



Number 7 of 2003

EMPLOYMENT PERMITS ACT 2003

REVISED

Updated to 20 March 2013

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 *Electoral (Amendment) (Dáil Constituencies) Act 2013 (7/2013)*, enacted 20 March 2013, and all statutory instruments up to and including *Health Insurance Act 1994 (Section 11E(2)) Regulations 2013*. (S.I. No. 93 of 2013), made 20 March 2013, 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 2012: This Act is one of a group of Acts included in this collective citation to be construed together as one (*Industrial Relations (Amendment) Act 2012, s. 1(3)*). 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)*

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

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Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked.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.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 2000, may be found in the Legislation Directory at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Industrial Relations (Amendment) Act 2012 (32/2012)*
- *Employment Permits Act 2006 (16/2006)*

- *Employment Equality Act 1998 (21/1998)*

All Acts up to and including *Electoral (Amendment) (Dáil Constituencies) Act 2013 (7/2013)*, enacted 20 March 2013, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *European Union (Occupation of Road Transport Operator) Regulations 2011 (S.I. No. 697 of 2011)*
- *European Communities (Free Movement of Persons)(No.2) Regulations 2006 (S.I. No. 656 of 2006)*
- *European Communities (Free Movement of Persons) Regulations 2006 (S.I. No. 226 of 2006)*

All statutory instruments up to and including *Health Insurance Act 1994 (Section11E(2)) Regulations 2013 (S.I. No. 93 of 2013)*, made 22 March 2013, were considered in the preparation of this revision.



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ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
2. Employment of non-nationals.
- 2A. Supplemental provisions in relation to section 2.
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

Terms of Employment (Information) Act 1994

1996, No. 17

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 OIREACTHAS AS FOLLOWS:

Annotations

Modifications (not altering text):

- C1** Actions taken in accordance with Act not rendered unlawful by *Employment Equality Act 1998* (21/1998), s. 17(2) as substituted (18.07.2004) by *Equality Act 2004* (24/2004), s. 10(a), commenced on enactment.

Compliance with statutory requirements etc.

17.— ...

[(2) In relation to discrimination on the basis of nationality, nothing in this Act shall render unlawful any action taken in accordance with the Employment Permits Act 2003.]

Editorial Notes:

- E1** Previous affecting provision: application of Act restricted (28.04.2006) by *European Communities (Free Movement of Persons) Regulations 2006* (S.I. No. 226 of 2006), reg. 18(1)(b); revoked (1.01.2007) by *European Communities (Free Movement of Persons) (No.2) Regulations 2006* (S.I. No. 656 of 2006), reg. 27.
- E2** Requirement to inform operator of offence under collectively cited *Employment Permits Acts 2003 and 2006* imposed (4.12.2011) by *European Union (Occupation of Road Transport Operator) Regulations 2011* (S.I. No. 697 of 2011), regs. 6, 8 and sch.

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;

F1[‘foreign national’ means a non-national (within the meaning of the Immigration Act 1999);]

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

F2[...]

(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.

Annotations

Amendments:

- F1** Inserted (1.01.2007) by *Employment Permits Act 2006* (16/2006), s. 39(a), S.I. No. 682 of 2006.
- F2** Deleted (1.01.2007) by *Employment Permits Act 2006* (16/2006), s. 39(b), S.I. No. 682 of 2006.

Employment of non-nationals.

2.—F3[(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.]

(3) A person who contravenes *subsection (1)* or *(2)* F4[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)* F4[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.

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

(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)*.

F5[(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.]

(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 “place” includes any dwelling or any building or part of a building.

Annotations

Amendments:

- F3** Substituted (1.01.2007) by *Employment Permits Act 2006* (16/2006), s. 2, S.I. No. 682 of 2006.
- F4** Inserted (1.01.2007) by *Employment Permits Act 2006* (16/2006), s. 3(a), S.I. No. 682 of 2006.
- F5** Substituted (1.01.2007) by *Employment Permits Act 2006* (16/2006), s. 3(b), S.I. No. 682 of 2006.

Modifications (not altering text):

- C2** Application of subs. (11) clarified (1.01.2007) by *Employment Permits Act 2006* (16/2006), s. 14(4), S.I. No. 682 of 2006.

Regulations governing grant of permits, etc.

14.— ...

(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.

C3 Application of section made subject to presumption (1.01.2007) by *Employment Permits Act 2006* (16/2006), s. 34, S.I. No. 682 of 2006.

Presumption that a person is being employed.

34.—In proceedings for an offence under section 2(3) of the Act of 2003, where evidence is given by—

- (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.

F6[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.]

Annotations

Amendments:

F6 Inserted (1.01.2007) by *Employment Permits Act 2006* (16/2006), s. 3(c), S.I. No. 682 of 2006.

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;

“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.

F7[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—

¹ O.J. No. L257, 19.10.68, p.2

(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.]

Annotations

Amendments:

F7 Inserted (1.01.2007) by *Employment Permits Act 2006* (16/2006), s. 3(d), S.I. No. 682 of 2006.

F8[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.]

Annotations

Amendments:

F8 Inserted (1.01.2007) by *Employment Permits Act 2006* (16/2006), s. 3(d), S.I. No. 682 of 2006.

S. 4 **[No. 7.]** *Employment Permits Act 2003* [2003.]

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