

**Response to the Department of Enterprise, Trade and Employment's
Public Consultation on the review of the Critical Skills Occupations List
and the Ineligible Occupations List**

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Introduction

The Irish Congress of Trade Unions (ICTU) is the representative confederation of over 40 trade unions in the Republic of Ireland and in Northern Ireland, with a total membership of over 700,000, more than 500,000 in the Republic of Ireland and 200,000 in Northern Ireland, including members on work permits, and working in every sector of the economy. Our core mission is to ‘achieve economic development, social cohesion and justice by upholding the values of solidarity, fairness and equality’.¹

We welcome the invitation to ‘representative bodies, Government Departments, Agencies, and other interested parties’ to take part in the public consultation on the *Review of the Critical Skills Occupations List and the Ineligible Occupations List*, opened by the Department of Enterprise, Trade and Employment (DETE) on 1 July 2021.

ICTU position on work permits

ICTU’s overall position on work permits has been set out on a number of occasions, most recently in our 2018 submission to the Department of Business, Enterprise and Innovation (DBEI) on the review of economic migration policy.

Key issues for ICTU in relation to the work permits regime include:

- Protecting migrant workers from exploitation
- Ensuring the incidence of work permits does not become excessive in any sector
- Protecting the labour market position of Irish, EEA citizens and existing permit holders from downward pressure on wages and employment conditions
- Ensuring policymakers focus on the employment of people currently outside the labour force.
- Ensuring risks to the labour market are not overlooked.

¹ ICTU Mission & Objectives <https://www.ictu.ie/about/>

ICTU's approach to the public consultation

It is clear that the *Consultation Submission Form* (CSF), upon which submissions are requested, has been designed primarily with employers and industry representatives in mind.

We note for example that the CSF invites submissions

'...if you feel that there is a skills deficit or surplus of individuals holding such skills, or a shortage of labour or surplus of individuals available to fill those labour needs, in relation to occupations *in your sector* and the impact of which is *adversely affecting your industry*' (p.1, emphasis added).

This clearly does not apply to a broad-based civil society organisation such as ICTU.

We are therefore responding to this public consultation as an '...opportunity for stakeholders to *provide information and experiences and different perspectives* on the nature and extent of skill and/or labour shortages' (p.1).

This enables us to raise a number of issues that might not be addressed if we limited ourselves to responding to the questions posed in the CSF. Given that the public consultation invitation does refer to 'other interested parties' and in view of the fact that DETE's Economic Migration Policy Unit (EMPU) has previously engaged directly with ICTU on the issue of work permits, such as in relation to the 2018 Review of Economic Migration Policy, we believe this approach is appropriate.

Ireland's employment situation

The point needs to be made at the outset that Ireland's employment situation was very much average by European standards before the pandemic, especially compared to Nordic and northern European countries, all countries with a more progressive policy on collective bargaining and social dialogue than Ireland.²

² The OECD's 2019 report *Negotiating Our Way Up: Collective Bargaining in a Changing World of Work* finds that countries with coordinated, sector-level collective bargaining systems, such as Austria, Denmark, Finland, Germany, the Netherlands, Norway and Sweden produce better labour market outcomes in terms of higher employment and lower unemployment rates (particularly for women, young people and migrants), lower income inequality and higher

Eurostat data indicates that Ireland's pre-pandemic employment rate (20-64) of 75.1% in 2019 was 12th lowest of the EU-27 and well below countries such as Sweden (82.1%), and the Netherlands (80.1%).

14 other EU member states had an unemployment rate lower than Ireland's 5% in 2019. Ireland's job vacancy rate of 0.9% in Q4 2019 was the fourth lowest in the EU-27, and compared to EU-27 and Eurozone averages of 2.2%.

At 11.4%, Ireland also had the 15th highest rate in the EU-27 of young people (15-29) neither in employment, education or training ('NEETs') in 2019, around twice the rates of the Netherlands (5.7%) and Sweden (6.3%).

Furthermore, Ireland lagged many other European countries when it came to the provision of in-work training by employers, a key issue when considering work permits. As the OECD points out 'Irish businesses...provide less training to employees than those in other OECD countries' (OECD, 2020).

The proportion of Irish adults who reported taking part in education and training over a four-week period was 11% in 2019, above the EU-27 average of 9% but well below the rates of 29% in Sweden and 28% in Finland. The OECD has now recommended the introduction of a statutory entitlement to paid training leave for individual workers in Ireland, as is common in many other European countries that have comparatively high participation in training.

Ireland also compares poorly as regards pay and employment conditions, particularly when compared to Nordic and northern European countries with higher employment rates. Eurostat data also indicates that Ireland had the seventh highest proportion of low-wage earners in the EU-27 in 2018, at 20%, compared to 4% in Sweden. Furthermore, recent ESRI research found that over 40% of all minimum wage employees in Ireland are in two sectors – wholesale and retail and accommodation and food and that 'the concentration of minimum wage employees in these two sectors in Ireland is higher than in any other country in the sample.'³ This research also found that

productivity than countries where collective bargaining may take place only at firm level, such as the US, the UK and many eastern European countries.

³ Belgium, Germany, Spain, France, Luxembourg, the Netherlands, the United Kingdom (UK), Estonia, Greece, Hungary, Latvia, Poland, and Portugal.

minimum wage employees are less likely to be satisfied in their job compared to higher-paid workers (Redmond et al, 2021).

Ireland is now almost 18 months into the worst global pandemic in a century. The measures taken to contain Covid-19 have interrupted or stopped entire sectors of economic activity. The numbers at work fell from almost 2.4 million in Q4 2019 to just under 2 million in 2020, with the Covid-adjusted unemployment rate averaging almost 19% in 2020.

Based in part on wage subsidy proposals advocated by ICTU and others the TWSS (and the successor EWSS) have maintained the link between a worker and their job, and helped to mitigate the impact of lock-down measures on employment.

While it might not have been possible in all cases due to the suddenness of the introduction of lock-down measures, it is regrettable that some employers who could have done so chose not to avail of the TWSS but instead opted to make their employees redundant, thereby breaking their employees' link with their jobs, and forcing the worker onto the Pandemic Unemployment Payment (PUP). These decisions naturally mean that some of these workers may have sought or are now seeking alternative employment.

The extent of structural damage from the pandemic to the labour market remains unclear. Scarring should not be as severe as during the post-2008 crash as there is no equivalent sectoral collapse akin to the collapse in construction after 2008. Labour market conditions should improve over the next two years. Even so, unemployment levels will still be elevated, with the ESRI forecasting an average unemployment rate of over 16% (approximately 400,000) in 2021 and over 7% (approximately 175,000) in 2022. It should be noted that the most recent Eurostat job vacancy data available for Ireland (for Q4 2020) indicates that Ireland's job vacancy rate is still at 0.9%, and still one of the lowest in the EU-27.

Work permit, pay and employment conditions

The 2018 Government report on the Review of Economic Migration Policy acknowledges that

'...employment permit holders working for relatively low levels of pay may influence the rate and conditions for other workers in the same occupations and sectors i.e. wages may not increase in line with expectations and/or it may give rise to downward pressure on

wage rates. Any impacts would need to be closely monitored, including increases in demand for in-work State subsidies.’ (p.48).

The CSF now states (pages 3-4) that the 2018 report included a recommendation that no changes should be made to the occupations lists arising from ‘salary and/or employment conditions’.

However, aside from question 8b (which seeks information on current average remuneration), the CSF does not appear to advance these issues from the 2018 report.

This leaves open the possibility and danger that ‘salary and employment conditions’ will form the underlying ‘rationale’ for some responses to this public consultation.

As Government will be aware, a number of business lobbies have been arguing with increasing vehemence over recent months that the PUP represents a ‘disincentive’ to work.

The point needs to be made however that even at its highest rate of €350 a week, the PUP amounted to less than what would be earned by a worker working full-time (39 hours) on the current National Minimum Wage of €10.20 an hour, i.e. €397.80, which the commitment in the current programme for government to move to a living wage is a *de facto* acknowledgment is inadequate.

What is also the case is that much-publicised ‘staff shortages’ are also a reflection in many cases of workers who were made redundant by their employers at the onset of the pandemic exercising their right to reject poor pay and working conditions, as recently documented by Dr Deirdre Curran of J.E. Cairnes School of Business & Economics, NUI Galway (June 2021) and by Unite trade union (July 2021), and as reported by *The Irish Times* (31 July 2021). Dr Curran for example documents evidence of

‘...significant breaches of basic employment rights from; contracts of employment, to payslips, to working hours etc. Perhaps more worrying are the testimonies regarding verbal/psychological/physical abuse and the witnessing/experiencing of harassment and bullying. The absence of mechanisms for employee voice are also striking, whether it be to offer an idea or raise a grievance.’ (p.1).

We would cite the example of nurses to draw attention to how the current regime for Critical Skills Employment Permits can be exploited to undermine workers' rights and employment conditions.

While a job offer under this regime must be of two years' duration, the permit holder is expected to stay with the initial employer for a minimum period of 12 months. Many non-EEA nurses are recruited by private nursing homes pursuant to this regime. Quite a sizeable proportion find themselves working in sub-optimal employment conditions where they can be subject to abuse, racism, bullying and intimidation. These workers are often afraid to raise a complaint with their employer for fear of repercussions. As a result, many find themselves in a situation where they must remain for 12 months with an employer who treats them abysmally and of whom they are in fear. Some cannot bear their circumstances any longer and are forced by their employer's behaviour, to resign, even though they have worked for the initial employer for less than 12 months. It is often the case that when this situation arises, many employers further exploit the employee by seeking to recover expenses they incurred in the recruitment of the employee, in breach of section 23 of the Employment Permits Act 2006, as amended.

The requirement to remain with the initial employer for a period of 12 months before they are allowed to seek alternative employment binds those on critical skills permits to their employer. It subjects very vulnerable employees to intolerable working conditions with no mechanism of changing their circumstances. At the very least, the legislation needs to be amended to broaden the circumstances under which an employee may change employer before the period of 12 months has elapsed.

Fundamentally, the judicious use of the work permit regime cannot be safeguarded without a properly resourced system of labour inspectors. Government will be aware that the International Labour Organization (ILO) recommends that the number of labour inspectors in relation to workers should be approximately 1 per 10,000 in an industrial market economy such as Ireland's (ILO 2006). This would equate to over 200 labour inspectors pre-pandemic. However, as of 1 May 2021, the WRC has just 53 inspectors,⁴ or just one quarter what is advised by the ILO.

⁴ Minister for Enterprise, Trade and Employment's answer to Dáil written question no.29941/21, 3 June 2021.

Employers availing of the Critical Skills Employment Permit must be required to demonstrate a real commitment to training and upskilling. This could be by participation in a Skillnet network, in a consortium to develop a new apprenticeship, or strategic links with a Higher Education Institution. In addition, as previously advised in our submission for the 2018 Review, the remuneration threshold should be re-set at the prevailing rate of pay and conditions for the occupation or double average industrial earnings per annum, whichever is the higher.

Conclusion

ICTU is strongly of the view that non-EEA workers on work permits have played and will continue to play an important and positive role in the Irish economy.

The key issue for ICTU is the rights such workers have when they work in Ireland and how these rights can be vindicated to ensure decent work both for the workers concerned and all workers in Ireland.

As Government will be aware, the recent ESRI/IHREC report *Monitoring Decent Work in Ireland* found that while a number of national policies do address employment, such as the Action Plan for Jobs, the Roadmap for Social Inclusion 2020-2025 and the Pathways to Work Strategy 2016-2020, 'however, the focus here is often solely on accessing employment, rather than facets of decent work such as security or earnings' (McGinnity et al, 2021).

Taking action to ensure decent work should be high on the agenda in view of Ireland's commitments under the UN Sustainable Development Goals (SDGs) and the European Pillar of Social Rights.

Unfortunately, recent policy initiatives suggest little real intention to act on these commitments. Again, we would cite one example – the working conditions of meat processing workers.

The 2020 Oireachtas Special Committee on Covid-19 responses was informed by business representatives that 20% of the 15,000 workers in meat plants in Ireland were on work permits. The Special Committee's final report (October 2020) stated that 'while meat processing is highly regulated regarding food safety and hygiene, the same level of regulation and protection is not extended to workers and their conditions of employment'. The final report concluded that

‘...workers in the meat processing industry are particularly vulnerable to poor working conditions *as a result of the current work permit regime* and the extension of the use of sectoral work permits.’ (p.18, emphasis added)

The final report expressly recommended the establishment of ‘a task force or similar body to examine the terms and conditions of workers in the meat processing industry and the extension of the use of sectoral work permits’ (p.25). It is not clear what, if any, action has been taken on foot of these findings and recommendations.

Moreover, the Department of Agriculture, Food and the Marine’s *Food Vision 2030* (August 2021), now states that

‘More responsive and flexible labour and immigration policies will be pursued. Where recourse to employment permits is needed, and recognising that this should be the last resort for filling vacancies, stakeholders⁵ should work together to prove that this option is necessary (p.166).

Food Vision 2030 also commits to implementing the 2018 People in Dairy Action Plan ‘in order to address specific labour issues in the dairy sector.’⁶ Five of the plan’s six ‘key initiatives’ to identify the ‘short and long term human capital needs’ on dairy farms involved migration, including seeking more employment permits for workers from non-EEA countries. The Action Plan also committed to developing

‘a work place charter for the Irish dairy industry in relation to hours of work, pay, health and safety, communication and career development. This should be an agreed standard to which the industry aspires to operate. The charter would clearly specify the rights and duties of both employers and employees’.

Again, it should be pointed out it is proposed that no worker and trade union representatives be involved in the negotiation of this work place charter, which is intended to specify the ‘rights’ of employees.

⁵ It should be pointed out that food processing workers and trade unions were not included in the stakeholder group that drew up this strategy and no role is envisaged for them in any way under the strategy.

⁶ This action plan was drawn up by a stakeholder group comprised of primary producers, business representatives, DAFM, DBEI and Teagasc, but again with no worker or trade union representation.

In view of the continuing failure to take adequate measures to ensure decent work and little evidence of any intention to do so, as well as the current state of the labour market and continuing uncertainty about its prospects over the medium-term, ICTU believes that a fundamental review of Ireland's work permit regime is warranted. And we would very much question whether it is appropriate to remove any occupations from the Ineligible List of Occupations for Employment Permits in response to industry lobbying.

ICTU would be willing to engage further with the Economic Policy Migration Unit and Government on this submission.

References

Curran, Deirdre, Dr (2021) *INSIDE-OUT HOSPITALITY: A STUDY OF WORKING CONDITIONS IN THE HOSPITALITY SECTOR IN IRELAND* RESEARCH REPORT BY: DR DEIRDRE CURRAN, J.E. CAIRNES SCHOOL OF BUSINESS & ECONOMICS, NUI GALWAY, JUNE 2021.

ILO (2006) *Labour Inspection. Report III (Part 1B) - Third item on the agenda of the 95th Session of the International Labour Conference*. International Labour Office.

OECD (2019) *Negotiating Our Way Up: Collective Bargaining in a Changing World of Work*.

OECD (February 2020), *Economic Surveys Ireland 2020*

McGinnity, Frances, Russell, Helen, Privalko Ivan, and Enright, Shannen (June 2021), *Monitoring Decent Work in Ireland*

Redmond, Paul, Maître Bertrand, McGuinness, Seamus, and Maragkou, Konstantina (April 2021), *A Comparative Assessment of Minimum Wage Employment in Europe*, ESRI Research Series Number 123, April 2021

Falvey, Deirdre, The Irish Times, (July 31 2021), *Hospitality staff: 'Everywhere I have seen harassment... it's all swept under the carpet' -Behind well-publicised staff shortages lurks a story of poor working conditions'*

Unite (July 2021), *Hidden Truths - The reality of work in Ireland's hospitality and tourism sector*.