



Corporate Immigration

in 25 jurisdictions worldwide

2012

Contributing editor: Julia Onslow-Cole, PwC Legal

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Ireland

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Overview

- 1 In broad terms what is your government's policy towards business immigration?

The Economic Migration Policy Unit in the Department of Jobs, Enterprise and Employment formulates and implements labour market policies. This unit leads the development of policy on economic migration and access to employment in Ireland.

There are clear signals that rising unemployment is influencing the evolution of immigration policy, with some restrictions being put in place on eligibility for employment permits (eg, the list of eligible occupations under the green card scheme has been scaled back on a number of occasions recently in response to changes in skills shortages in Ireland). However, a framework remains in place to attract highly skilled workers to Ireland from outside the European Economic Area (EEA) where these skills are not available within the EU countries.

The National Employment Rights Authority (NERA) is an office of the Department of Jobs, Enterprise & Innovation. NERA's aim is to secure compliance with employment rights legislation and to foster a culture of employment rights' compliance in Ireland. Inspectors from NERA are authorised to carry out employment permit compliance checks as part of their routine inspections.

Short-term transfers

- 2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

Individuals from certain countries require a visa to travel to Ireland irrespective of the length of time of the proposed visit to Ireland. The Department of Justice & Equality maintains a list of the countries whose nationals do not require a visa to travel to Ireland. It should be noted that the granting of a visa is a form of pre-entry clearance only, granting permission to the individual to present himself or herself at a point of entry to Ireland to seek permission to enter the country.

All visa applications must be made using the Online Visa Application Facility (with the exception of a re-entry visa application for an individual already residing legally in Ireland). Following submission of the online visa application, the individual will be required to print and sign a summary of the application form. The signed summary together with the specific documentation requested must be submitted in respect of the individual to the local Irish embassy or consulate (listed on the summary sheet).

- 3 What are the main restrictions on a business visitor?

An individual travelling to Ireland as a business visitor is entitled to attend business meetings, conferences and orientations, etc, but is not permitted to work in Ireland. The maximum period of time an individual is permitted to remain in Ireland as a business visitor is 90 days. The holder of a business visa will generally be granted

permission to remain in Ireland for the period of time specified on their return travel ticket.

The decision to grant entry to Ireland and the period of time for which permission is granted to business visitors is at the sole discretion of the immigration officer on duty at the point of entry into Ireland.

- 4 Is immigration permission needed to give or receive short-term training?

Individuals from certain countries require a visa to travel to Ireland to give or receive short-term training.

There is a specific type of employment permit called the Intra-Company Transfer (ICT) training permit which facilitates the transfer of non-EU trainees from an overseas company of a multinational corporation to a subsidiary or group company in Ireland. The Irish company must have a direct link with the overseas company by common ownership (for example, either one company must own the other, or both must be part of a group of companies controlled by the same parent company).

An application for an ICT permit for training purposes may be considered for a maximum duration of 12 months, provided it is adequately demonstrated that a detailed training programme will be undertaken (and all other conditions pertaining to the ICT permit are satisfied).

An application for an employment permit may be necessary where an individual is required to provide training in Ireland and intends to spend more than 90 days in the country.

- 5 Are transit visas required to travel through your country? How are these obtained?

Nationals of certain countries are required to be in possession of a valid Irish transit visa when arriving at a port in Ireland for the purposes of passing through the port in order to travel to another country.

If the intention is to leave the port at any stage the individual must apply for the appropriate visit visa.

All transit visa applications must be made using the Online Visa Application Facility. Following submission of the online visa application, the individual will be required to print and sign a summary of the application form. The signed summary together with the specific documentation requested must be submitted to the local Irish embassy or consulate (listed on the summary sheet).

Long-term transfers

- 6 What are the main immigration permission categories used by companies to transfer skilled staff?

The main type of employment permit used to transfer skilled staff to Ireland is the ICT permit, which facilitates the transfer of senior management, key personnel or trainees from an overseas company

of a multinational corporation to a subsidiary or group company in Ireland.

If the individual is required to be a local hire in Ireland, then the green card employment permit is generally used (the employment contract with the Irish entity must be for a minimum period of two years).

In certain circumstances, a work permit may be sought (eg, where all the conditions for an ICT or green card permit are not met).

7 What are the procedures for obtaining these permissions?

An application for an employment permit must be submitted to the Department of Jobs, Enterprise & Innovation (DJEI). The application consists of the following:

- completion of the appropriate application form;
- provision of support documents (eg, copy of passport of the individual, two passport-sized photographs, copies of relevant qualifications, together with specific company documentation etc). If the original documentation is not in English, a certified translation must be submitted with the application.

The relevant application form and supporting documents must be submitted to the DJEI. Assuming the application is accepted and all documentation is in order, the DJEI will process the application and issue the original employment permit together with a certified employer's copy of the permit.

8 What are the general maximum and minimum periods of stay granted under the main categories for company transfers?

An ICT permit may be granted for a period of between three months to two years with a possible extension for a further three years (maximum stay of five years), after which time the individual must return to the overseas company.

Green card employment permits are initially issued for a period of two years and may subsequently be renewed. The green card permit route is intended to allow an accelerated pathway to permanent residency; however, this is currently subject to the enactment of the Immigration, Residence and Protection Bill 2010, which is at the initial stages of review by the Irish parliament.

Residence permit

If a non-EEA national intends to spend more than 90 days in Ireland he or she is required to obtain permission to reside legally in Ireland from the minister for justice and equality. This can be done by attending at the local Garda (police) station, if residing outside Dublin, or at the Garda National Immigration Bureau (GNIB), if residing in Dublin and obtaining an Irish residence permit.

9 How long does it typically take to process the main categories?

The current processing time for employment permits is between four to six weeks from the date the application is submitted to the Department of Jobs, Enterprise & Innovation. Please note that the processing times can vary depending on the time of year, staffing levels and holiday periods. The maximum processing time encountered over the past two years for employment permits was between 10 and 12 weeks.

10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?

It is not necessary to have any benefits or facilities in place to secure the employment permit.

11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?

In Ireland there are three different government departments with responsibility for immigration (DJEI, Department of Justice & Equality and Department of Foreign Affairs & Trade). The level of discretion afforded varies depending on the particular government department.

While the DJEI follows set procedures for processing employment permits, some flexibility may be allowed, (eg, in the case of an ICT permit in a start-up situation). The DJEI guidelines will not permit the number of intra-company transferees to exceed 5 per cent of the total Irish workforce in an organisation. However, in exceptional circumstances such as in small firms or start-up companies, a higher ICT percentage may be permitted on a strictly temporary basis with an absolute limit of 50 per cent permitted.

12 Is there a special route for high net worth individuals or investors?

Non-EEA nationals who wish to pursue a business activity in Ireland (in a capacity other than as an employed person for whom an employment permit must be obtained) must first obtain Business Permission from the minister for justice and equality.

Presently, non-EEA nationals applying for business permission must create employment (other than their own) and show personal investment in Ireland of €300,000 or more.

The Department of Justice & Equality is considering revising the current business permission system in place for non-EEA nationals seeking entry to Ireland to start a business. Major reform to the current business permission system has been proposed in an attempt to attract foreign investors and entrepreneurs, particularly in start-up enterprises in key sectors. Proposals and guidelines are being drafted by the Department of Justice in consultation with state agencies and other government departments.

It is recognised that the existing business permission scheme, which requires a €300,000 investment and has other employment-related conditions, is not sufficiently flexible to cater for certain types of businesses such as start-ups. As entrepreneurship and investment come in many forms, the immigration systems that interact with them need to respond in a more diversified way. The overall objective of the new scheme will be to facilitate the creation of employment opportunities in Ireland.

13 Is there a special route for highly skilled individuals?

The green card scheme applies to highly skilled individuals. This scheme is available to all occupations where the base salary excluding bonuses is in excess of €60,000. For those on salaries of between €30,000 and €60,000, the scheme is available to occupations listed as having skills that are in short supply in specific sectors.

14 Is there a minimum salary requirement for the main categories for company transfers?

There is a minimum salary requirement of €40,000 for an ICT permit.

15 Is there a quota system or resident labour market test?

Ireland does not currently operate an employment permit quota system.

However, Irish employers seeking work permits for non-EEA nationals are required to advertise the position with the FÁS (Irish Training & Employment Authority) and EURES (European Employment Services Network) employment networks for a minimum period of eight weeks and in local and national newspapers for six days. This is to ensure that the vacancy has been advertised in the local and wider EEA labour market and that in the first instance a

national of the EU or Norway, Iceland, Liechtenstein and Switzerland, or in the second instance a national of Bulgaria or Romania, cannot be found to fill the vacancy. Evidence that this has been done must be included with the work permit application.

There is no advertising requirement for a green card employment permit or ICT employment permit applications.

In all employment permit cases, the ratio of EEA nationals employed must be maintained at a minimum of 50 per cent of the total workforce. In addition, for ICT permits the number of ICT employees must not exceed 5 per cent of the total Irish workforce.

16 What is the process for third-party contractors obtaining work permission?

Employment permit applications submitted by recruitment agencies, agents, intermediaries or companies who intend to outsource or subcontract the employee to work in another company are not accepted by the Department of Jobs, Enterprise and Employment.

Foreign employers requiring a work permit for employees who will be based at client sites in Ireland must satisfy additional requirements to those applicable to the regular work permit scheme. In addition, under current practice, each foreign employer must register with the Irish Revenue as an employer for Irish payroll taxes (PAYE) and provide an Employer's Registered Number if they wish to obtain employment permits.

17 Is assessment or recognition of skills and qualifications required to obtain immigration permission?

The foreign national concerned must possess the relevant qualifications, skills or experience required for the particular role or job. A certified copy of the relevant qualifications must be submitted with the employment permit application form.

Extensions and variations

18 How can short-term visas be converted into longer-term authorisations?

It is generally not possible to extend a business visa while the individual is in Ireland. In addition, it is not possible for an individual to convert a business visa to an employment visa while the individual is residing in Ireland. The individual must leave Ireland, apply for the appropriate employment permit and, once issued, apply for the relevant employment visa in his or her country of normal residence in order to re-enter Ireland as an employment permit holder.

19 Can long-term immigration permission be extended?

Green card permit holders

Currently a green card employment permit is issued for an initial period of two years and can be extended subsequently. Green card employment permit holders whose permit and immigration registration card are due to expire are required to present themselves to the relevant immigration authorities to obtain permission to continue to work in Ireland without the requirement to hold an employment permit. Currently, where the person meets the qualifying criteria and presents the required documentation, such permission is generally granted for a further two years.

This is an interim solution as it is proposed that the green card permit route will allow a pathway to permanent residency after two years. However, the legislation required to implement this is contained in the Immigration, Residence and Protection Bill 2010 which has not yet been enacted. The extension of permission to remain in renewal green card cases simply exempts the person from the requirement to hold a green card permit. It is not a long-term residence status and does not confer the full benefits of that status.

Intra-company transfer (ICT) permit holders

An ICT permit can be issued for a period of two years initially and can subsequently be extended for a further three years only (maximum stay in Ireland of five years) after which time the individual must leave Ireland and return to the overseas company.

Work permit holders

A work permit can be issued for a period of two years initially and can subsequently be extended for a further three years. After five years on work permit conditions, immigration permission can be obtained from the Department of Justice & Equality to reside and work in Ireland without the requirement to hold a further employment permit. This arrangement applies both to individuals still in employment and to those made redundant after five years employed on a work permit.

20 What are the rules on and implications of exit and re-entry for work permits?

An individual who holds an employment permit is required to work in Ireland for the duration of the employment permit. An individual may leave Ireland for short periods of time, for example, to go on business trips or holidays.

21 How can immigrants qualify for permanent residency or citizenship?

Permanent/long-term residency

As outlined above, it is proposed that the green card permit route will allow a pathway to permanent residency after two years; however, the legislation required to implement this is contained in the Immigration, Residence and Protection Bill 2010, which has not yet been enacted.

Individuals who have been legally resident in Ireland for a minimum of five years (ie, 60 months) on the basis of work permit conditions may apply to the immigration authorities for a five-year residency extension. The individual may also apply to be exempt from employment permit requirements. In addition, current working visa or work authorisation holders (issued prior to 31 December 2006) may also apply to the immigration authorities for a five-year residency extension.

Long-term residency is granted on the basis that a non-EEA national has completed a minimum of five years (ie, 60 months) legal residence in the state on work permit, work authorisation or working visa conditions, which is reflected in the corresponding endorsements on an individual's passport (not by the dates of commencement and expiry of each employment permit). Periods of time for which an individual has not been legally resident in the state (ie, does not have an up-to-date endorsement on their passport) cannot be counted towards an application for long-term residency. If successful, the individual will be granted permission to remain which is valid for five years.

Individuals who have been resident in Ireland on the basis of green card permission only are specifically excluded from applying for long-term residency permission.

Citizenship

A non-Irish national can apply to become an Irish citizen through naturalisation. Applications for citizenship are decided by the minister for justice and equality, who has absolute discretion whether or not to grant citizenship, even where the applicant meets certain conditions set out in the legislation. The main conditions for naturalisation are that the individual must:

- be 18 years or older (or married, if younger than 18);
- be of good character;

Update and trends

Short Stay Visa Waiver Programme

The first ever Short Stay Visa Waiver Programme commenced on 1 July 2011 and is intended to run up to the end of October 2012, taking in the period of the London Olympics. This programme is an integral part of the Irish government's Jobs Initiative, launched in May 2011, and is intended to promote tourism, particularly from emerging markets.

Under the programme, holders of UK 'general visas' will be able to travel to Ireland within the period of validity of that visa without the requirement to obtain a separate Irish visa. The period of validity of such a visa is 180 days but the maximum stay in Ireland will be 90 days or to the end of the period of validity of the visa, whichever is the shorter. It should be stressed that the need for a visa to visit Ireland is not eliminated by this programme. Visitors from visa-required countries will still require an Irish visa (for direct travel to Ireland) or a UK visa (for travel to Ireland via the UK). What is eliminated by this programme is the need to have both an Irish and UK visa when visiting Ireland via the UK.

Employers and individuals should also be aware that while the programme includes business and tourist visas, other types of visa are not included in the programme.

New student scheme

Following a public consultation process which commenced in 2009 on the reform of the non-EEA student immigration regime, a series of recommendations were published on 22 September 2010 and the new rules came into force from 1 January 2011. The aim of the new student scheme is to tighten the regulatory framework for students while at the same time maintaining the growth of the international education sector and retaining talented non-EEA students in Ireland once they have completed their studies.

Some of the main changes which came into force include setting a maximum period of residence in Ireland on student permission and a more selective approach to the range of third-level courses for which student permission is available. The aim of these changes is to facilitate students at the upper end of the academic spectrum and to enable skilled non-EEA students to progress within the Irish immigration system.

EU treaty rights

A foreign national (who is not a citizen of the EU) is required to register with the Department of Justice and Law Reform and obtain a residence permit in order to reside legally in Ireland.

The European Directive 2004/38/EC, which is contained in Irish law, protects the right of citizens of the EU and their family members to move and reside freely within EU member states. To avail of the benefits of what are commonly known as 'EU Treaty Rights', the non-EU spouse or family member must make a formal application to the Department of Justice and Law Reform seeking permission to reside and work in Ireland without the requirement to obtain an employment permit. Where all the conditions are met, an EU Treaty Rights Residence Card is issued which allows the individual to live and work in Ireland for a five-year period.

Applicants are currently permitted to live and work in Ireland while their applications are being processed.

Immigration, Residence & Protection Bill

The Immigration Residence and Protection Bill originally drafted in 2005 remains at committee stage and is still set for review by the Irish parliament. The recent change of government, coupled with backlogs of other legislation, have contributed to further delays in the passing of the Bill. The comprehensive Bill, if enacted, would deal with a wide range of issues relating to immigration, asylum and the rights of foreign nationals to reside in Ireland.

Van Der Elst Ruling

Ireland recognises the *Van der Elst* Ruling which means that, subject to certain conditions, a non-EEA employee legally employed in another EU country is permitted to work in Ireland for a temporary period of time without the need to apply for an employment permit.

Citizenship applications

Reforms to the naturalisation application process are due to take place which will include a six-month turnaround on applications and the introduction of a formal citizenship ceremony.

Immigration law and practice is constantly being updated and prospective employers are strongly advised to ensure that they are aware of all up-to-date regulations. It is an offence for an employer to employ a person who is not authorised to work in Ireland.

- have had a period of one year's continuous reckonable residence in Ireland immediately before the date of the application and, during the eight years preceding that, have had a total reckonable residence in Ireland amounting to four years;
- intend in good faith to continue to reside in the state after naturalisation;
- make a declaration of fidelity to the nation and loyalty to the state.

22 Must immigration permission be cancelled at the end of employment in your jurisdiction?

Where an individual holding a valid employment permit ceases to be employed by the employer stated on the permit, for any reason, the employment permit (employee and employer's certified copy) must be returned to the immigration authorities for cancellation within four weeks of the individual ceasing employment with the employer.

An individual who has held an employment permit for less than five years and has been made redundant is permitted to remain in Ireland for a period of six months from the date of redundancy in order to seek further employment.

An individual who has held an employment permit for a period of five years or more and is made redundant may seek permission from the Department of Justice & Equality to reside and work in Ireland without the requirement to hold a further employment permit.

23 Are there any specific restrictions on a holder of employment permission?

Any change in the circumstances of the individual or the employment must be notified to the immigration authorities. An individual who holds an employment permit is only permitted to work for the employer and in the employment stated on the employment permit.

The holder of an employment permit must be employed on a full-time basis with the employer stated on the employment permit and is therefore not permitted to attend a full time educational course (student permission required). However, part-time evening study is permitted.

If the individual is on his or her first employment permit in Ireland, then the individual is not permitted to change employment within the first twelve months (except in exceptional circumstances) of the start date of the employment permit. After 12 months, the individual is free to move employer; however, a new employment permit application must be submitted in respect of the new employment.

If the individual is not on his or her first employment permit in Ireland, even if it is the individual's first employment permit with the employer named on the permit, changing employer is permitted (a new employment permit application must be submitted in respect of the new employment).

An individual who has held a green card for two years may subsequently apply to obtain permission which entitles the current green card permit holder to work without an employment permit during that time. Assuming the individual meets the qualifying criteria and presents the correct documentation to the immigration authorities, the individual may be granted permission with a duration of two years.

Dependants**24** Who qualifies as a dependant?

The following individuals may qualify as a dependant:

- non-EEA spouse;
- non-EEA partner of an Irish citizen in a long-term relationship that has existed for at least two years;
- non-EEA partner of an EU citizen, in a long-term relationship that has existed for at least two years;
- non-EEA partner of a work permit/green card holder or person granted long-term residence, in a long-term relationship that has existed for at least four years;
- a non-EEA civil partner who has contracted a registered partnership, or is a party to a class of legal relationship specified in the Civil Partnership (Recognition of Registered Foreign Relationships) Order 2010 as entitled to be recognised as a civil partnership; and
- non-EEA child under 18 years of age (under 21 years if a child of an EU spouse).

25 Are dependants automatically allowed to work?

Dependants are not automatically entitled to work.

Spousal/dependant work permit

The following individuals may be eligible to apply for a spousal/dependant work permit:

- non-EEA spouse;
- a non-EEA civil partner who has contracted a registered partnership, or is a party to a class of legal relationship specified in the Civil Partnership (Recognition of Registered Foreign Relationships) Order 2010 as entitled to be recognised as a civil partnership;
- non-EEA child under 18 years of age who is resident in Ireland as a family member of the employment permit holder.

A non-EEA spouse or dependant of an individual who holds one of the employment permits listed below may apply for a spousal/dependant work permit:

- a valid green card permit;

- a valid ICT permit of 12 months or more duration where the application was received by the Department of Jobs, Enterprise & Innovation (DJEI) before 1 June 2009;
- a valid work permit of 12 months or more duration where the first work permit application was received by the DJEI before 1 June 2009;
- a valid employment permit or hosting agreement in respect of a researcher position;
- a valid working visa issued before 31 December 2006; and
- a valid work authorisation issued before 31 December 2006.

Under this scheme, eligible spouses and dependants have greater ease of access to employment in Ireland as they are permitted to apply for an employment permit in respect of most occupations. In addition, the prospective employer is not required to advertise the position and the government processing fee is waived.

All other dependants who do not qualify for a spousal/dependant work permit must satisfy the criteria applicable to the relevant employment permits in their own right.

26 What social benefits are dependants entitled to?

The main entitlement to social benefits is linked to the social welfare contribution (PRSI) class and length of time paying social security in Ireland. Certain minimum Irish social security (PRSI) contribution conditions must be satisfied in order to be entitled to the main social benefits in Ireland. Child benefit entitlements are linked to habitual residence.

Other matters**27** Are prior criminal convictions a barrier to obtaining immigration permission?

Prior criminal convictions can be a barrier and the immigration authorities may refuse to grant an employment permit or visa in such cases.

28 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?

The Employment Permits Acts of 2003 and 2006 provide for fines of up to €250,000 and imprisonment for a term of up to 10 years for employing a non-EEA national without an employment permit.



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Inspectors from the National Employment Rights Authority (NERA) carry out employment permit compliance checks as part of their routine inspections. In 2010, NERA inspectors undertook employment permit compliance inspections of Irish organisations and breaches of employment permit legislation were detected in 26 per cent of cases inspected, requiring remedial action.

29 Are there any minimum language requirements for migrants?

There is no minimum language requirement for migrants.

30 Is medical screening required for obtaining immigration permission?

No medical screening is required in order to obtain immigration permission.



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