraph (c) or (d) of section 3A(2) and section 10(2A) applied in respect of such grant and, on the date the application for such renewal was made, 50 per cent or more of the employees of the employer or, as the case may be, the connected person, are not nationals referred to in section 10(2), the Minister shall not grant the renewal of the permit concerned unless—
- (a) an enterprise development agency has made a recommendation referred to in section 3B in respect of that application, and
 - (b) the Minister is satisfied that, having regard to such recommendation, renewing the employment permit concerned will contribute to the further development of employment in the State,
- and where the employment permit concerned is renewed, the period for which the employment permit is renewed shall not exceed 1 year.
- (12) Where a subsequent application is made for the renewal of an employment permit that was last renewed in accordance with subsection (11)(b), the Minister shall not renew the employment permit unless 50 per cent or more of the employees of the employer, or, as the case may be, the connected person, are nationals referred to in section 10(2) and where, pursuant to that subsequent application, the employment permit concerned is renewed, the period for which it is renewed shall not exceed 2 years.
- (13) Notwithstanding the application, under subsection (8), of section 10 to the renewal of an employment permit, where—
- (a) an application is made to renew an employment permit that was granted for the purpose referred to in paragraph (b), (c), (f) or (h) of section 3A(2),
 - (b) on the day the application to renew the employment permit is made the holder in respect of whom that application is made is the sole employee of the employer concerned, and
 - (c) at the time the application to grant the employment permit was made, section 10(2B) applied in respect of the grant of that employment permit,
- section 10 shall not apply to that application to renew that employment permit.
- (14) The period for which an employment permit granted for the purpose referred to in section 3A(2)(b) may, under subsection (3), be renewed shall be the lesser of—
- (a) the period referred to in subsection (3), or

- (b) the period beginning on the date on which the employment permit is to be renewed and ending on the date of the expiry of—
 - (i) the employment permit granted to the primary permit holder referred to in section 3C(2)(a),
 - (ii) the permission, referred to in section 3C(2)(b), given to the primary permit holder referred to in section 3C(2)(b) to remain in the State and be in employment in the State,
 - (iii) the permission referred to in section 3C(3)(a), given to the research project researcher referred to in section 3C(3)(a), or
 - (iv) the permission, referred to in section 3C(3)(b), given to the research project researcher referred to in section 3C(3)(b) to remain in the State and be in employment in the State.
- (15) Nothing in subsection (14) shall be construed as preventing an employment permit referred to in that subsection being renewed for a period that is less than the period specified in subsection (3) in circumstances other than those specified in subsection (14).
- (16) Where, on or after the coming into operation of *sections 7 and 23* of the *Employment Permits (Amendment) Act 2014*, an application is made to renew an employment permit that was in force immediately before those provisions came into operation, and—
 - (a) where that employment permit is renewed, it shall be renewed in respect of a purpose referred to in section 3A(2) and the Minister shall determine the purpose for which that employment permit is to be renewed having had regard to the employment in respect of which the employment permit that is the subject of the renewal had been granted and where appropriate, the foreign national concerned, and
 - (b) in the case of an employment permit that the Minister has determined shall be renewed for the purpose referred to in section 3A(2)(c), but the remuneration to be paid in respect of the employment that is the subject of the application for renewal is less than the remuneration specified in regulations under section 14 for that employment or the category of employment into which the employment falls, such lesser remuneration shall not, notwithstanding section 12(3), operate to prevent the Minister from—
 - (i) renewing that employment permit in respect of such purpose, or
 - (ii) renewing that employment permit pursuant to any subsequent application for renewal.

- (17) Where, on or after the coming into operation of *section 23* of the *Employment Permits (Amendment) Act 2014*, an application is made to renew an employment permit that was in force immediately before that section came into operation, notwithstanding subsection (8), section 10 shall not apply in respect of that application to renew that employment permit or to any subsequent application to renew that permit.”.

Insertion into Act of 2006 of new sections 20A, 20B, 20C and 20D

24. The Act of 2006 is amended by inserting the following sections after section 20:

“Redundancy of foreign national to whom employment permit granted for purpose referred to in section 3A(2)(a)

20A. (1) This section applies to a foreign national to whom an employment permit in respect of the purpose referred to in section 3A(2)(a) has been granted and he or she is dismissed by reason of redundancy from the employment concerned during the period for which the employment permit is in force.

(2) Without prejudice to section 24, a foreign national to whom this section applies shall notify the Minister of the date of dismissal within 4 weeks of that date of dismissal and the notification shall be in such form as may be specified in regulations under section 29 and shall include the information and documents specified in section 20C.

(3) Where the Minister is satisfied that the foreign national was dismissed by reason of redundancy from the employment for which the employment permit referred to in subsection (1) was granted, an application for an employment permit may be made under, and in accordance with the requirements of, section 4 in respect of a foreign national to whom this section applies, within 6 months of the date of dismissal of that foreign national, and such application shall be for an employment permit in respect of the purpose referred to in section 3A(2)(a) for—

(a) an employment that is the same type of employment for which the employment permit referred to in subsection (1) was granted, or

(b) an employment for a different employment to that for which the employment permit referred to in subsection (1) was granted that is specified in regulations under section 14, in respect of the purpose referred to in subsection (1), as an employment for which an employment permit may be granted.

(4) Where—

(a) on the date an application referred to in subsection (3) is made, the type of employment referred to in subsection (3)(a)—

(i) is no longer specified in regulations under section 14 as an employment, or no longer falls within a category of employment specified in those regulations, for which an employment permit may be granted in respect of the purpose referred to in subsection (1), or

(ii) is specified in regulations under section 14 as an employment, or falls within a category of employment, in respect of which an employment permit shall not be granted,

and

(b) the Minister is satisfied that the dismissal by the employer of the foreign national from the employment in respect of which the employment permit referred to in subsection (1) was granted, was a dismissal by reason of redundancy,

the application may be made for that employment by a foreign national to whom this section applies notwithstanding that the employment is no longer an employment, or falls within a category of employment, for which an employment permit may be granted or is an employment, or falls within a category of employment specified in regulations under section 14 for which an employment permit shall not be granted.

(5) Notwithstanding section 12(3), the Minister may, subject to subsection (6), grant, under section 8, an employment permit for the employment referred to in subsection (4) pursuant to an application referred to in subsection (4) that is made within the period referred to in subsection (3) and for the avoidance of doubt—

(a) section 12(3) shall apply in respect of any other provision or requirement, specified in regulations under section 14 that is required to be satisfied, and

(b) section 14 shall, in respect of such grant under section 8, apply in respect of any other provision or requirement specified in regulations under section 14 that is required to be satisfied.

(6) Without prejudice to subsection (3) or (4), where an application referred to in subsection (3) or (4) is made by a foreign national who has made a notification to the Minister under this section, the Minister shall not grant the employment permit concerned unless the Minister is satisfied that the foreign national was dismissed by reason of redundancy from the employment in respect of which the employment permit referred to in subsection (1) was granted.

(7) Having regard to the consideration, under section 11, of an application referred to in subsection (4)—

(a) the provisions of any regulations referred to in section 11(3), other than the provisions of such regulations referred to in subsection (4), shall continue to apply in relation to the application concerned, and

- (b) section 11(4) shall apply in respect of a provision or requirement of regulations under section 14, other than the provision referred to in subsection (4).
- (8) Nothing in this section shall be construed as providing a permission to be in the State for the period of 6 months referred to in subsection (3).
- (9) Without prejudice to section 20C, a foreign national who makes an application referred to in subsection (3) or (4) shall provide the Minister with any information or documents that the Minister may require to satisfy himself or herself that the dismissal of the foreign national was a dismissal by reason of redundancy.

Redundancy of foreign national to whom employment permit granted for purpose referred to in section 3A(2)(c)

- 20B.** (1) This section applies to a foreign national to whom an employment permit in respect of the purpose referred to in section 3A(2)(c) has been granted and he or she is dismissed by reason of redundancy from the employment concerned during the period for which the employment permit is in force.
- (2) Without prejudice to section 24, a foreign national to whom this section applies shall notify the Minister of the date of dismissal within 4 weeks of that date of dismissal and the notification shall be in such form as may be specified in regulations under section 29 and include the information and documents specified in section 20C.
 - (3) Where the Minister is satisfied that the foreign national was dismissed by reason of redundancy from the employment for which the employment permit referred to in subsection (1) was granted, an application for an employment permit may be made under, and in accordance with the requirements of, section 4 in respect of a foreign national to whom this section applies within 6 months of the date of dismissal of that foreign national and such application shall be for an employment permit in respect of the purpose referred to in section 3A(2)(c) for—
 - (a) an employment that is the same type of employment for which the employment permit referred to in subsection (1) was granted, or
 - (b) a different employment to the one for which the employment permit referred to in subsection (1) was granted that—
 - (i) is specified in regulations under section 14, in respect of the purpose referred to in subsection (1), as an employment for which an employment permit may be granted, or
 - (ii) is not an employment that is specified in such regulations as an employment for which an employment permit shall not be granted or falls within a category of employment for which an employment permit shall not be granted.

- (4) Where—
- (a) at the time an application referred to in subsection (3) is made the type of employment referred to in subsection (3)(a) is specified in regulations under section 14 as an employment, or falls within a category of employment, in respect of which an employment permit shall not be granted, and
 - (b) the Minister is satisfied that the dismissal by the employer of the foreign national from the employment in respect of which the employment permit referred to in subsection (1) was granted was a dismissal by reason of redundancy,
- the application may be made in respect of that employment by a foreign national to whom this section applies notwithstanding that the employment is an employment, or falls within a category of employment, that is specified in regulations under section 14 as an employment, or category of employment, for which an employment permit shall not be granted.
- (5) Notwithstanding section 12(3), the Minister may, subject to subsection (6), grant, under section 8, an employment permit for an employment referred to in subsection (4) pursuant to an application referred to in subsection (4) that is made within the period referred to in subsection (3) and for the avoidance of doubt—
- (a) section 12(3) shall apply to any other provision or requirement specified in regulations under section 14, that is required to be satisfied, and
 - (b) section 14 shall, in respect of such grant under section 8, apply in respect of any other provision or requirement specified in regulations under section 14 that is required to be satisfied.
- (6) Without prejudice to subsection (3) or (4), where an application referred to in subsection (3) or (4) is made by a foreign national who has made a notification to the Minister under this section, the Minister shall not grant the employment permit concerned unless the Minister is satisfied that the foreign national was dismissed by reason of redundancy from the employment in respect of which the employment permit referred to in subsection (1) was granted.
- (7) Having regard to the consideration, under section 11, of an application referred to in subsection (4)—
- (a) the provisions of any regulations referred to in section 11(3), other than the provisions of such regulations referred to in subsection (4), shall continue to apply in relation to the application concerned, and
 - (b) section 11(4) shall apply in respect of a provision or requirement of regulations under section 14, other than the provision referred to in subsection (4).

- (8) Nothing in this section shall be construed as providing a permission to be in the State for the period of 6 months referred to in subsection (3).
- (9) Without prejudice to section 20C, a foreign national who makes an application referred to in subsection (3) or (4) shall provide the Minister with any information or documents that the Minister may require to satisfy himself or herself that the dismissal of the foreign national was a dismissal by reason of redundancy.

Information and documents to be provided with notification under section 20A or 20B of dismissal by reason of redundancy

20C. The information and documents to be provided to the Minister with the notification referred to in section 20A(2) and 20B(2) are—

- (a) the date of dismissal,
- (b) the reason for the dismissal by reason of redundancy as specified in paragraph (a), (b), (c), (d) or (e) of section 7(2) of the Act of 1967 or in section 21 of that Act,
- (c) such information and documents as may be specified in regulations under section 29 that the Minister may require to satisfy himself or herself that the dismissal of the foreign national was a dismissal by reason of redundancy, and
- (d) a statement specifying whether the foreign national has surrendered the employment permit in accordance with section 24.

Sections 20A and 20B: supplemental provisions

20D. Where—

- (a) an employment permit is in force immediately before the coming into operation of *section 7* and *section 24* of the *Employment Permits (Amendment) Act 2014*,
- (b) following the coming into operation of those sections, a foreign national to whom such permit was granted is dismissed by reason of redundancy from the employment in respect of which the employment permit was granted, and
- (c) the Minister is satisfied that—
 - (i) the dismissal is a dismissal by reason of redundancy, and
 - (ii) having regard to the employment in respect of which the employment permit referred to in paragraph (a) has been granted, that employment permit would, had it been granted after the coming into operation of *section 7* and *section 24* of the *Employment Permits (Amendment) Act 2014*, have been granted in respect of the purpose referred to in section 3A(2)(a) or 3A(2)(c),

the foreign national to whom the employment permit referred to in paragraph (a) was granted may be treated, for the purposes of section 20A or as the case may be section 20B, as a foreign national to whom section 20A or, as the case may be, section 20B applies.”.

Amendment of section 23 of Act of 2006

25. Section 23 of the Act of 2006 is amended—

- (a) by deleting subsection (2),
- (b) in subsection (3), by deleting “or (2)”,
- (c) by inserting the following subsection after subsection (3):

“(3A) A connected person shall not seek to recover from the holder of the employment permit any charge, fee or expense arising out of the application for the employment permit or the renewal of the permit under section 20 or any matter relating to or concerning such an application or the grant or renewal of the permit.”,

and

- (d) in subsection (4), by substituting “(3) or (3A)” for “(2) or (3)”.

Amendment of section 24 of Act of 2006

26. Section 24 of the Act of 2006 is amended—

- (a) in subsection (1), by deleting “(other than a permit granted on foot of an application by a foreign national)”,
- (b) by inserting the following subsection after subsection (1):

“(1A) In the case of an employment permit granted for the purpose referred to in section 3A(2)(d), if—

- (a) the employment of the foreign national is terminated by the foreign employer or the holder of the permit, or
- (b) the foreign national ceases, for whatever reason, to carry out duties for, or participate in a training programme provided by, the connected person,

there shall be surrendered to the Minister within 4 weeks from the date of termination or cessation—

- (i) by the holder — the original of the permit, and
- (ii) by the connected person — the copy of the permit.”,

and

- (c) in subsection (2), by inserting “or (1A)” after “fails to comply with subsection (1)”.

Amendment of section 27 of Act of 2006

27. Section 27 of the Act of 2006 is amended—

- (a) in subsection (1) by deleting “(other than a permit granted on foot of an application by the foreign national)”,
- (b) by deleting subsection (2),
- (c) in subsection (3) by deleting “or, in the case of a permit falling within subsection (2), the second-mentioned person in that subsection (in subsection (5)(b) referred to as the ‘second-mentioned person’)”,
- (d) in subsection (4), in paragraph (c)—
 - (i) by substituting “one or more foreign nationals are” for “more than one foreign national is”, and
 - (ii) by substituting “an employment permit” for “2 or more employment permits”,
- (e) in subsection (5)—
 - (i) by deleting “or (2)”, and
 - (ii) in paragraph (b), by deleting “or, as the case may be, the second-mentioned person”,
- (f) by inserting the following subsections after subsection (5):
 - “(5A) A connected person shall keep, in relation to the foreign national to whom an employment permit for the purpose referred to in section 3A(2)(d) has been granted, a record of the employment concerned, a record of the duties carried out by the foreign national or the training programme concerned, the duration of the employment and particulars of the permit and that record shall be kept for the period specified in subsection (5).
 - (5B) Where the connected person makes, pursuant to section 3D(1)(b), the payment for board and accommodation, or either of them, or health insurance, the connected person shall—
 - (a) keep and have available for inspection by an authorised officer exercising his or her powers under this Act the records, specified in subsection (5C) in respect of the foreign national to whom the employment permit referred to in subsection (5A) has been granted at the premises or place of business of that connected person in or at which the duties or training programme is carried out in the State, and
 - (b) furnish, when requested by the Minister to do so, information to the Minister concerning the records referred to in paragraph (a).
 - (5C) The records referred to in subsection (5B) are—
 - (a) records relating to the payment for—

(i) board and accommodation, or either of them, and

(ii) health insurance,

and

(b) if one or more foreign nationals are, pursuant to an employment permit granted for the purpose referred to in section 3A(2)(d), carrying out duties for, or participating in a training programme provided by, the connected person, records of the number for the time being, if any, of those foreign nationals who are nationals of a Member State referred to in subsection (4)(c)(i) or a state referred to in subsection (4)(c)(ii).”,

and

(g) in subsection (6) by substituting “, (3), (5A) or (5B)” for “, (2) or (3)”.

Amendment of section 28 of Act of 2006

28. Section 28 of the Act of 2006 is amended—

(a) by substituting the following paragraph for paragraph (a):

“(a) the name of—

(i) the foreign national in respect of whom the employment permit has been granted, and

(ii) the employer or—

(I) in the case of an employment permit granted in respect of the purpose referred to in section 3A(2)(d), the connected person and the foreign employer, or

(II) in the case of an employment permit granted in respect of the purpose referred to in section 3A(2)(e), the contractor and the relevant person,”

and

(b) by substituting the following paragraph for paragraph (c):

“(c) the address of—

(i) the foreign national, as specified in the application for the employment permit, in respect of whom the employment permit has been granted,

(ii) the employer or—

(I) in the case of an employment permit granted in respect of the purpose referred to in section 3A(2)(d), the connected person and the foreign employer, or

(II) in the case of an employment permit granted in respect of the purpose referred to in section 3A(2)(e), the contractor and the relevant person,

and

(iii) the place at which the employment is to be carried out and where such employment is to be carried out at more than one place, the address of each such place,”.

Amendment of section 29 of Act of 2006

29. (1) Section 29 of the Act of 2006 is amended in subsection (1) by inserting “and may, when making the regulations, make provision for the purposes specified in paragraphs (a) to (i) of section 3A(2) for which employment permits may be granted and the different classes of employment permit provided for in regulations under section 14(1) in respect of those purposes” after “on foot of such application”.

(2) Section 29(2) of the Act of 2006 is amended by inserting the following paragraphs after paragraph (b):

“(ba) the production to the Minister, with an application under section 4, of information and documents—

(i) as the Minister may, without prejudice to the requirement under section 6(a), specify, in respect of the employment concerned and the terms, conditions and the duration of it,

(ii) as the Minister may, without prejudice to the requirement under section 6(c), specify, in respect of the qualifications, skills, knowledge and experience, of the foreign national in respect of whom the application is made,

(iii) as the Minister may, without prejudice to the requirement under section 6(e), specify, in respect of the remuneration that is proposed to be paid to the foreign national and deductions to be made from it,

(iv) as the Minister may, without prejudice to the requirement under section 6(f), specify, concerning—

(I) any permission given to the foreign national in respect of whom the application is made by the Minister for Justice and Equality to land in the State or to be in the State, and

(II) any application, made before the date on which the application under section 4 is made, to the Minister for Justice and Equality for which the foreign national has sought permission to land in the State or to be in the State,

(v) as the Minister may, without prejudice to the requirement under section 6(f), specify, concerning the employment in the State of the foreign national in respect of whom the application is made,

at the time of the application or at any other time,

- (vi) as the Minister may specify concerning the identity of the foreign national in respect of whom the application is made and without prejudice to the generality of the foregoing may include the production to the Minister of a copy of the passport of that foreign national and in respect of which the expiry date of that passport is not less than a period as the Minister may specify under paragraph (bh),
- (vii) as the Minister may, without prejudice to the requirement under section 6(i), specify, in respect of the requirement under section 4(5) in relation to—
 - (I) the employment of any person employed in the employment that is the subject of the application in the period referred to in section 4(5), and
 - (II) the dismissal by reason of redundancy within that period of any person employed in the employment that is the subject of the application,and
- (viii) as the Minister may specify in respect of—
 - (I) without prejudice to subsection (1), the making of an application under section 4,
 - (II) without prejudice to the requirement under section 6, any matter specified in paragraphs (a) to (i) of section 6,
 - (III) the requirement under section 10 for the employees referred to in that section to be nationals of the states referred to in that section and the matters specified in section 10(2B),
 - (IV) without prejudice to the generality of subsection (1), a purpose specified in section 3A(2), and
 - (V) any other requirement under this Act that, in respect of the grant of an employment permit, is required to be satisfied;
- (bb) the production to the Minister, with an application under section 20 to renew an employment permit, of information and documents—
 - (i) as the Minister may specify, in respect of the employment that is the subject of such application and the terms and conditions of that employment,
 - (ii) as the Minister may specify, in respect of the qualifications, skills and knowledge, of the foreign national in respect of whom the application is made,
 - (iii) as the Minister may specify, in respect of—

- (I) the remuneration that is proposed to be paid to the foreign national on and after such renewal and deductions to be made from such remuneration, and
 - (II) the remuneration paid to the foreign national in respect of whom such application is made, for all or part of the period commencing on the date on which the employment permit was granted and ending on the date on which such application was made,
- (iv) as the Minister may specify that have been issued by the Revenue Commissioners in relation to the remuneration paid to, and tax paid in respect of such remuneration by, the foreign national in respect of whom such application is made,
- (v) as the Minister may specify concerning the permission given by the Minister for Justice and Equality to the foreign national in respect of whom such application is made to land in the State or to be in the State during the period for which the employment permit has been in force,
- (vi) as the Minister may specify concerning the identity of the foreign national in respect of whom such application is made and without prejudice to the generality of the foregoing may include the production to the Minister of a copy of the passport of that foreign national and in respect of which the expiry date of that passport is not less than a period as the Minister may specify under paragraph (bh), and
- (vii) as the Minister may specify in respect of—
- (I) without prejudice to the generality of subsection (1), the making of an application to renew an employment permit under section 20,
 - (II) without prejudice to the generality of subsection (1), the requirements under section 10, referred to in paragraph (ba) (viii)(III), in relation to an application for the renewal of an employment permit,
 - (III) without prejudice to the generality of subsection (1), a purpose referred to in section 3A(2), and
 - (IV) any other requirement under this Act that, in respect of the renewal of an employment permit, is required to be satisfied;
- (bc) the production to the Minister, with an application under section 4, of documents and evidence to verify such documents—

- (i) demonstrating that the person who makes the offer of employment or as the case may be the contractor, connected person or the person referred to in section 4(2)(c), is registered with the Revenue Commissioners,
- (ii) where the person who makes the offer of employment is a company within the meaning of the Companies Acts, relating to the registration of the company pursuant to the Companies Acts,
- (iii) relating to the registration of the business name, pursuant to the Act of 1963, of the person who makes the offer of employment where that person has a registered business name, and
- (iv) where the person who makes the offer of employment is—
 - (I) a limited partnership under the Limited Partnerships Act 1907, documents and such evidence relating to the registration of the limited partnership under that Act,
 - (II) an industrial and provident society, documents and such evidence relating to the registration of the society under the Industrial and Provident Societies Acts 1893 to 1978,
 - (III) a friendly society, documents and such evidence relating to the registration of the society under the Friendly Societies Acts 1896 to 1977, and
 - (IV) a trade union, documents and such evidence relating to the registration of the trade union under the Trade Union Acts 1871 to 1990;
- (bd) the production to the Minister with an application for a renewal of an employment permit under section 20 of documents and evidence referred to in paragraph (bc);
- (be) without prejudice to paragraph (ba), in the case of an application for an employment permit for the purposes referred to in paragraphs (d) and (e) of section 3A(2), the production to the Minister, with an application under section 4, of information and documents as the Minister may specify in respect of—
 - (i) the remuneration paid to the foreign national concerned,
 - (ii) the currencies and exchange rate to be used in the description of the amount of such remuneration and in any computation and statement of remuneration,
 - (iii) the translations of any information or document relating to such remuneration,
 - (iv) the payment to the foreign national of the additional payment referred to in sections 3D(2), 3D(3), 3E(2) and 3E(3), and
 - (v) the arrangements for making the additional payment referred to

in subparagraph (iv),

and, without prejudice to paragraph (a), the Minister may specify the form in which such information is to be provided to the Minister;

(bf) without prejudice to paragraph (bb), in the case of an application for the renewal of an employment permit for the purposes referred to in paragraphs (d) and (e) of section 3A(2), the production to the Minister, with an application under section 20, of—

(i) information and documents as the Minister may specify in respect of—

(I) the remuneration that is proposed to be paid to the foreign national on and after such renewal and deductions to be made from such remuneration, and

(II) the remuneration paid to the foreign national in respect of whom such application is made, for all or part of the period commencing on the date on which the employment permit was granted and ending on the date on which such application was made,

(ii) documents, as the Minister may specify, issued by the Revenue Commissioners in relation to the remuneration paid to, and tax paid in respect of such remuneration by, the foreign national in respect of whom such application is made,

(iii) documents, as the Minister may specify, issued by the Revenue Commissioners in relation to the remuneration and tax paid by the connected person, the foreign employer, and contractor,

(iv) information and documents as the Minister may specify in respect of the currencies and exchange rate to be used in the description of the amount of such remuneration and in any computation and statement of remuneration, and

(v) information and documents as the Minister may specify in respect of the translations of any information or document relating to such remuneration,

and without prejudice to paragraph (b), the form in which such information is to be provided to the Minister;

(bg) the form of the notification referred to in sections 20A and 20B and the information and documents the Minister may require to satisfy himself or herself—

(i) that, for the purposes of sections 20A and 20B, the dismissal by an employer of a foreign national referred to in section 20A or 20B is a dismissal by reason of redundancy, and

- (ii) the date on which the redundancy takes effect;
 - (bh) the specification of the minimum period for which a passport referred to in paragraphs (ba) and (bb) shall be in force on the date of an application for the grant, or renewal, of an employment permit;”.
- (3) Section 29 of the Act of 2006 is amended by inserting the following subsections after subsection (2):
- “(2A) Without prejudice to the generality of subsections (1) and (2), regulations under this section may provide for the production, with an application for the grant or renewal of an employment permit, to the Minister of—
- (a) in the case of an application for the grant or renewal of an employment permit for the purpose referred to in section 3A(2)(e), information and documents in respect of the contract service agreement concerned,
 - (b) in the case of an application for the grant or renewal of an employment permit for the purposes referred to in paragraphs (d) and (e) of section 3A(2), information and documents relating to—
 - (i) the business carried on by a connected person and a foreign employer and the connection between the connected person and the foreign employer, and
 - (ii) the arrangements made by a connected person, foreign employer and a contractor for accommodation, board and health insurance referred to in section 1A(1)(b)(iii) provided for the foreign nationals,
- and
- (c) evidence as the Minister may reasonably require in order to verify such information or documents.
- (2B) Without prejudice to the generality of subsections (1) and (2), regulations under this section may provide for the production to the Minister, in respect of the grant or renewal of an employment permit for the purpose referred to in section 3A(2)(b), of information, documents and evidence to verify such information, with—
- (a) an application under section 4 for the grant of an employment permit, or
 - (b) an application under section 20 for the grant of a renewal of an employment permit,

that the Minister may reasonably require in order to satisfy himself or herself that the foreign national in respect of whom the application is made is the spouse or the civil partner, or a dependant, of a primary permit holder and satisfies the requirements of section 3C(2) or is the spouse or the civil partner, or a dependant, of a research project researcher and satisfies the requirements of section 3C(3) and in so providing may include information, documents and evidence referred to in paragraphs (a) to (j) of subsection (2C).

- (2C) The information, documents and evidence referred to in subsection (2B) that may be included in regulations under this section are information, documents and evidence verifying such information and documents in respect of—
- (a) the marital status of a foreign national in respect of whom an application for an employment permit for the purpose referred to in section 3A(2)(b) is made and the primary permit holder or, as the case may be, the research project researcher concerned, which may include copies of marriage certificates and other documents providing evidence of such marital status,
 - (b) the civil partnership status of a foreign national in respect of whom an application for an employment permit referred to in section 3A(2)(b) is made and the primary permit holder or, as the case may be, the research project researcher concerned, which may include copies of the civil partnership registration,
 - (c) the legal relationship, in the case of a civil partner who is a party to a legal relationship referred to in section 3(b) of the Act of 2010, of a foreign national in respect of whom an application for an employment permit referred to in section 3A(2)(b) is made and the primary permit holder or, as the case may be, the research project researcher concerned, which may include copies of documents relating to such legal relationship,
 - (d) the nature of the dependence of a foreign national, in respect of whom an application for an employment permit referred to in section 3A(2)(b) is made, on the primary permit holder or, as the case may be, the research project researcher concerned, which may include copies of birth certificates or other documents providing evidence of the nature of such dependence,
 - (e) the identity of the primary permit holder and the grant to him or her of the employment permit for the purpose referred to in section 3A(2)(a),
 - (f) the identity of the research project researcher,
 - (g) the permission—
 - (i) given to a primary permit holder referred to in section 3C(2)(a)

- to be in the State and be in employment in the State,
- (ii) referred to in section 2(10)(d) of the Act of 2003 given to a primary permit holder referred to in section 3C(2)(b), and
 - (iii) given to the foreign national in respect of whom the application for an employment permit for the purpose referred to in section 3A(2)(b) is made, to land in the State and reside in the State,
- (h) in the case of a research project researcher referred to in section 3C(3)(b), the permission referred to in section 2(10)(d) of the Act of 2003 given to him or her and the permission given to the foreign national in respect of whom the application for an employment permit for the purpose referred to in section 3A(2)(b) is made, to land in the State and reside in the State,
- (i) the verification, by the employer of the primary permit holder, that the primary permit holder is in employment with the employer, and
- (j) the verification—
- (i) that the research project researcher is carrying out research in the State pursuant to Directive 2005/71/EC by the person in the State with whom that research is being carried out, and
 - (ii) by the employer of a research project researcher referred to in section 3C(3)(b), of the employment of the research project researcher.
- (2D) Without prejudice to the generality of subsections (1) and (2), regulations under this section may provide for the production to the Minister, with an application under section 4, of information, documents and evidence to verify such information and documents as the Minister may require to satisfy himself or herself—
- (a) that the exchange agreement applies to the foreign national in respect of an application for the grant of an employment permit for the purpose referred to in section 3A(2)(g), and
- (b) that, in respect of the purpose referred to in section 3A(2)(i)—
- (i) the third level institution outside the State confirms—
 - (I) that the foreign national is enrolled as a full-time student at that institution and the name and description of the course of study in which the foreign national is enrolled,
 - (II) the qualifications or skills with which the course of study is wholly or substantially concerned,
 - (III) that the employment in respect of which the application is made is wholly or substantially concerned with the course of study on which the foreign national is enrolled,

- (IV) the requirement referred to in section 3A(2)(i)(iii), and
 - (V) that the foreign national is required to return to that institution at the end of the 12 month period in order to complete that course of study,
- and
- (ii) the person who has made the offer of employment concerned confirms that—
 - (I) the employment is for a period not exceeding 12 months, and
 - (II) the employment is wholly or substantially concerned with the skills or qualifications referred to in section 3A(2)(i).
- (2E) The Minister may, in respect of the notification referred to in section 8(8), make regulations under this section specifying—
- (a) the information and documents to be provided to the Minister that relate to the transfer, and the change of name, that arises pursuant to such transfer, of—
 - (i) the employer or connected person specified in an employment permit referred to in that section, or
 - (ii) the relevant person,
 - (b) the form in which the notification under section 8(8) is to be made, and
 - (c) the procedure for the making of that notification.
- (2F) Without prejudice to subsections (1) and (2), in regulations under this section the Minister may provide for the production to the Minister, with an application for the grant or renewal of an employment permit, of information, documents and evidence to verify such information and documents concerning—
- (a) compliance by a person who makes an offer of employment with an enactment, as the Minister may specify in the regulations, with which compliance is required by such person in order to carry on his or her business,
 - (b) compliance by a contractor, relevant person or connected person with an enactment, as the Minister may specify in the regulations, with which compliance is required by such contractor, relevant person or connected person in order to carry on his or her business,
 - (c) compliance by a person who makes an offer of employment with a requirement, as the Minister may specify in the regulations, with which compliance is required by such person in order to carry on his or her business, and

- (d) without prejudice to paragraphs (a) and (b), compliance by a person who made the offer of employment, a contractor or connected person with the Act of 1997 that is in addition to the documents and evidence that may be specified in regulations under subsections (2)(bc)(i) and (2)(bd),

and the Minister may make different provision for different cases and different classes of cases and different circumstances and different classes of circumstances.

- (2G) In regulations under this section the Minister may provide for the procedure for the payment of any fee that is to accompany an application for the grant or renewal of an employment permit.”.

Amendment of section 30 of Act of 2006

30. Section 30 of the Act of 2006 is amended—

- (a) by substituting the following subsection for subsection (2):

“(2) Different regulations under subsection (1) may be made in respect of different classes of matter the subject of the prescribing concerned and for different circumstances or classes of circumstances in relation to such different matters or different classes of matters.”,

- (b) in subsection (4) by deleting “(other than a regulation made under section 14)”, and

- (c) by deleting subsection (5).

Amendment of section 31 of Act of 2006

31. Section 31 of the Act of 2006 is amended in subsection (1)(c) by substituting “ordinary prepaid post” for “post in a prepaid registered letter”.

Amendment of section 37 of Act of 2006

32. Section 37 of the Act of 2006 is amended—

- (a) in subsection (1)—

- (i) by inserting the following paragraph after paragraph (a):

“(aa) the Garda Síochána;”,

and

- (ii) by inserting “or the Garda Síochána” after “or, as the case may be, the Revenue Commissioners”,

and

- (b) in subsection (2)—

- (i) by inserting the following paragraph after paragraph (a):

- “(aa) the Garda Síochána,”
- and
- (ii) by inserting “or the Garda Síochána” after “or, as the case may be, the Revenue Commissioners”.

Amendment of Schedule 1 to Act of 2006

33. Schedule 1 to the Act of 2006 is amended—

- (a) by substituting “Unfair Dismissals Acts 1977 to 2007” for “Unfair Dismissals Acts 1977 to 2005”, and
- (b) by inserting the following after “Protection of Employees (Part-Time Work) Act 2001”:

“Protection of Employment Act 1977”.

PART 4**AMENDMENT OF ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000****Amendment of Illegal Immigrants (Trafficking) Act 2000**

34. (1) The Illegal Immigrants (Trafficking) Act 2000 is amended by substituting the following section for section 5:

“Judicial review

5. (1) A person shall not question the validity of—

- (a) a notification under section 3(3)(a) of the Immigration Act 1999,
- (b) a notification under section 3(3)(b)(ii) of the Immigration Act 1999,
- (c) a deportation order under section 3(1) of the Immigration Act 1999,
- (d) a refusal under Article 5 of the Aliens Order 1946 (S.R. and O. No. 395 of 1946),
- (e) a refusal under section 4 of the Immigration Act 2004,
- (f) an exclusion order under section 4 of the Immigration Act 1999,
- (g) a recommendation of the Refugee Applications Commissioner under section 13 (as amended by section 7(h) of the Immigration Act 2003) of the Refugee Act 1996,
- (h) a decision of the Refugee Appeals Tribunal under section 16 (as amended by section 7(i) of the Immigration Act 2003) of the Refugee Act 1996,

- (i) a refusal under section 17 (as amended by Regulation 34 of the European Union (Subsidiary Protection) Regulations 2013 (S.I. No. 426 of 2013)) of the Refugee Act 1996,
 - (j) a decision under section 21 (as amended by section 11(1)(o) of the Immigration Act 1999) of the Refugee Act 1996,
 - (k) a removal order under Regulation 20(1) of the European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I. No. 656 of 2006),
 - (l) an exclusion order under Regulation 23(1) of the European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I. No. 656 of 2006),
 - (m) an order under section 3(11) of the Immigration Act 1999,
 - (n) a recommendation of the Refugee Applications Commissioner referred to in Regulation 6(2)(b) of the European Union (Subsidiary Protection) Regulations 2013 (S.I. No. 426 of 2013),
 - (o) a decision of the Refugee Appeals Tribunal referred to in Regulation 8(22)(a) of the European Union (Subsidiary Protection) Regulations 2013 (S.I. No. 426 of 2013), or
 - (p) such other decision, determination, recommendation, refusal or order as may be prescribed by the Minister under subsection (9),

made on or after the date on which *section 34* of the *Employment Permits (Amendment) Act 2014* comes into operation, otherwise than by way of an application for judicial review under Order 84 of Rules of the Superior Courts (S.I. No. 15 of 1986) (hereafter in this section referred to as ‘the Order’).
- (2) An application for leave to apply for judicial review under the Order in respect of any of the matters referred to in subsection (1) (hereafter in this section referred to as an ‘application’) shall be made within the period of 28 days commencing on the date on which the person was notified of the decision, determination, recommendation, refusal or making of the order concerned unless the High Court considers that there is good and sufficient reason for extending the period within which the application shall be made, and such leave shall not be granted unless the High Court is satisfied that there are substantial grounds for contending that the decision, determination, recommendation, refusal or order is invalid or ought to be quashed.
- (3) Notwithstanding the period referred to in subsection (2), rules of court may require an applicant to lodge or file with the High Court, such number of days (which shall not exceed 4 days) as may be specified in the rules before the date on which the application is to be heard, all pleadings and written submissions relating to the application.

- (4) Where the High Court considers that an application involves a point of law of exceptional public importance or that, having regard to the likely impact of the proceedings on the respondent or another party, the issues arising or any other matter, it is in the interests of justice to do so, it may—
 - (a) direct that the application should be heard on notice,
 - (b) adjourn the application for such period (which shall not be less than 28 days) and on such terms as it may direct,
 - (c) give such directions as it thinks fit as to the service on the intended respondent and on any other person of notice of the application and copies of any documents lodged under rules of court referred to in subsection (3), and the mode of, and the time allowed for, such service, and
 - (d) give such other direction or make such order as it considers appropriate.
- (5) The High Court, having considered an application—
 - (a) shall pronounce its determination of the application in public, and
 - (b) where it grants an application for leave to apply for judicial review in respect of a matter referred to in subsection (1), shall state, in respect of that matter, the relief granted and the grounds upon which that relief is granted.
- (6)
 - (a) The determination of the High Court of an application for leave to apply for judicial review to which this section applies, or of an application for such judicial review, shall be final and no appeal shall lie from the decision of the High Court to the Supreme Court in either case except with the leave of the High Court which leave shall only be granted where the High Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.
 - (b) This subsection shall not apply to a determination of the High Court in so far as it involves a question as to the validity of any law having regard to the provisions of the Constitution.
- (7) The High Court shall give such priority as it reasonably can, having regard to all the circumstances, to the disposal of proceedings in that Court under this section.
- (8) The Superior Court Rules Committee may make rules to facilitate the giving of effect to subsection (7).
- (9)
 - (a) The Minister may prescribe any decision, determination, recommendation, refusal or order—

- (i) made under a relevant enactment or, as the case may be, an instrument made under a relevant enactment, and
- (ii) concerning the entry into, presence in, removal from or exclusion from the State of a person, the conditions under which a person may be present in the State or the entitlement of a person to international protection in the State,

to be a decision, determination, recommendation, refusal or order to which subsection (1) applies.

- (b) In exercising his or her power under paragraph (a), the Minister shall have regard to the need for the fair and efficient administration of the relevant enactment concerned and the interests of justice.

- (c) In this subsection—

‘international protection’ means protection in the State either as—

- (i) a refugee, within the meaning of section 2 of the Refugee Act 1996, or
- (ii) a person eligible for subsidiary protection, within the meaning of the European Union (Subsidiary Protection) Regulations 2013 (S.I. No. 426 of 2013);

‘relevant enactment’ means—

- (i) the Aliens Act 1935,
- (ii) the Refugee Act 1996,
- (iii) the Immigration Act 1999,
- (iv) the Immigration Act 2003,
- (v) the Immigration Act 2004,
- (vi) the European Communities (Free Movement of Persons) Regulations 2006 and 2008,
- (vii) the European Union (Subsidiary Protection) Regulations 2013 (S.I. No. 426 of 2013), and
- (viii) any Act, or instrument made under an Act, giving effect to Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013¹.

- (2) Notwithstanding the amendment of section 5 of the Illegal Immigrants (Trafficking) Act 2000 by *subsection (1)*, that section, before such amendment, shall continue to apply as if that amendment had not been made, in relation to—

- (a) a decision, determination, recommendation, refusal or order referred to in subsection (1) of that section made before the date on which this section comes

¹ OJ L180 31, 29.6.2013, p. 31

into operation, and

- (b) an application for leave to apply for judicial review, or an application for such judicial review, in respect of any of the matters specified in *paragraph (a)* that has been made before the date on which this section comes into operation.

PART 5

AMENDMENT OF IMMIGRATION ACT 2004 AND ALIENS ORDER 1946

Amendment of Immigration Act 2004

35. The Immigration Act 2004 is amended—

- (a) in section 1, by deleting the definitions of “registration district” and “registration officer” and substituting the following:

“ ‘registration district’ means a registration district prescribed under section 9A (inserted by *section 35* of the *Employment Permits (Amendment) Act 2014*);

‘registration officer’, subject to subsection (4) of that section, means a registration officer appointed under section 9A (inserted by *section 35* of the *Employment Permits (Amendment) Act 2014*);”,

- (b) in section 9(6), by deleting paragraph (a),

- (c) by inserting the following after section 9:

“Registration districts and registration officers

9A. (1) The Minister may, for the purpose of the efficient and effective administration of this Act, prescribe an area (which area may consist of the whole or any part of the State) to be a registration district.

- (2) The Minister may by order appoint a person, being—

- (a) a member of the Garda Síochána not below the rank of Superintendent, or

- (b) an officer of the Minister, not below the rank of assistant principal officer,

to be the registration officer of the registration district specified in the order.

- (3) A registration officer may delegate any of his or her functions (other than this power of delegation) under this Act to—

- (a) in the case of a registration officer to whom subsection (2)(a) applies, a member of the Garda Síochána, and

- (b) in the case of a registration officer to whom subsection (2)(b) applies, an officer of the Minister.

- (4) Where a function of a registration officer is delegated under subsection (3)—
- (a) that function may be performed, under the general control of the registration officer concerned, by the person to whom it is delegated,
 - (b) the delegation does not preclude the registration officer from performing the function delegated, and
 - (c) a reference, in a provision of this Act relating to the function, to a registration officer includes a reference to the person to whom the function has been delegated.”,

and

- (d) by deleting section 14 and substituting the following:

“Provision for particular non-nationals

14. (1) The Minister, an immigration officer or a member of the Garda Síochána may, by notice in writing, require a non-national who does not have permission to be in the State to comply with any or all of the following conditions:

- (a) that he or she reside or remain in a particular district or place in the State;
- (b) that he or she report at specified intervals to—
 - (i) an officer of the Minister, an immigration officer or a member of the Garda Síochána specified in the notice, or
 - (ii) the registration officer of the registration district in which he or she is resident;
- (c) where, and only for so long as, it is reasonably necessary to facilitate his or her removal from the State in accordance with any enactment or other law, that he or she surrender his or her passport and any other travel document that he or she holds,

and the non-national shall comply with the requirement.

- (2) A non-national who contravenes this section shall be guilty of an offence.
- (3) Where a non-national who is complying with a notice under subsection (1)(c), as a result of that compliance, fails to comply with the requirements of section 12(1) (as amended by section 34 of the Civil Law (Miscellaneous Provisions) Act 2011)—
 - (a) his or her compliance with the notice shall constitute reasonable cause for the purposes of section 12(2)(b), and

- (b) in proceedings referred to in section 12(2)(b), a certificate signed by the Minister, an immigration officer or a member of the Garda Síochána stating that the non-national concerned was, at the time of the alleged offence under section 12, in compliance with the notice, shall, in the absence of evidence to the contrary, be proof of that fact.
- (4) In this section, ‘enactment’ means—
- (a) an Act of the Oireachtas,
 - (b) a statute that was in force in Saorstát Éireann immediately before the date of the coming into operation of the Constitution and that continues in force by virtue of Article 50 of the Constitution, or
 - (c) an instrument made under—
 - (i) an Act of the Oireachtas, or
 - (ii) a statute referred to in paragraph (b).”.

Amendment of Aliens Order 1946

36. The Aliens Order 1946 (S.R. and O. No. 395 of 1946) is amended—

- (a) by substituting the following definitions for the definitions of “registration district” and “registration officer”:

“the expression ‘registration district’ has the same meaning as it has in section 1 (as amended by *section 35* of the *Employment Permits (Amendment) Act 2014*) of the Immigration Act 2004;

the expression ‘registration officer’ has the same meaning as it has in section 1 (as amended by *section 35* of the *Employment Permits (Amendment) Act 2014*) of the Immigration Act 2004;”

and

- (b) by revoking Article 11(6)(a).

PART 6

MISCELLANEOUS

Amendment of Taxes Consolidation Act 1997

37. The Taxes Consolidation Act 1997 is amended—

- (a) by inserting the following section after section 124:

“Tax treatment of payments made pursuant to an order under section 2B of Employment Permits Act 2003

124A.(1) Payments made pursuant to an order under section 2B of the

Employment Permits Act 2003 shall be regarded as—

- (a) profits or gains accruing from an office or employment (and accordingly tax under Schedule E shall be charged on those payments, and tax so chargeable shall be computed under section 112(1)), and
- (b) emoluments to which Chapter 4 of Part 42 applies.”,

and

- (b) in section 192A, by inserting the following after subsection (5):

“(5A) This section shall not apply to payments made pursuant to an order under section 2B of the Employment Permits Act 2003.”.

Repeals

38. The following provisions of the Act of 2006 are repealed:

- (a) section 4(4);
- (b) section 7;
- (c) section 8(3);
- (d) section 10(1);
- (e) section 35(2).

Savings and transitional provisions

39. (1) An employment permit that is in force immediately before the coming into operation of this section shall, after such coming into operation, continue in force, for the period for which it was granted or last renewed and the Act of 2006 as amended by this Act shall apply to such permits.
- (2) In the case of an employment permit continued in force under *subsection (1)* that was granted under section 8 of the Act of 2006 and permits the employment in the State of the foreign national in an economic sector specified in the employment permit, references to the employer of a foreign national to whom such employment permit was granted shall, until such permit expires or is revoked or renewed, be to the employer for the time being employing that foreign national pursuant to that employment permit.
 - (3) An employment permit continued in force under *subsection (1)* may be revoked and renewed under the Act of 2006 as amended by this Act.
 - (4) Regulations made under section 14, 29 or 30 of the Act of 2006 that are in force immediately before the coming into operation of *section 17, 29 or 30* as the case may be, shall continue in force after such coming into operation as if made under section 14, 29 or 30 as amended by *section 17, 29 or 30* as appropriate and such regulations may be amended or revoked accordingly.

- (5) Where, before the coming into operation of this section an application has been made for the grant of an employment permit but a decision in respect of the application has not been made by the Minister, then the application (other than an application referred to in *subsection (6)*) shall be treated as if it were an application for an employment permit under the Act of 2006 as amended by this Act and shall be dealt with accordingly.
- (6) Where, by virtue of section 10(1) of the Act of 2006, section 10 of that Act does not apply to an employment permit for which an application is made before the coming into operation of this section and a decision in respect of the application has not been made by the Minister, then the application shall be treated as if it were an application for an employment permit under the Act of 2006 as amended by this Act other than in so far as the amendments relate to the repeal of section 10(1) and the insertion of section 10A of the Act of 2006 and shall be dealt with accordingly.
- (7) Where evidence has been given through a live television link in accordance with section 35 of the Act of 2006 and has been video recorded in accordance with section 35(2) of the Act of 2006, the repeal of section 35(2) of the Act of 2006 by *section 38(e)* shall not affect the validity of such video recording in respect of the proceedings concerned where such proceedings have not been finally determined before the coming into operation of *section 38(e)*.