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Number 16 of 2006

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**EMPLOYMENT PERMITS ACT 2006**

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*Number 16 of 2006*

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**EMPLOYMENT PERMITS ACT 2006**

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AN ACT TO PROVIDE FOR THE GRANT OF EMPLOYMENT PERMITS TO CERTAIN FOREIGN NATIONALS FOR THE PURPOSE OF PERMITTING THEM TO BE IN EMPLOYMENT IN THE STATE, TO ENABLE THE MINISTER FOR ENTERPRISE, TRADE AND EMPLOYMENT TO MAKE, HAVING HAD REGARD TO CERTAIN CRITERIA, REGULATIONS IMPOSING A LIMIT ON THE NUMBER OF SUCH PERMITS THAT MAY BE GRANTED IN A PARTICULAR PERIOD AND IMPOSING CERTAIN OTHER RESTRICTIONS WITH REGARD TO THE GRANT OF SUCH PERMITS, TO OTHERWISE REGULATE THE EMPLOYMENT OF CERTAIN FOREIGN NATIONALS IN THE STATE AND PROVIDE CERTAIN PROTECTIONS FOR FOREIGN NATIONALS IN EMPLOYMENT IN THE STATE, TO AMEND THE EMPLOYMENT PERMITS ACT 2003 AND TO PROVIDE FOR RELATED MATTERS.

[23rd June, 2006]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act—

Interpretation.

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

“application” means an application under *section 4*;

“application by a foreign national” shall be construed in accordance with *section 4(4)*;

“citizen” means an Irish citizen within the meaning of the Irish Nationality and Citizenship Act 1956;

“economic sector” means a sector of the economy concerned with a specific economic activity requiring specific qualifications, skills or knowledge;

“employer” means the employer (as defined in the Act of 2003) who—

- (a) employs a foreign national pursuant to an employment permit, or

- (b) in the case of a permit granted on foot of an application by a foreign national, for the time being employs a foreign national pursuant to an employment permit;

“employment permit” means an employment permit granted under *section 8*;

“employment regulation order” means an order under *section 48* of the Industrial Relations Act 1990;

“holder”, in relation to an employment permit, means the foreign national to whom it has been granted;

“Member State of the EEA” means a state that is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as amended for the time being;

“Minister” means the Minister for Enterprise, Trade and Employment;

“national minimum hourly rate of pay” has the meaning assigned to it by the National Minimum Wage Act 2000;

“foreign national” has the meaning assigned to it by the Act of 2003;

“foreign national concerned” shall be construed in accordance with *section 5(1)*;

“prescribed” means prescribed by regulations made by the Minister under this Act;

“public interest” includes—

- (a) public order and the interests of national security,
- (b) public health and safety, and
- (c) the need to protect the labour market;

“registered employment agreement” has the meaning assigned to it by *section 25* of the Industrial Relations Act 1946;

“remuneration”, in relation to an employee, means—

- (a) any consideration, whether in cash or in kind, which the employee receives, directly or indirectly, from the employer in respect of the employment, and
- (b) any amounts the employee will be entitled to receive on foot of any pension scheme or arrangement.

(2) For the purposes of this Act, a person (the “first person”) is not, by virtue of the following contract with another (the “second person”), an employer of the second person.

(3) That contract is one which—

- (a) provides that the second person is to do work or perform a service for a third person (whether the third person is a party to the contract or not), and

- (b) has been entered into by the first person in the course of carrying on the business of an employment agency within the meaning of the Employment Agency Act 1971,

whether the contract is express or implied and if express, whether it is oral or in writing.

2.—Section 2 of the Act of 2003 is amended by substituting the following for subsections (1) and (2):

Amendment of section 2 of Act of 2003.

“(1) A foreign national shall not—

- (a) enter the service of an employer in the State, or
- (b) be in employment in the State,

except in accordance with an employment permit granted by the Minister under *section 8* of the *Employment Permits Act 2006* that is in force.

(1A) Subsection (1)(b) applies whether the employment concerned results from—

- (a) the foreign national’s being employed in the State by a person,
- (b) his or her being employed by a person outside the State (the ‘contractor’) to perform duties in the State, the subject of an agreement between the contractor and another person, or
- (c) any other arrangement.

(2) A person shall not employ a foreign national in the State except in accordance with an employment permit granted by the Minister under *section 8* of the *Employment Permits Act 2006* that is in force.

(2A) Where a person (the ‘first person’) enters into an agreement with another person (the ‘second person’) whereby the second person agrees to cause, or arrange for, services (whether of a specific or general kind) to be rendered on behalf of the first person and either—

- (a) it is customary in the trade or business in which the agreement is entered into, or
- (b) the circumstances in which the agreement is entered into are such that it must reasonably have been in the contemplation of the parties to the agreement,

that the means to be used by the second person for complying with the agreement would consist of or involve, in whole or part, the services being rendered by persons employed by a person other than the second person (and whether or not that person is in a contractual relationship with the second person) then, if those means are used, it shall be the duty of the first person to take the following steps.

(2B) Those steps are all such steps as are reasonable to ensure, in so far as one or more of the persons so employed is or are a foreign national or foreign nationals employed in the

State for the purpose of rendering those services, that that foreign national or each of those foreign nationals is employed in accordance with an employment permit granted by the Minister under *section 8* of the *Employment Permits Act 2006* that is in force.”.

Further amendment  
of Act of 2003.

3.—The Act of 2003 is further amended—

(a) in subsection (3) of section 2—

(i) by inserting, after “subsection (1) or (2)”, “or fails to take the steps specified in subsection (2B)”, and

(ii) by inserting in paragraph (b), after “subsection (2)”, “or a failure to take the steps specified in subsection (2B)”,

(b) by substituting the following subsections for subsections (10) and (11) of section 2:

“(10) Without prejudice to the other provisions of this Act, this section does not apply to a foreign national—

(a) in respect of whom a declaration under section 17 of the Refugee Act 1996 is in force,

(b) who is entitled to enter the State pursuant to section 18 or 24 of that Act,

(c) who is entitled to enter the State and to be in employment in the State pursuant to the treaties governing the European Communities (within the meaning of the European Communities Acts 1972 to 2003), or

(d) who is permitted to remain in the State by the Minister for Justice, Equality and Law Reform and who is in employment in the State pursuant to a condition of that permission that the person may be in employment in the State without an employment permit referred to in subsection (1),

but this section, subject to section 2A and any order under section 3A(1) for the time being in force, does apply to a foreign national who is a national of the Republic of Bulgaria or Romania (including at a time subsequent to the accession of the Republic of Bulgaria or Romania to the European Union).

(11) The Minister, when determining which applications for employment permits should be granted, shall give preference to each of the following, namely—

(a) applications in respect of nationals of a state in relation to which an order under section 3 is in force, and

(b) applications in respect of nationals of the Republic of Bulgaria or Romania to whom this section for the time being applies.”.

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

“Supplemental provisions in relation to section 2. 2A.—(1) Notwithstanding subsection (10) of that section, section 2 does not apply to—

(a) a national of the Republic of Bulgaria or Romania who falls within the second or third subparagraph of paragraph 2 of Annex VI of the Treaty of Accession with the Republic of Bulgaria and Romania,

(b) a person, whatever his or her nationality, who falls within paragraph 8 of that Annex.

(2) Irrespective of whether the person falls within the second or third subparagraph of paragraph 2 of Annex VI of the Treaty of Accession with the Republic of Bulgaria and Romania, section 2 does not apply to a national of the Republic of Bulgaria or Romania on and from the expiration of—

(a) unless paragraph (b) applies, 5 years from the date that the Republic of Bulgaria and Romania become members of the European Union (the ‘accession date’), or

(b) if at, or during the 2 months before, the end of the period of 5 years referred to in paragraph (a) an order under subsection (1) of section 3A is revoked by a subsequent order under that subsection, 7 years from the accession date.

(3) In this section ‘Treaty of Accession with the Republic of Bulgaria and Romania’ means the Treaty concerning the accession of the Republic of Bulgaria and Romania to the European Union signed at Luxembourg on the 25th day of April 2005.”,

and

(d) by inserting the following sections after section 3:

“Non-application of section 2 to nationals of Bulgaria and Romania. 3A.—(1) Notwithstanding section 2(10), the Minister may, subject to subsection (2), make an order providing that section 2 shall apply neither to nationals of the Republic of Bulgaria nor to nationals of Romania and for so long as such an order remains in force that section shall not apply to such nationals accordingly.

(2) The Minister shall not make an order under subsection (1) at a particular time unless, having regard to the conditions of the labour market in the State at that time, the Minister is of the opinion—

- (a) that it is desirable in the interests of the proper functioning of the economy to make such an order, and
- (b) that, in the 24 months following the making of the order, employment in the State is likely to become available on a continuous basis for nationals of the states referred to in subsection (1) contemplating entry into employment in the State.

(3) An order under subsection (1) may not be revoked by a subsequent order under that subsection unless, in the opinion of the Minister, the labour market, at the time of the making of the second-mentioned order, is experiencing a disturbance or is likely thereafter to experience a disturbance.

(4) Notwithstanding section 2(10), where an order under subsection (1) is revoked by a subsequent order under that subsection section 2 shall not apply to a national of the Republic of Bulgaria or Romania if he or she has been in employment in the State for a period of not less than 6 weeks immediately before the commencement of the second-mentioned order and has been in receipt of remuneration for such employment.

(5) In this section—

‘disturbance’ shall be construed in accordance with the Treaty of Accession with the Republic of Bulgaria and Romania;

‘labour market’ shall be construed in accordance with the Treaty of Accession with the Republic of Bulgaria and Romania;

‘Treaty of Accession with the Republic of Bulgaria and Romania’ has the same meaning as it has in section 2A.

Non-application of certain requirement of *Employment Permits Act 2006.*

3B.—(1) The Minister may, subject to subsection (2), by order provide that *section 10* of the *Employment Permits Act 2006* shall not apply to an application for an employment permit in respect of a national of the Republic of Bulgaria or Romania

and for so long as such an order remains in force—

- (a) that *section 10* shall not apply to such an application accordingly, and
- (b) the other provisions of the *Employment Permits Act 2006* shall be construed and have effect subject to the order,

but without prejudice to any regulations for the time being in force under *section 14* of that Act.

(2) The Minister shall not make an order under subsection (1) at a particular time unless, having regard to the conditions of the labour market in the State at that time, the Minister is of the opinion that it is desirable in the interests of the proper functioning of the economy to make such an order.”.

4.—(1) An application for the grant of an employment permit in respect of the employment in the State of a particular foreign national may be made, other than in a case referred to in *subsection (2)*, by—

- (a) the person proposing to employ the foreign national, or
- (b) subject to *subsection (3)*, the foreign national.

(2) In a case falling within *section 2(1A)(b)* or *(c)* of the Act of 2003, such an application may be made by, as appropriate—

- (a) the contractor referred to in that subsection, or
- (b) any person party to the arrangement concerned relating to the foreign national.

(3) A foreign national may not make an application under this section in respect of his or her employment in the State unless an offer of employment in the State has been made in writing to him or her within such period preceding the application as may be prescribed.

(4) An application under this section by a foreign national in respect of his or her employment in the State is referred to subsequently in this Act as an “application by a foreign national”.

5.—(1) In all cases, irrespective of who the applicant for the grant of the permit under *section 8* is—

- (a) an application for the grant of an employment permit under *section 8* shall be expressed to be an application for the grant under that section of such a permit to the person proposed to be employed pursuant to the permit (in this Act referred to as the “foreign national concerned”), and

Application for employment permit.

Foreign national is grantee of permit, general provisions as respects applications, etc.

(b) a grant under *section 8* of an employment permit shall be to the foreign national concerned.

(2) An application for an employment permit shall be in writing and be accompanied by such fee as may be prescribed.

Application (other than by a foreign national) for permit — information to be provided.

6.—An application for an employment permit (other than an application by a foreign national) 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, of the employment, and the duration of the employment,
- (b) provide information in respect of the qualifications, skills or experience that are required for the employment concerned,
- (c) provide information and, where appropriate, any relevant documents in respect of the qualifications, skills or experience of the foreign national concerned,
- (d) specify the place at or in which the employment concerned is to be carried out,
- (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 relating to the permission granted to him or her to land in the State,

and

- (g) provide such other information as may be prescribed, or which the Minister may request and which, in the Minister’s opinion, might materially assist in the making of a decision on the application.

Application by foreign national — information to be provided.

7.—An application by a foreign national shall—

- (a) provide such information and documents concerning the foreign national’s qualifications, skills and experience as the Minister may request,
- (b) 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,

- (c) where he or she is in the State at the time of the application, provide information and documents relating to the permission granted to him or her to land in the State,
- (d) provide such information and documents concerning the offer of employment referred to in *section 4(3)* as the Minister may request,
- (e) provide information in respect of the qualifications, skills or experience that are required for the employment referred to in *section 4(3)*,
- (f) provide a full and accurate description of the employment that will result if that offer of employment is accepted (the “employment concerned”) and the terms and conditions, including the hours of work in each week of the employment, and the duration of the employment,
- (g) specify the place at or in which the employment concerned is to be carried out,
- (h) specify the proposed remuneration and any deductions, where agreed, for board and accommodation or either of them in respect of the employment concerned, and
- (i) provide such other information as may be prescribed, or which the Minister may request and which, in the Minister’s opinion, might materially assist in the making of a decision on the application.

8.—(1) Subject to *sections 10, 12 and 14* and *section 2(11)* of the Act of 2003, the Minister may, on application made to him or her, grant an employment permit.

Grant of employment permit by Minister.

(2) The employment permit so granted shall, save in a case falling under *subsection (3)*, operate to permit the employment in the State (being the employment specified in the application) of the foreign national concerned by—

- (a) the applicant, or
- (b) in the case of an application made under *section 4(2)*, the other relevant person.

(3) In the case of an application by a foreign national, the employment permit so granted shall operate to permit the employment in the State of the foreign national concerned in an economic sector specified in the permit.

(4) An employment permit shall specify the period for which the foreign national concerned may be employed in the State pursuant to the permit and the permit shall, subject to the provisions of this Act, remain in force for that period accordingly.

(5) The period that shall be specified in the employment permit for that purpose shall not exceed 2 years beginning on the date of the grant of the permit or such longer period as may be specified by regulations under *section 14*.

Original of permit to be issued to foreign national, information to be included in permit, etc.

9.—(1) The Minister shall cause—

- (a) the original of an employment permit granted under *section 8* to be issued to the foreign national concerned, and
- (b) a copy of the permit so granted (unless granted on foot of an application by a foreign national) to be issued to the person who will employ the foreign national concerned pursuant to the permit.

(2) An employment permit shall include the following information:

- (a) if the permit has been granted other than on foot of an application by a foreign national, a description of the employment in respect of which the permit has been granted and a statement of the remuneration and any deductions, where agreed, for board and accommodation or either of them in respect of the employment;
- (b) if the permit has been granted on foot of an application by a foreign national, a description of the economic sector in which the foreign national concerned is permitted, pursuant to the permit, to be employed in the State;
- (c) a statement of the requirement under the National Minimum Wage Act 2000 that the foreign national concerned be paid the national minimum hourly rate of pay by his or her employer and the effect of *subsections (1), (3) and (4) of section 23*; and
- (d) a statement that a new application for the grant of an employment permit may be made in respect of the foreign national concerned subject to, and in accordance with, the *Employment Permits Acts 2003 and 2006*.

(3) An employment permit shall include or be accompanied by a summary of the principal employment rights of the employee.

(4) *Subsections (2) and (3)* are in addition to any other provision of this Act, or any provision of regulations under *section 29(2)*, specifying matters or information to be included in an employment permit.

Restriction on grant of employment permit.

10.—(1) This section applies to an employment permit other than one granted on foot of an application by a foreign national.

(2) An employment permit to which this section applies shall not be granted unless the applicant satisfies the Minister that—

- (a) he or she has taken all such steps as were reasonably open to him or her to offer the employment in respect of which the application is made to a citizen or a foreign national referred to in any of paragraphs (a) to (d) of *section 2(10)* of the Act of 2003 or to whom *section 3* of that Act applies, and
- (b) at the time of the application, more than 50 per cent of the employees of the applicant are nationals of any of the following, namely—

- (i) one or more Member States of the EEA, or
- (ii) the Swiss Confederation, or
- (iii) a combination of any of the states referred to in *sub-paragraphs (i) and (ii)*.

(3) This section is—

- (a) in respect of *subsection (2)(a)*, supplementary to Council Regulation (EEC) No. 1612/68 of 15 October 1968 on freedom of movement for workers within the Community, and
- (b) in addition to the other requirements that this Act specifies must be satisfied with respect to the grant of an employment permit and is without prejudice to—
  - (i) any regulations for the time being in force under *section 14*, and
  - (ii) section 2(11) of the Act of 2003.

**11.—(1)** In considering an application for an employment permit, the Minister shall have regard to—

Consideration by Minister of application for employment permit.

- (a) the extent to which a decision to grant the permit would be consistent with economic policy for the time being of the Government,
- (b) whether the skills or qualifications specified to be required for the employment to which the application relates, that is to say, specified to be so required by—
  - (i) the applicant, or
  - (ii) in the case of an application by a foreign national, the person who has made the offer referred to in *section 4(3)* to the foreign national,

are necessary for, or relevant to, that employment,

- (c) such of the other matters referred to in *section 6* or, as the case may be, *section 7* as are relevant to the application, and
- (d) if any of *paragraphs (a) to (j)* of *section 12(1)* fall to be applied in relation to the application, any matters that, in the opinion of the Minister, are material to the application of such a paragraph or paragraphs.

(2) In considering an application for an employment permit, the Minister may take such steps as he or she considers necessary to establish the accuracy or authenticity of the information provided in respect of the application.

(3) This section is subject to the provisions of any regulations under *section 14* that apply in relation to the application concerned.

(4) Accordingly, nothing in this section authorises the Minister to make a decision on an application for a grant of an employment

permit which he or she would not be authorised to make by reason of the operation of those regulations.

Refusal to grant employment permit. **12.**—(1) The Minister may refuse to grant an employment permit if—

- (a) the applicant for the permit (the “applicant”) has failed to provide any information required by or under this Act in respect of the application for the permit (the “application”),
- (b) the applicant has failed to furnish the prescribed fee with the application,
- (c) the applicant has been convicted of an offence under this Act or the Act of 2003, or an enactment specified in *Schedule 1*, during the period of 5 years ending on the date of the application,
- (d) in the opinion of the Minister, the granting of the permit would be manifestly inconsistent with economic policy for the time being of the Government,
- (e) the following 2 conditions are satisfied, namely—
  - (i) a period (being a period ending on the date of the application) of less than 12 months has elapsed since the foreign national concerned first commenced employment in the State, and
  - (ii) there is already in force, on the date of the application, an employment permit granted to the foreign national,
- (f) in the opinion of the Minister, it is in the public interest to do so,
- (g) a material misrepresentation in respect of the application has been made by the applicant,
- (h) a forged or fraudulent document has been submitted in respect of the application,
- (i) the foreign national concerned lands or has landed, or is or has been, in the State without permission,
- (j) the remuneration to be paid to the foreign national concerned in respect of the proposed weekly hours of work (whatever they may be) is less than the standard working week remuneration, or
- (k) the skills or qualifications specified to be required for the employment concerned, that is to say, specified to be so required by—
  - (i) the applicant, or
  - (ii) in the case of an application by a foreign national, the person who made the offer referred to in *section 4(3)* to the foreign national,

are not necessary for, or relevant to, that employment.

(2) *Subsection (1)* is without prejudice to *section 10(2)* and *subsection (3)*.

(3) The Minister shall refuse to grant an employment permit if the granting of it would contravene regulations under *section 14* in force at the time the decision on the application for the permit is made.

(4) Where the Minister refuses to grant an employment permit, the Minister shall notify, in writing, the applicant of the decision and the reasons for it.

(5) Where an application for an employment permit is refused, the Minister shall return to the applicant such portion, as may be prescribed, of the fee that has been submitted in respect of the application.

(6) In this section “standard working week remuneration” means the weekly remuneration that the foreign national concerned would receive if he or she were to work 39 hours each week at—

- (a) the national minimum hourly rate of pay, or
- (b) if the hourly rate of pay provided for in an employment regulation order or a registered employment agreement that applies to the employment concerned is greater than the national minimum hourly rate of pay, the hourly rate of pay provided for in that order or agreement.

**13.—**(1) A decision of the Minister to refuse to grant an employment permit may, in accordance with regulations under *section 29(3)*, be submitted by the applicant therefor to the Minister for review under this section. Review of decision to refuse permit.

(2) Such a submission of a decision for review shall be made within 21 days from the date the decision is notified under *section 12* to the applicant.

(3) A review under this section of a decision shall be carried out by an officer of the Minister appointed by the Minister for the purpose; the person so appointed—

- (a) shall not be the person who made the decision, and
- (b) shall be of a grade senior to the grade of the person who made the decision.

(4) The person so appointed, having afforded the person who submitted the decision for review 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 in writing the second-mentioned person 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.

Regulations governing grant of permits, etc.

14.—(1) The Minister may, having regard to, and only to, the matters specified in *section 15*, make regulations specifying, for a period not exceeding 2 years (“the appropriate period”), such one or more of the following as the Minister considers appropriate, namely:

- (a) the maximum number of employment permits that may be granted during the appropriate period;
- (b) the maximum number of employment permits that may be granted during the appropriate period in respect of a specified economic sector;
- (c) categories of employment (by reference to the economic sector or sectors into which they fall) which—
  - (i) may be the subject of the grant of an employment permit during the appropriate period, or
  - (ii) shall not be the subject of the grant of an employment permit during that period;
- (d) the minimum amount of remuneration (being an amount greater than that referred to in *section 12(1)(j)*) that shall be payable in respect of an employment as a condition for the grant of an employment permit in respect of it;
- (e) the qualifications or skills that a foreign national, in respect of whom, or by whom, an application for an employment permit is made during the appropriate period, is required to possess in order for a grant of the permit to be made;
- (f) for the purposes of *section 8(5)*, in relation to an employment permit granted during the appropriate period on foot of an application by a foreign national, a period longer than 2 years beginning on the date of the grant of the permit.

(2) To the extent that the Minister considers appropriate, but having regard to, and only to, the matters specified in *section 15*, regulations under *subsection (1)* may also include either or both of the following:

- (a) a provision specifying that the limitations or requirements falling under *subsection (1)(a), (b), (c), (d) or (e)* and provided for in the regulations in relation to the grant of employment permits in the period concerned shall apply, or shall apply with specified modifications, in relation to the renewal under *section 20* of employment permits in that period;
- (b) a provision specifying, for the purposes of *section 20(3)*, in relation to an employment permit which is renewed in the period concerned, a period longer than 3 years.

(3) For so long as regulations under *subsection (1)* remain in force during the appropriate period to which the regulations relate, the relevant powers of the Minister under this Act in relation to employment permits shall be exercised, during that period, subject to, and in accordance with, those regulations.

(4) To avoid doubt, during a period such as is referred to in *subsection (3)*, the preference required to be given by *section 2(11)* of

the Act of 2003 to an application in respect of a foreign national referred to in that provision shall only be given if an employment permit, the subject of the application, could, consistently with the regulations referred to in *subsection (3)*, be granted to the foreign national.

**15.—(1)** The matters mentioned in *subsections (1) and (2) of section 14* are—

Criteria to which regard is to be had in making regulations under *section 14*.

- (a) the qualifications or skills that, in the opinion of the Minister, are required for economic and social development and competitiveness in the period to which the regulations concerned under *section 14* will relate (the “relevant period”),
- (b) the economic sector or sectors that, in the opinion of the Minister, will be involved in the achievement of such economic and social development and competitiveness,
- (c) the qualifications or skills that, in the opinion of the Minister, are required for the proper functioning of such economic sector or sectors in the relevant period, and
- (d) if, in the opinion of the Minister, there is likely to be, during the relevant period, a shortage or surplus in respect of qualifications or skills falling within *paragraph (c)*, an estimate as best the Minister may make (and which estimate the Minister is, by virtue of this section, required to make) of what the extent of that shortage or surplus will be.

(2) References in *subsection (1)* to qualifications or skills are references to qualifications or skills of employees.

**16.—(1)** The Minister may revoke an employment permit if—

Revocation of employment permit.

- (a) in the opinion of the Minister, the holder of the permit or the employer has not complied with *section 19(1) or (2)*,
- (b) the holder of the permit or the employer has been convicted of an offence under this Act,
- (c) in the opinion of the Minister, it was obtained by fraud or misrepresentation,
- (d) in the opinion of the Minister, any information provided in respect of the application for it was false or misleading in a material respect,
- (e) the employment permit was granted by virtue of an administrative error, or
- (f) in the opinion of the Minister, it is in the public interest to do so.

(2) Where the Minister decides to revoke an employment permit, he or she shall notify in writing the holder of the permit and the employer of—

- (a) the decision,

- (b) the reasons for it, and
- (c) the fact that either or both of them may, in accordance with regulations under *section 29(3)* and within 28 days from the date of notification of the decision, submit the decision to the Minister for review under *section 17*.

(3) Subject to *subsection (5)* a decision to revoke an employment permit under this section shall, if such decision has not been submitted to the Minister for review under *section 17* in accordance with that section, take effect on the expiration of the period mentioned in *subsection (2)(c)*.

(4) Where such a decision is submitted to the Minister for review under *section 17* in accordance with that section, the revocation of the employment permit concerned shall, subject to *subsection (5)*, not take effect until the review is determined (and the decision is confirmed on that review) or the submission of the decision for review is withdrawn.

(5) Where, in the opinion of the Minister, the circumstances concerning the revocation of an employment permit are such that, having regard to the public interest, it is appropriate that the decision to revoke the permit should take effect immediately and he or she states that opinion in the notification of the decision under *subsection (2)*, then the revocation shall take effect immediately on that notification.

Review of decision to revoke permit.

**17.—(1)** A decision of the Minister to revoke an employment permit, may, in accordance with regulations under *section 29(3)*, be submitted by the holder of the permit or the employer to the Minister for review under this section.

(2) Such a submission of a decision for review shall be made within 28 days from the date the decision is notified under *section 16(2)* to the person.

(3) A review under this section of a decision shall be carried out by an officer of the Minister appointed by the Minister for the purpose; the person so appointed—

- (a) shall not be the person who made the decision, and
- (b) shall be of a grade senior to the grade of the person who made the decision.

(4) The person so appointed, having afforded the person who submitted the decision for review 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 in writing the second-mentioned person of the reasons for the confirmation), or
- (b) cancel the decision.

(5) If a decision to revoke an employment permit—

- (a) has, by virtue of *section 16(5)*, taken effect on the notification of the decision to the holder, and
- (b) is, on a review under this section, cancelled,

then, in determining the period for which the employment permit shall remain in force, the period for which the permit ceased to be in force by virtue of *section 16(5)* shall be disregarded.

**18.—(1)** A person shall not—

- (a) forge a document purporting to be an employment permit,
- (b) alter an employment permit with intent to deceive,
- (c) use an employment permit with intent to deceive,
- (d) permit the alteration of an employment permit with intent to deceive,
- (e) permit the use of an employment permit with intent to deceive, or
- (f) use, with intent to deceive, a forged document purporting to be an employment permit.

Prohibition on forgery, fraudulent alteration or fraudulent use of employment permit.

(2) A person who contravenes *subsection (1)* is guilty of an offence.

**19.—(1)** Where an employment permit has been granted (other than on foot of an application by a foreign national) the employer shall not purport to—

- (a) transfer the employment permit to another person,
- (b) use the employment permit to employ a foreign national other than the foreign national to whom it has been granted, or
- (c) use the employment permit in respect of an employment other than the employment in respect of which it has been granted.

Prohibition on certain use of employment permit.

(2) The holder of an employment permit shall not purport to—

- (a) transfer the employment permit to another foreign national,
- (b) allow another foreign national to use the employment permit to enter into the service of an employer in the State or be in employment in the State, or
- (c) if the permit has been granted on foot of an application by the holder, use the employment permit to enter into a contract of employment or be in employment in an economic sector other than the one in respect of which it has been granted.

(3) A person who contravenes *subsection (1)* or (2) is guilty of an offence.

**20.—(1)** The Minister may from time to time, on application of the employer or, if the permit was granted on foot of an application by a foreign national, the holder of it, renew an employment permit in accordance with this section.

Renewal of employment permit.

(2) An application for the renewal of an employment permit shall be made either—

- (a) within such period before the expiry of the period for which it has been granted (or for which it has last been renewed under this section) as may be prescribed, or
- (b) within such period after the expiry of that period as may be prescribed.

(3) The period for which an employment permit may be renewed shall, subject to *subsection (4)*, not exceed 3 years or such longer period as may be specified by regulations under *section 14*.

(4) If, at the date of the making of an application for the renewal of an employment permit, the period for which the permit has been in force (including the periods for which it has been previously renewed) is 5 or more years, then the period for which the permit may be renewed on foot of that application may be an unlimited period.

(5) An application for a renewal of an employment permit shall be accompanied by the prescribed fee.

(6) The applicant for a renewal of an employment permit shall furnish to the Minister—

- (a) such information (being information of a similar nature to that referred to in *section 6* or *7*, as appropriate) as the Minister specifies in a direction in writing given by him or her for the purposes of this subsection, and
- (b) if the Minister requests such a statement or evidence, a statement or evidence, in such form as the Minister specifies, confirming that the applicant has complied with the terms of the employment permit and the provisions of this Act during the period ending on the making of the application for renewal.

(7) The Minister shall publish, in such manner as he or she considers appropriate, any direction given under *subsection (6)(a)*.

(8) *Sections 11 to 13* shall, with the modifications specified in *subsection (9)*, apply to the grant of, or the refusal to grant, a renewal of an employment permit as they apply to the grant of, or the refusal to grant, an employment permit.

(9) The modifications mentioned in *subsection (8)* are—

- (a) the omission of *subsection (1)(b)* from *section 11*,
- (b) the substitution of references to a decision of the Minister to refuse to grant a renewal of an employment permit for references to a decision of the Minister to refuse to grant an employment permit, and
- (c) any other necessary modifications.

Effect of order under section 3 or 4 of Immigration Act 1999.

**21.—(1)** If an order under section 3 or 4 of the Immigration Act 1999 is made in relation to a foreign national in respect of whom an employment permit has been granted, the permit shall, subject to *subsection (2)*, cease to be in force.

(2) If the order concerned under section 3 or 4 of the Immigration Act 1999 is revoked or otherwise ceases to be in force, the employment permit referred to in *subsection (1)* shall, on that revocation or cesser, be revived in force.

(3) If an employment permit is so revived in force, in determining the period for which the permit shall remain in force the period for which the permit ceased to be in force by virtue of *subsection (1)* shall be disregarded.

**22.**—(1) The Minister may appoint in writing such and so many of his or her officers to be authorised officers for the purposes of all or any of the provisions of this Act or the Act of 2003 and such appointment may be specified to be for a fixed period. Authorised officers.

(2) Every authorised officer appointed under this section shall be furnished with a warrant of appointment and shall, when exercising any power conferred on him or her by this section, if requested by a person affected, produce the warrant of appointment or a copy of it to that person.

(3) An appointment under this section as an authorised officer shall cease—

- (a) if the Minister revokes the appointment,
- (b) if the appointment is for a fixed period, on the expiry of that period, or
- (c) if the person appointed ceases to be an officer of the Minister.

(4) An authorised officer may, for the purpose of obtaining any information which may be required in relation to a matter under investigation under this Act or the Act of 2003—

- (a) at all reasonable times enter any premises, place or vehicle, on, at or in which there are grounds to believe that any trade or business or any activity in connection with a trade or business is being, or has been, carried on, or that records relating to such trade, business or activity are kept, and search and inspect the premises, place or vehicle and any records that are on, at or in such premises, place or vehicle,
- (b) secure for later inspection any, or any part of any, premises or place or any vehicle on, at or in which such records are kept or there are reasonable grounds for believing that such records are kept,
- (c) require any person who carries on such trade, business or activity or any person employed in respect of such trade, business or activity to produce to him or her such records and where such records are kept in a non-legible form to reproduce them in a legible form or to give to him or her any information as the authorised officer may reasonably require in relation to any entries in such records,
- (d) inspect and take copies of or extracts from any such records, files, papers or electronic information system on, at or in the premises, place or vehicle, including, in the case of information in a non-legible form, copies of or

extracts from such information in a permanent legible form,

- (e) remove and retain such records for such periods as may be reasonable for future examination, subject to a warrant being issued for that purpose by the District Court,
- (f) require any such person to give to the authorised officer any information which the authorised officer may reasonably require in respect of such trade, business or activity or in respect of the persons carrying on such trade, business or activity or employed in connection with such trade, business or activity,
- (g) require any such person to give to the authorised officer any other information which the authorised officer may reasonably require in respect of such trade, business or activity,
- (h) require any person by or on whose behalf data equipment is or has been used or any person having charge of, or otherwise concerned with the operation of the data equipment or any associated apparatus or material, to afford the authorised officer all reasonable assistance in relation to it and assist in the retrieval of information connected with the operation of such data equipment, apparatus or material,
- (i) summon, at any reasonable time, any other person employed in connection with such trade, business or activity to give to the authorised officer any information which the authorised officer may reasonably require in relation to such trade, business or activity and to produce to the authorised officer any records which are in the control of that other person,
- (j) have photographs taken of any thing on, at or in the premises, place or vehicle and remove the photographs from the place, and
- (k) inspect any vehicle relating to such trade, business or activity.

(5) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling unless he or she has obtained a warrant from the District Court under *subsection (8)* authorising such entry.

(6) Where an authorised officer, in the exercise of his or her powers under this section, is prevented from entering any premises, place or vehicle, an application may be made for a warrant under *subsection (8)* authorising such entry.

(7) An authorised officer appointed under this section, when exercising any powers conferred on an authorised officer by this Act, may be accompanied by such other authorised officers or members of the Garda Síochána or both as he or she considers necessary.

(8) Without prejudice to the powers conferred on an authorised officer by or under any provision of this section, if a judge of the District Court is satisfied on the sworn information of an authorised officer that there are reasonable grounds for suspecting that there is information required by an authorised officer under this section held

on or at any, or any part of any, premises or place or in any vehicle, the judge may issue a warrant authorising an authorised officer, accompanied by such other authorised officers and members of the Garda Síochána as provided for in *subsection (7)*, at any time or times within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter the premises, place or vehicle, if need be by reasonable force, and exercise all or any of the powers conferred on an authorised officer under this section.

(9) A person shall comply with any request or requirement of an authorised officer under this Act.

(10) A person who—

- (a) obstructs or impedes an authorised officer in the exercise of a power under this section,
- (b) without reasonable excuse, does not comply with a requirement under this section, or
- (c) in purported compliance with such a requirement gives information that is false or misleading in a material respect,

is guilty of an offence.

**23.—(1)** The employer shall not make any deductions from the remuneration of, or seek to recover from, the holder of the employment permit concerned any charge, fee or expense arising out of or concerning one or more of the following:

Prohibition on deduction from remuneration and retention of personal documents.

- (a) the application for the employment permit or a 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;
- (b) the recruitment of the holder for the employment in respect of which the application was made; or
- (c) any amount previously paid to the holder in respect of travelling expenses incurred by the holder in connection with taking up the employment in the State.

(2) In the case of an employment permit granted on foot of an application by a foreign national, the person who made the offer of employment referred to in *section 4(3)* in respect of which the application was made shall not make any deductions from the remuneration of, or seek to recover from, the holder of the permit any charge, fee or expense arising out of or concerning one or more of the following:

- (a) the recruitment of the holder for the employment in respect of which the application was made; or
- (b) any amount previously paid to the holder in respect of travelling expenses incurred by the holder in connection with taking up the employment in the State.

(3) Neither a person referred to in *subsection (1)* or (2) nor a person acting on his or her behalf shall keep any personal document belonging to a holder referred to in that subsection.

(4) A person who contravenes *subsection (1), (2) or (3)* is guilty of an offence.

(5) In this section “personal document” includes a passport, a driving licence, an identity card, a document relating to any account held with a financial institution, a document relating to the skills, qualifications or experience of the foreign national and travel documents.

Surrender of  
employment permit.

**24.—**(1) If the employment of a foreign national pursuant to an employment permit (other than a permit granted on foot of an application by a foreign national) is terminated by the employer or the holder of the permit or otherwise, for whatever reason, ceases, there shall be surrendered to the Minister, within 4 weeks from the date of termination or cessation—

(a) by the holder — the original of the permit, and

(b) by the employer — the copy of the permit.

(2) A person who fails to comply with *subsection (1)* is guilty of an offence.

(3) It shall be a defence for a person charged with an offence under *subsection (2)* to show that he or she took all reasonable steps to surrender the original or, as the case may be, copy of the employment permit concerned to the Minister within 4 weeks from the date of cessation or termination of the employment concerned.

Provision of false or  
misleading  
information in  
relation to  
application under  
*section 4 or 20.*

**25.—**A person who furnishes to the Minister, on an application under *section 4 or 20*, information that is false or misleading in a material respect knowing that it is so false or misleading or being reckless as to whether it is so false or misleading is guilty of an offence.

Prohibition on  
penalisation.

**26.—**(1) In this section “penalisation” includes any act or omission by an employer or a person acting on behalf of an employer that affects, to his or her detriment, an employee with respect to any term or condition of his or her employment.

(2) Without prejudice to the generality of *subsection (1)*, “penalisation” in this section includes—

(a) suspension, lay-off or dismissal (including a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2005), or the threat of suspension, lay-off or dismissal,

(b) demotion or loss of opportunity for promotion,

(c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,

(d) imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty), and

(e) coercion or intimidation.

(3) An employer shall not penalise or threaten penalisation against an employee for—

- (a) making a complaint to a member of the Garda Síochána or the Minister that a provision of the Act of 2003 or this Act is not being complied with,
- (b) giving evidence in any proceedings under the Act of 2003 or this Act, or
- (c) giving notice of his or her intention to do any of the things referred to in the preceding paragraphs.

(4) *Schedule 2* has effect in relation to an alleged contravention of *subsection (3)* and matters consequential thereon and includes amendments of other enactments.

(5) If a penalisation of an employee, in contravention of *subsection (3)*, constitutes a dismissal of the employee within the meaning of the Unfair Dismissals Acts 1977 to 2005, relief may not be granted to the employee in respect of that penalisation both under *Schedule 2* and under those Acts.

**27.**—(1) The employer shall keep, in relation to the foreign national to whom an employment permit has been granted (other than a permit granted on foot of an application by the foreign national), a record of the employment concerned, the duration of the employment and particulars of the permit and that record shall be kept for the period specified in *subsection (5)*. Retention of records.

(2) Where a foreign national to whom an employment permit has been granted on foot of an application by him or her enters into the service or employment of a person in the State, the second-mentioned person shall keep, in respect of the foreign national, a record of—

- (a) the employment performed by the foreign national and the economic sector in which it is being performed,
- (b) the duration of the employment, and
- (c) particulars of the permit,

and that record shall be kept for the period specified in *subsection (5)*.

(3) The employer 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”) shall—

- (a) keep and have available for inspection by an authorised officer exercising his or her powers under this Act such books and records, including accounts, as may be prescribed concerning the employment of the foreign national to whom the employment permit concerned has been granted at the premises or place of business of that person in or at which the employment is carried out in the State, and
- (b) furnish, when requested by the Minister to do so, information to the Minister concerning the books and records referred to in *paragraph (a)*.

(4) The records that may be prescribed for the purposes of *subsection (3)(a)* include—

- (a) records concerning the remuneration paid during a specified period to the relevant foreign national,
  - (b) records concerning the trade or business to which the employment referred to in that subsection relates, and
  - (c) if more than one foreign national is employed by the employer concerned pursuant to 2 or more employment permits, records of the number for the time being, if any, of those foreign nationals who are nationals of—
    - (i) a Member State of the EEA, or
    - (ii) a state other than a Member State of the European Union or a Member State of the EEA.
- (5) The period referred to in *subsection (1) or (2)* is—
- (a) subject to *paragraph (b)*, 5 years, or
  - (b) if the relevant foreign national remains in the employment of the employer or, as the case may be, the second-mentioned person for a period exceeding 5 years from the date of the grant of the permit, a period equal to the duration of the period for which the foreign national remains in such employment.
- (6) A person who fails to comply with *subsection (1), (2) or (3)* is guilty of an offence.

Register of  
employment  
permits.

**28.**—The Minister shall establish and maintain a register of employment permits granted under this Act and shall cause to be entered in such register—

- (a) the name—
  - (i) in the case of each employment permit granted otherwise than on foot of an application by a foreign national, of the holder of the permit and the employer, or
  - (ii) in the case of each employment permit granted on foot of an application by a foreign national, of the holder of the permit and of the person who made the offer of employment concerned referred to in *section 4(3)*,
- (b) the employment or economic sector in respect of which each employment permit has been granted,
- (c) the address—
  - (i) in the case of each employment permit granted otherwise than on foot of an application by a foreign national, at which the employment is to be carried out, or
  - (ii) in the case of each employment permit granted on foot of such an application, of the person who made the offer of employment concerned referred to in *section 4(3)*,

- (d) the duration of each employment permit and its commencement and expiry dates,
- (e) in the case of a renewal of an employment permit under *section 20*, the fact of its renewal, the period for which it has been renewed and the commencement and expiry dates of that period,
- (f) in the case of a revocation of an employment permit under *section 16*, the fact of its being revoked, the date and reason for its revocation and, if a review under *section 17* occurs, the fact of the decision being reviewed and the outcome of the review, and
- (g) if the employment permit is surrendered, the date and reason for such surrender.

**29.—(1)** The Minister shall make regulations providing for the procedure relating to the making of an application for an employment permit under *section 4* or the renewal of an employment permit under *section 20* and the grant or renewal of an employment permit on foot of such an application. Regulations.

(2) Without prejudice to the generality of *subsection (1)*, regulations under this section may make provision for all or any of the following:

- (a) the form in which an application for an employment permit shall be made and the form of an employment permit;
- (b) the form in which an application for the renewal of an employment permit shall be made and the form of an employment permit as renewed;
- (c) the period within which any information or documents, including additional information or documents requested by the Minister relating to the grant or renewal of an employment permit, shall be furnished to the Minister; and
- (d) the production to the Minister, within a specified period, of such evidence as he or she may reasonably require in order to verify any information or documents previously furnished to the Minister in respect of an application for the grant or renewal of an employment permit.

(3) The Minister may make regulations providing for the procedures in relation to the submission of a decision for review under *section 13* or *17* and the carrying out of such a review and, without prejudice to the generality of the foregoing, such regulations may make provision for all or any of the following:

- (a) the form in which such a submission is to be made;
- (b) the furnishing of specified information to the person carrying out the review for the purposes of the review;
- (c) the furnishing of such additional information as that person thinks appropriate for the purposes of the review;

- (d) the period within which any such information, including any additional such information requested by that person, shall be furnished; and
- (e) the production to that person, within a specified period, of such evidence as he or she may reasonably require in order to verify any information or particulars previously furnished to him or her for the purposes of the review.

(4) Regulations under this section may make provision for the making of an application under *section 4* or *20* by electronic means (within the meaning of the Electronic Commerce Act 2000).

Further provisions  
in relation to  
regulations.

**30.—(1)** The Minister may make regulations in relation to any matter referred to in this Act as prescribed or to be prescribed.

(2) Different regulations under *subsection (1)* may be made in respect of different classes of matter the subject of the prescribing concerned.

(3) Regulations under this Act may contain such incidental, supplementary, consequential and transitional provisions as the Minister considers necessary for the purposes or in consequence of, or to give full effect to, such regulations.

(4) Every regulation made under this Act (other than a regulation made under *section 14*) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling such regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

(5) Every regulation made under *section 14* shall be laid before each House of the Oireachtas as soon as may be after it is made.

Service of notices.

**31.—(1)** A notice or document that is required to be served, issued or given under this Act shall be addressed to the person concerned by name and may be served on or issued or given to the person in one of the following ways:

- (a) by delivering it to the person;
- (b) by leaving it at the address at which the person ordinarily resides or, in a case where an address for service has been furnished, at that address;
- (c) by sending it by post in a prepaid registered letter to the address at which that person ordinarily resides or, in a case in which an address for service has been furnished, to that address; or
- (d) by such other means as may be prescribed.

(2) For the purposes of this section, a company within the meaning of the Companies Acts shall be deemed to be ordinarily resident at its registered office and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

**32.**—(1) A person guilty of an offence under *section 18(2), 19(3), 23(4) or 25* is liable— Penalties and proceedings.

- (a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both.

(2) A person guilty of an offence under *section 22(10), 24(2) or 27(6)* is liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both.

(3) Notwithstanding *section 10(4)* of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under the Act of 2003 or this Act may be brought within 24 months from the date of the offence.

(4) Summary proceedings for an offence under this Act may be brought and prosecuted by the Minister.

**33.**—(1) Where an offence under this Act has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate is guilty of an offence and is liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence. Offences by body corporate.

(2) Where the affairs of a body corporate are managed by its members, *subsection (1)* applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

**34.**—In proceedings for an offence under *section 2(3)* of the Act of 2003, where evidence is given by— Presumption that a person is being employed.

- (a) a member of the Garda Síochána,
- (b) an immigration officer (within the meaning of the Immigration Act 2004), or
- (c) an authorised officer under *section 22*,

that he or she observed a person doing an act in a particular place, being an act the doing of which, in the circumstances concerned, is consistent with that person's having been employed to do that act in that place, then it shall be presumed, until the contrary is shown, that that person was employed to do that act in that place.

**35.**—(1) In any proceedings for an offence under this Act or the Act of 2003, a person, other than the accused, may, with the leave of the court, give evidence through a live television link if the person is outside the State. Evidence through television link.

(2) Evidence given under *subsection (1)* shall be video-recorded.

(3) In any proceedings referred to in *subsection (1)* in any circuit or district court district where the court is satisfied that leave should be granted for evidence to be given through a live television link pursuant to that subsection but the necessary facilities for doing so are not available in that circuit or district, the court may by order transfer the proceedings to a circuit or district court district where such facilities are available and, where such an order is made, the jurisdiction of the court to which the proceedings have been transferred may be exercised—

(a) in the case of the Circuit Court, by the judge of the circuit concerned, and

(b) in the case of the District Court, by the judge of that court for the time being assigned to the district court district concerned.

(4) A person who, in giving evidence under *subsection (1)* from outside the State, makes a statement material in the proceedings which the person knows to be false or does not believe to be true shall be guilty of perjury.

(5) Proceedings for an offence referred to in *subsection (4)* may be taken, and the offence may, for the purposes of the jurisdiction of the court, be treated as having been committed, in any place in the State.

(6) This section is without prejudice to any other enactment providing for the giving of evidence through a live television link.

Delegation of functions.

**36.—(1)** The Minister may, with the consent of the Minister of the Government concerned, delegate the performance of functions under any or all of *sections 6 to 13, 16, 17 and 20* in a specified class of cases to an officer, of a specified class, of another Minister of the Government.

(2) Functions so delegated shall be performable by such an officer accordingly.

(3) If such a delegation is made of functions under *section 13 or 17*, the reference in that section to an officer of the Minister appointed by the Minister for the purpose of carrying out the review shall, in relation to any performance of the function the subject of the delegation, be construed as a reference to the officer of the Minister of the Government concerned appointed by the Minister for Enterprise, Trade and Employment for the purpose of carrying out the review.

(4) *Subsection (1)* shall not be construed as affecting the application to this Act of the general law concerning the imputing of acts of an officer of a Minister of the Government to the Minister of the Government.

(5) In this section “specified” means specified in the delegation concerned.

Data exchange in respect of certain matters.

**37.—(1)** Information held by the Minister for the purposes of this Act or the Act of 2003 may be supplied by the Minister to each of the following, namely:

(a) the Minister for Social and Family Affairs;

- (b) the Minister for Justice, Equality and Law Reform; and
- (c) the Revenue Commissioners,

if such supply is reasonably necessary for the purpose of the performance by the Minister of the Government referred to in *paragraph (a)* or *(b)* or, as the case may be, the Revenue Commissioners of functions under any enactment.

(2) Information held by—

- (a) the Minister for Social and Family Affairs,
- (b) the Minister for Justice, Equality and Law Reform, or
- (c) the Revenue Commissioners,

may, notwithstanding any other enactment, be supplied by that Minister of the Government or, as the case may be, the Revenue Commissioners to the Minister if such supply is reasonably necessary for the purpose of the performance by the Minister of functions under this Act or the Act of 2003.

**38.**—(1) An employment permit granted by the Minister under a scheme administered by the Minister before the commencement of this section and which permit is in force immediately before such commencement shall, subject to *subsection (2)*, continue in force for the period for which it was granted or renewed or, as appropriate, last renewed under that scheme. Transitional provision.

(2) An employment permit continued in force by *subsection (1)* shall, for the purposes of this Act and the Act of 2003, be regarded as an employment permit granted under this Act and may be revoked and may be renewed accordingly.

**39.**—Section 1(1) of the Act of 2003 is amended—

- (a) by inserting the following definition after the definition of “employer”:

“ ‘foreign national’ means a non-national (within the meaning of the Immigration Act 1999);”

and

- (b) by deleting the definition of “non-national”.

Amendment of section 1(1) of Act of 2003.

**40.**—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas. Expenses.

**41.**—(1) This Act may be cited as the Employment Permits Act 2006. Short title, collective citation, construction and commencement.

(2) The Employment Permits Act 2003 and this Act may be cited together as the Employment Permits Acts 2003 and 2006.

(3) The Employment Permits Act 2003 and this Act shall be construed together as one.

(4) This Act 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.

#### SCHEDULE 1

ENACTMENTS OFFENCES UNDER WHICH FALL WITHIN *section 12(1)(c)*

Employment Agency Act 1971

Carers Leave Act 2001

Minimum Notice and Terms of Employment Acts 1973 to 2005

National Minimum Wage Act 2000

Organisation of Working Time Act 1997

Payment of Wages Act 1991

Protection of Employees (Fixed-Term Work) Act 2003

Protection of Employees (Part-Time Work) Act 2001

Protection of Young Persons (Employment) Act 1996

Safety, Health and Welfare at Work Act 2005

Unfair Dismissals Acts 1977 to 2005.

#### SCHEDULE 2

REDRESS FOR CONTRAVENTION OF *section 26(3)*

##### **Complaints to rights commissioner.**

1. (1) An employee may present a complaint to a rights commissioner that his or her employer has contravened *section 26(3)* in relation to the employee.

(2) Where a complaint under *subparagraph (1)* is made, the rights commissioner shall—

- (a) give the parties an opportunity to be heard by the commissioner and to present to the commissioner any evidence relevant to the complaint,
- (b) give a decision in writing in relation to it, and
- (c) communicate the decision to the parties.

(3) A decision of a rights commissioner under *subparagraph (2)* shall do one or more of the following:

- (a) declare that the complaint was or, as the case may be, was not well founded;
- (b) require the employer to take a specified course of action;

- (c) require the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances;

and the references in the foregoing clauses to an employer shall be construed, in a case where ownership of the business of the employer changes after the contravention to which the complaint relates occurred, as references to the person who, by virtue of the change, becomes entitled to such ownership.

(4) A rights commissioner shall not entertain a complaint under this paragraph if it is presented to him or her after the expiration of the period of 6 months beginning on the date of the contravention to which the complaint relates.

(5) Notwithstanding *subparagraph (4)*, a rights commissioner may entertain a complaint under this paragraph presented to him or her after the expiration of the period referred to in *subparagraph (4)* (but not later than 6 months after such expiration) if he or she is satisfied that the failure to present the complaint within that period was due to reasonable cause.

(6) A complaint shall be presented by giving notice of it in writing to a rights commissioner and the notice shall contain such particulars and be in such form as may be specified from time to time by the Minister.

(7) A copy of a notice under *subparagraph (6)* shall be given to the other party concerned by the rights commissioner concerned.

(8) Proceedings under this paragraph before a rights commissioner shall be conducted otherwise than in public.

(9) A rights commissioner shall furnish the Labour Court with a copy of each decision given by the commissioner under *subparagraph (2)*.

#### **Appeals from decisions of rights commissioner.**

2. (1) A party concerned may appeal to the Labour Court from a decision of a rights commissioner under *paragraph 1* and, if the party does so, the Labour Court shall give the parties an opportunity to be heard by it and to present to it any evidence relevant to the appeal, shall make a determination in writing in relation to the appeal affirming, varying or setting aside the decision and shall communicate the determination to the parties.

(2) An appeal under this paragraph shall be initiated by the party concerned, giving within 6 weeks (or such greater period as the Court may determine in the particular circumstances) from the date on which the decision to which it relates was communicated to the party, a notice in writing to the Labour Court containing such particulars as are determined by the Labour Court under *subparagraph (4)* and stating the intention of the party concerned to appeal against the decision.

(3) A copy of a notice under *subparagraph (2)* shall be given by the Labour Court to any other party concerned as soon as practicable after the receipt of the notice by the Labour Court.

(4) The following matters, or the procedures to be followed in relation to them, shall be determined by the Labour Court, namely:

- (a) the procedure in relation to all matters concerning the initiation and the hearing by the Labour Court of appeals under this paragraph;
- (b) the times and places of hearings of such appeals;
- (c) the representation of the parties to such appeals;
- (d) the publication and notification of determinations of the Labour Court;
- (e) the particulars to be contained in a notice under *subparagraph (2)*; and
- (f) any matters consequential on, or incidental to, the foregoing matters.

(5) The Minister may, at the request of the Labour Court, refer a question of law arising in proceedings before it under this paragraph to the High Court for its determination and the determination of the High Court shall be final and conclusive.

(6) A party to proceedings before the Labour Court under this paragraph may appeal to the High Court from a determination of the Labour Court on a point of law and the determination of the High Court shall be final and conclusive.

**Paragraphs 1 and 2: supplemental provisions.**

3. (1) Section 39(17) of the Redundancy Payments Act 1967 shall apply in relation to proceedings before the Labour Court under *paragraph 2* as it applies to matters referred to the Employment Appeals Tribunal under that section with—

- (a) the substitution in that provision of references to the Labour Court for references to the Tribunal, and
- (b) the substitution in paragraph (e) of that provision of “€3,000” for “£150”.

(2) Where a decision of a rights commissioner in relation to a complaint under this Schedule has not been carried out by the employer concerned in accordance with its terms, the time for bringing an appeal against the decision has expired and no such appeal has been brought, the employee concerned may bring the complaint before the Labour Court and the Labour Court shall, without hearing the employer concerned or any evidence (other than in relation to the matters aforesaid), make a determination to the like effect as the decision.

(3) The bringing of a complaint before the Labour Court under *subparagraph (2)* shall be effected by giving to the Labour Court a written notice containing such particulars (if any) as may be determined by the Labour Court.

(4) The Labour Court shall publish, in a manner it considers appropriate, particulars of any determination made by it under *subparagraph (4)(a), (b), (c), (e) and (f) of paragraph 2* (not being a determination as respects a particular appeal under that paragraph) and *subparagraph (3)*.

**Enforcement of determinations of Labour Court.**

4. (1) If an employer fails to carry out in accordance with its terms a determination of the Labour Court in relation to a complaint under *paragraph 1* within 6 weeks from the date on which the determination is communicated to the parties, the Circuit Court shall, on application to it in that behalf by—

- (a) the employee concerned,
- (b) with the consent of the employee, any trade union of which the employee is a member, or
- (c) the Minister, if the Minister considers it appropriate to make the application having regard to all the circumstances,

without hearing the employer or any evidence (other than in relation to the matters aforesaid), make an order directing the employer to carry out the determination in accordance with its terms.

(2) The reference in *subparagraph (1)* to a determination of the Labour Court is a reference to a determination in relation to which, at the expiration of the time for bringing an appeal against it, no such appeal has been brought or, if such an appeal has been brought it has been abandoned and the references to the date on which the determination is communicated to the parties shall, in a case where such an appeal is abandoned, be read as references to the date of such abandonment.

(3) In an order under this paragraph providing for the payment of compensation, the Circuit Court may, if in all the circumstances it considers it appropriate to do so, direct the employer concerned to pay to the employee concerned interest on the compensation at the rate referred to in section 22 of the Courts Act 1981, in respect of the whole or any part of the period beginning 6 weeks after the date on which the determination of the Labour Court is communicated to the parties and ending on the date of the order.

(4) An application under this paragraph to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the employer concerned ordinarily resides or carries on any profession, business or occupation.

**Provisions relating to winding up and bankruptcy.**

5. (1) There shall be included among the debts which, under section 285 of the Companies Act 1963 (as amended by section 10 of the Companies (Amendment) Act 1982 and section 134 of the Companies Act 1990) are, in the distribution of the assets of a company being wound up, to be paid in priority to all other debts, all compensation payable by virtue of a decision under *paragraph 1(2)(b)* or a determination under *paragraph 2(1)* by the company to an employee, and that Act shall have effect accordingly, and formal proof of the debts to which priority is given under this subparagraph shall not be required except in cases where it may otherwise be provided by rules made under that Act.

(2) There shall be included among the debts which, under section 81 of the Bankruptcy Act 1988 are, in the distribution of the property of a bankrupt or arranging debtor, to be paid in priority to all other

debts, all compensation payable by virtue of a decision under *paragraph 1(2)(b)* or a determination under *paragraph 2(1)* by the bankrupt or arranging debtor, as the case may be, to an employee, and that Act shall have effect accordingly, and formal proof of the debts to which priority is given under this subparagraph shall not be required except in cases where it may otherwise be provided under that Act.

**Amendment of Protection of Employees (Employers' Insolvency) Act 1984.**

6. (1) Section 1(1) of the Protection of Employees (Employers' Insolvency) Act 1984 (as amended by the European Communities (Protection of Employees (Employers' Insolvency)) Regulations 2005) is amended by inserting, after the definition of "the Act of 2004", the following:

“ ‘the Act of 2006’ means the *Employment Permits Act 2006*;”.

(2) Section 6 of the Protection of Employees (Employers' Insolvency) Act 1984 (as so amended) is amended—

(a) in subsection (2)(a)—

(i) in subparagraph (xxiv), after “of the Act of 1990,” by deleting “and”,

(ii) in subparagraph (xxv), by substituting “Act of 2004, and” for “Act of 2004.”,

(iii) by inserting after subparagraph (xxv) the following:

“(xxvi) any amount which an employer is required to pay by virtue of a decision of a rights commissioner under paragraph 1(2)(b) of *Schedule 2* to the Act of 2006 or a determination by the Labour Court under paragraph 2(1) of that Schedule.”,

(b) in subsection (2)(b), by substituting “, (xxv) or (xxvi)” for “or (xxv)”,

(c) in subsection (2)(c), by substituting “, (xxv) or (xxvi)” for “or (xxv)”, and

(d) in subsection (9), in the definition of “relevant date”, by substituting “, (xxv) or (xxvi)” for “or (xxv)”.