



Number 7 of 2003

EMPLOYMENT PERMITS ACT 2003

REVISED

Updated to 30 June 2018

This Revised Act is an administrative consolidation of the *Employment Permits Act 2003*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Childcare Support Act 2018* (11/2018), enacted 2 July 2018, and all statutory instruments up to and including *European Communities (Reception Conditions) Regulations 2018* (S.I. No. 230 of 2018), made 29 June 2018, were considered in the preparation of this Revised Act.

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Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

Employment Permits Acts 2003 to 2014: this Act is one of a group of Acts included in this collective citation to be construed together as one (*Employment Permits (Amendment) Act 2014*, s. 1(2)). The Acts in the group are:

- *Employment Permits Act 2003* (7/2003)
- *Employment Permits Act 2006* (16/2006)
- *Industrial Relations (Amendment) Act 2012* (32/2012), s. 16(1)
- *European Union (Accession of the Republic of Croatia) (Access to the Labour Market) Act 2013* (21/2013), s. 3
- *Employment Permits (Amendment) Act 2014* (26/2014), other than Parts 4 and 5

Annotations

This Revised Act is not annotated and only shows textual amendments. An annotated version of this revision is also available which shows textual and non-textual amendments and their sources. It also shows editorial notes including statutory instruments made pursuant to the Act and previous affecting provisions.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available. A list of legislative changes to any Act, and to statutory instruments from 1984, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.



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ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
2. Employment of non-nationals.
- 2A. Supplemental provisions in relation to *section 2*.
- 2B. Civil proceedings
- 2C. Section 2B: supplemental provisions
3. Non-application of *section 2* to nationals of certain states.
- 3A. Non-application of *section 2* to nationals of Bulgaria and Romania.
- 3B. Non-application of certain requirement of Employment Permits Act 2006.
4. Short title.

ACTS REFERRED TO

European Communities Acts 1972 to 2002

Refugee Act 1996

1996, No. 17

Terms of Employment (Information) Act 1994

1994, No. 5



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AN ACT TO PROVIDE FOR THE GRANT OF EMPLOYMENT PERMITS IN RESPECT OF NON-NATIONALS, TO PROHIBIT THE EMPLOYMENT OF NON-NATIONALS WHO DO NOT HAVE SUCH PERMITS, TO PROVIDE FOR THE GRANT OF SUCH PERMITS IN RESPECT OF NATIONALS OF CERTAIN STATES UNDER CERTAIN CIRCUMSTANCES AND TO PROVIDE FOR RELATED MATTERS. [10th April, 2003]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation.

1.—(1) In this Act, unless the context otherwise requires—

“Act of 1994” means the Terms of Employment (Information) Act 1994;

“contract of employment” has the meaning assigned to it by the Act of 1994;

“employer” has the meaning assigned to it by the Act of 1994;

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

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

[...]

(2) In this Act—

(a) a reference to any enactment shall, unless the contrary otherwise requires, be construed as a reference to that enactment as amended or extended by or under any subsequent enactment including this Act,

(b) a reference to a section is a reference to a section of this Act unless it is indicated that reference to some other enactment is intended, and

(c) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

Employment of non-nationals.

2.—[(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,

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

(b) 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.]

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

(3) A person who contravenes *subsection (1) [, (2) or (2C)]* [or fails to take the steps specified in *subsection (2B)*] shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or

(b) if the offence is an offence consisting of a contravention of *subsection [(2) or (2C)]* [or a failure to take the steps specified in *subsection (2B)*], on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 10 years or both.

[(3A) It shall be a defence for a person charged with an offence under *subsection (3)* consisting of a contravention of *subsection (1)* to show that he or she took all such

steps as were reasonably open to him or her to ensure compliance with subsection (1).]

(4) It shall be a defence for a person charged with an offence under *subsection (3)* consisting of a contravention of [*subsection (2) or (2C)*] to show that he or she took all such steps as were reasonably open to him or her to ensure compliance with [*subsection (2) or (2C)*].

(5) Where, on the sworn information of a member of the Garda Síochána not below the rank of sergeant, a judge of the District Court is satisfied that there are reasonable grounds for suspecting that evidence of or relating to an offence under *subsection (3)* is to be found at a place specified in the information, the judge may issue a warrant for the search of that place and any persons found at that place.

(6) A warrant issued under this section shall authorise a named member of the Garda Síochána alone or accompanied by such other members of the Garda Síochána and such other persons as may be necessary—

- (a) to enter, within 7 days from the date of the warrant, and if necessary by the use of reasonable force, the place named in the warrant,
- (b) to search it and any persons found there, and
- (c) to seize anything found there, or anything found in the possession of a person present there at the time of the search, which that member reasonably believes to be evidence of or relating to an offence under *subsection (3)*.

(7) A member of the Garda Síochána acting in accordance with a warrant issued under this section may require any person found at the place where the search is carried out to give the member his or her name and address.

(8) Any person who—

- (a) obstructs or attempts to obstruct any member of the Garda Síochána acting in accordance with a warrant issued under *subsection (5)*,
- (b) fails or refuses to comply with a requirement under this section, or
- (c) gives a name or address which is false or misleading,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both.

(9) A member of the Garda Síochána may arrest without warrant any person whom the member reasonably suspects of having committed an offence under *subsection (8)*.

[(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).

[(10A) This section shall not apply to a national of the Republic of Croatia who is entitled to be in employment in the State pursuant to section 2(1)(a) of the European Union (Accession of the Republic of Croatia) (Access to the Labour Market) Act 2013, for the period referred to in section 2(1)(a) of that Act.]

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

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

(b) where the Minister for Foreign Affairs and Trade has certified in writing that the foreign national referred to in paragraph (a) falls within a reciprocal arrangement that permits a foreign national who is a member of the family of an assigned person, forming part of his or her household, to be in employment [in the State, or]

[(c) where the Minister for Foreign Affairs and Trade has certified in writing that the foreign national referred to in *paragraph (a)* is a member of the family of an assigned person forming part of his or her household, and that the assigned person is a national of another Member State, a Member State of the E.E.A. or the Swiss Confederation.]

(10C) A foreign national referred to in subsection (10B) shall be entitled to be in employment in the State without an employment permit for the duration of the assignment to official duties in the State of the assigned person concerned.

(10D) In subsections (10B) and (10C)—

‘assigned person’ means a person who is assigned, by a government of another state, to carry out official duty in the State on behalf of the government of that other state;

‘reciprocal arrangement’ means an arrangement (whether in the form of a memorandum of understanding or otherwise) that is entered into by the Government with another state.]

(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.]

(12) Article 4 of the Aliens Order 1946 (S.R. & O., No. 395 of 1946) is revoked.

(13) 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 the 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 shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(14) Where the affairs of a body corporate are managed by its members, *subsection (13)* shall apply 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.

[(15) In this section—

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

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

[“Member State of the E.E.A.” 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;]

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

[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.]

[Civil proceedings

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

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

(b) was in employment in the State,

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

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

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

(b) has paid an amount of money that was, having regard to the work done or services rendered during such period, an insufficient amount of money,

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

(3) Where, in proceedings under subsection (2), a court before which the proceedings are brought is satisfied that the foreign national took all steps as were reasonably open to him or her to comply with section 2(1), it may make an order that in recompense for such work done or services rendered an amount of money shall be paid to the foreign national by the employer who employed the foreign national, or, as the case may be, the person referred to in section 2(1A)(a) or the contractor referred to in section 2(1A)(b).

(4) The amount of money to be paid, pursuant to an order under subsection (3), to a foreign national in recompense for work done or services rendered shall be—

(a) in a case where no amount of money was paid in respect of work done or services rendered during the period for which the foreign national was in the employment without an employment permit, an amount equal to the greater of—

(i) an amount calculated by reference to the national minimum hourly rate of pay, or

(ii) an amount equal to an amount of pay for the work done or services rendered which is fixed under or pursuant to any enactment,

or

(b) in a case where an amount of money was paid in respect of work done or services rendered during the period for which the foreign national was in the employment without an employment permit, an amount equal to the difference between—

(i) the amount paid, and

(ii) an amount equal to the greater of—

(I) an amount calculated by reference to the national minimum hourly rate of pay, or

(II) an amount equal to an amount of pay for the work done or services rendered which is fixed under or pursuant to any enactment.

(5) The Minister may, at his or her discretion, institute civil proceedings under subsection (2) in the name, and on behalf, of the foreign national with the consent of that foreign national.

(6) Subject to subsection (10), proceedings under this section shall not be brought after the expiration of 2 years from the day on which the foreign national ceased his or her employment or service with the employer, a person referred to in section 2(1A)(a) or contractor referred to in section 2(1A)(b).

(7) Proceedings under this section shall not be brought in respect of any work, or services, done or rendered more than 6 years prior to the day on which the foreign national ceased his or her employment or service with the employer, a person referred to in section 2(1A)(a) or a contractor referred to in section 2(1A)(b).

(8) Subsection (7) shall apply to proceedings under this section whether the work was done or the services were rendered before or on or after the coming into operation of *section 4* of the Employment Permits (Amendment) Act 2014.

(9) Without prejudice to subsection (6), proceedings under this section shall not be brought where—

- (a) the foreign national, in respect of any right of action he or she may have and whether such right of action arises pursuant to any enactment or otherwise, has—
 - (i) instituted proceedings in relation to the same, or substantially the same, work done or services rendered as referred to in this section, or
 - (ii) otherwise commenced an action or other claim in relation to the same, or substantially the same, work done or services rendered as referred to in this section,
- and
- (b) those proceedings have, or that action or claim has, not been finally determined or have, or has, not been discontinued before being finally determined.

(10) Where—

- (a) before the day on which this section comes into operation a foreign national had instituted proceedings or otherwise commenced an action or other claim for work done or services rendered that are, or is, wholly or substantially in respect of work done or services rendered—
 - (i) during the period in which the foreign national was in the service of an employer in the State, or in employment in the State, without an employment permit referred to in subsection (1), and
 - (ii) for which he or she has not been paid or has been paid an insufficient amount of money,
- and
- (b) the foreign national—
 - (i) has, on or after the day on which this section comes into operation, discontinued the proceedings, action or claim before those proceedings are, or that action or claim is, finally determined, or
 - (ii) has not, when those proceedings are, or such action or claim is, finally determined, been awarded any amount of money in recompense for such work done or such services rendered,

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

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

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

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

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

(15) In this section—

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

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

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

[Section 2B:
supplemental
provisions

2C. (1) The District Court has jurisdiction to hear and determine proceedings under section 2B where the amount claimed in the proceedings does not exceed €15,000.

(2) The jurisdiction of the District Court under this section shall be exercised by the judge of the District Court for the time being assigned to the district court district in which the person against whom the proceedings are brought resides or carries on business.

(3) The Circuit Court has jurisdiction to hear and determine proceedings under section 2B where the amount claimed in the proceedings does not exceed €75,000.

(4) The jurisdiction of the Circuit Court shall be exercised by the judge of the Circuit Court for the time being assigned to the circuit in which the person against whom the proceedings are brought resides or carries on business.]

Non-application
of *section 2* to
nationals of
certain states.

3.—(1) In addition to the persons to whom, by virtue of *subsection (10)* of *section 2*, that section does not apply, that section shall not, subject to *subsection (3)*, apply to a national of a state to which this section applies if—

(a) that state becomes a member of the European Union after the passing of this Act, and

(b) Articles 1 to 6 of Council Regulation (EEC) No. 1612/68 of 15th October 1968 on freedom of movement for workers within the Community¹ do not apply to that state in accordance with the Treaty of Accession.

(2) This section applies to the following states, namely, the Czech Republic, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Poland, the Republic of Slovenia and the Slovak Republic.

(3) If, in the opinion of the Minister, the labour market is experiencing or is likely to experience a disturbance, then, notwithstanding *subsection (1)*, the Minister may, during the transitional period, make an order providing that *section 2* shall apply to a national of a state to which this section applies during a specified period or periods within the transitional period and if he or she does so, that section shall apply in accordance with the order.

(4) An order under this section shall not apply to a national of a state specified in the order if that person has been in employment in the State for a period of not less than 6 weeks immediately before the commencement of the order and has been in receipt of remuneration for such employment.

(5) The Minister may by order amend or revoke an order under this section.

(6) In this section, unless the context otherwise requires—

“disturbance” shall be construed in accordance with the Treaty of Accession;

“labour market” shall be construed in accordance with the Treaty of Accession;

“transitional period”, in relation to a state to which this section applies, shall be construed in accordance with the Treaty of Accession;

¹ O.J. No. L257, 19.10.68, p.2

“Treaty of Accession” means any treaty between the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Union) and the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic concerning the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union.

[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.]

Short title.

4.—This Act may be cited as the Employment Permits Act 2003.