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The content of this publication has been prepared and is provided for general information and assistance purposes only. Every effort has been made to ensure the information provided is accurate and up to date at the time of publication. It is not intended to constitute professional legal advice. Although great care has been taken in its preparation, all persons accessing the content of this booklet are advised to seek specific legal or professional advice in relation to any decision or course of action that they wish to take.

Introduction

This note will address generally how employers working in the arts sector in Ireland can hire arts workers who come from countries outside of the European Union, the European Economic Area (EEA) and/or the United Kingdom. Some examples of non-EEA countries are Nigeria, Pakistan, South Africa, China, Canada and the United States.

The law that mandates that non-nationals applying for work permits prior to beginning a job in Ireland does not apply to prospective employees coming from EEA countries, Switzerland, or the United Kingdom, due to Ireland's membership of the European Union, and international agreements that Switzerland and the UK.

A person coming from a non-EEA country must have explicit permission from the Minister of Justice to work in Ireland – either through an immigration permission that allows them to work in the State or by way of employment permit.

Some people do not need an employment permit to work and can get permission to work through the immigration system. Some immigration permissions, such as a Stamp 4 permission, allow the holder of that permission to work in any job available to them in the State. For example, the Non-EEA parent of an Irish citizen child could be granted a Stamp 4 permission for a finite period of time and allowed to renew that permission from time to time.

This summary focuses on how **Non-EEA applicants** may apply to work in Ireland by way of employment permit.

1.

Employment Permits

I. Employment Permits

Generally, employment permits are only given where an Irish employer has been unable to recruit an Irish or EEA national for the post. **This does not apply to Sports and Cultural Employment Permits (discussed below).**

In order for a prospective employee to get permission to work in Ireland, they should have a job offer from an employer in the first instance, and then they may apply for the employment permit. Once the prospective employee has obtained the employment permit, they can apply for a visa to come to Ireland, if the individual requires one.

Applications are considered under the Employment Permits Acts 2003–2014, which set out in legislation the criteria in relation to the application, grant and refusal of employment permits.

Once the employee has an employment permit, the employee has permission to remain in Ireland for as long as the employment permit is valid. The employee will get a Stamp 1 (one) on their passport. This stamp gives the employee permission to remain in Ireland, on condition that the employee does not enter any employment without an employment permit.

Employment permits are processed by the Department of Enterprise, Trade and Employment. In general, the employee must obtain the employment permit before they come to Ireland. The employee can apply for the employment permit themselves, or the employer can apply on their behalf.

The Employment Permits Act 2006 (as amended) allows for nine different types of Employment Permits to be granted. Further information about permits are available on the Department of Enterprise, Trade and Employment website.

2.

Types of Employment Permits

2. Types of Employment Permits

a. The Sport and Cultural Employment Permit



The Sport and Cultural Employment Permit caters for employment permits in the sporting and cultural area. This permit is designed to facilitate the employment in the State of non-EEA nationals with the relevant qualifications, skills, experience or knowledge for the development, operation and capacity of sporting and cultural activities.

b. Critical Skills Employment Permit



The Critical Skills Employment Permit is targeted at professionals with skills in certain areas. This permit is designed to address types of employment where there is a shortage in respect of qualifications, experience or skills which are required for the proper functioning of the Irish economy.

The “Critical Skills Occupations List” is set out in Schedule 3 of the Employment Permits (Amendment) Regulations 2022 (available at: <https://www.irishstatutebook.ie/eli/2022/si/273/made/en/pdf>)

Relevant to the arts sector are roles such as:

- Animation Background and Design Artist in 2D or 3D animation;
- Location Designer in 2D or 3D animation;
- Character Designer in 2D or 3D animation;
- Prop Designer in 2D or 3D animation;
- Animation Layout Artist in 2D or 3D animation.

Other roles listed under this Critical Skills Occupation list include architects, media professionals, sports and fitness professionals and teachers.

c. The General Employment Permit



The General Employment Permit is an employment permit which permits the holder to be employed in the State in a broad range of occupations.

Unlike the Critical Skills Employment Permits, where eligible occupations are specified, the General Employment Permits assume all occupations are eligible unless otherwise specified. Therefore, all occupations are eligible unless excluded under the list of Ineligible Categories of Employment for Employment Permits. All occupations on the Highly Skilled Eligible Occupations List are deemed eligible.

d. The Dependant/Partner/Spouse Employment Permit



The Dependant/Partner/Spouse Employment Permit allows the dependants, recognised partners, civil partners and spouses of Critical Skills Employment Permit holders and of Researchers on Hosting Agreements to apply for an employment permit to work in the State.

e. The Intra-Company Transfer Employment Permit



The Intra-Company Transfer Employment Permit is designed to facilitate the transfer of senior management, key personnel or trainees who are foreign nationals from an overseas branch of a multinational corporation to its Irish branch.

f. The Contract for Services Employment Permit



The Contract for Services Employment Permit is designed for situations where a foreign undertaking (Contractor) has won a contract to provide services to an Irish company on a contract for services basis and to facilitate the transfer of their non-EEA employees to work on the Irish contract in Ireland.

g. The Reactivation Employment Permit



The Reactivation Employment Permit is designed to permit a non-EEA national who entered the State on a valid Employment Permit but who fell out of the system through no fault of their own or who has been badly treated or exploited in the workplace, to work legally again.

h. The Internship Employment Permit



The Internship Employment Permit is designed to facilitate the employment in the State of non-EEA nationals who are full-time students, studying in a discipline relevant to the occupations included on the Highly Skilled Eligible Occupations List and enrolled at a third level institution outside the State, for the purposes of gaining work experience.

i. The Exchange Agreement Employment Permit



The Exchange Agreement Employment Permit is designed to facilitate the employment in the State of non-EEA nationals pursuant to prescribed agreements or other international agreements to which the State is a party. Such agreements are prescribed for in the Employment Permits Regulations.

3.

Where do I make the Application for the Employment Permit?

3. Where do I make the Application for the Employment Permit?

Employees and employers can apply for an employment permit online, through the Employment Permits Online System (EPOS).¹ The online application system allows for uploading supporting documents and also making the fee payments.



¹ <https://epos.enterprise.gov.ie/#/app/welcome>

4.

What information do I need for my Application Form?

4. What information do I need to include in my application form?

A separate application needs to be filled out online for each type of permit. Section 6 of the Employment Permits Act 2006 (as amended) sets out the information that must be included with each application. The online application will ask the applicant for this information. The information that will be requested of applicants includes:

- (a) a full and accurate description of the employment and the terms and conditions of the employment, including the hours of work in each week, and the duration, of the employment concerned;
- (b) information in respect of the qualifications, skills, knowledge and experience that are required for the employment concerned;
- (c) information and, where required, any relevant documents in respect of the qualifications, skills, knowledge or experience of the foreign national concerned;
- (d) the place at, or in which, the employment concerned is to be carried out and, where the employment concerned is to be carried out in more than one place, specify each such place;
- (e) the remuneration and any deductions, where agreed, for board and accommodation, or either of them in respect of the employment concerned;
- (f) in respect of the foreign national concerned —
 - (i) whether or not they have sought permission to land in the State on a previous occasion or have been in the State on a previous occasion without permission to land,
 - (ii) where they are in the State at the time of the application, provide information and documents, where required by the Minister, relating to the permission granted to them to be in the State,
 - (iii) where they are in employment in the State at the time of the application, provide information and documents, where required by the Minister, relating to the permission granted to them to be in such employment, and

- (iv) information as to whether they were at any time prior to such application in employment in the State and, where requested by the Minister, provide any information and documents relating to the permission granted to them to be in such employment, or, as the case may be, an employment permit granted in respect of that employment,
- (g) other information, documents and evidence to verify such information and documents as may be prescribed or which the Minister may request;
- (h) information and documents, as the Minister may request, concerning the offer of employment.

5.

Where do I make the Application for the Employment Permit?

5. Basic criteria for eligible employers / employees applying for work permits

(a) Employers must be trading in Ireland and registered with the Revenue Commissioners, and if applicable, with the Companies Registration Office (see section 12 of the Employment Permits Act 2006 (as amended));

(b) The applicant must be a prospective employee of the company (i.e. the prospective employee concerned will be employed, salaried and paid directly by the employer) who possesses the relevant qualifications, skills and experience that are required for the employment.

(c) The role cannot be included on the Government's prescribed list of ineligible roles²

(d) The employer must demonstrate that their workforce is made up of at least 50% EEA nationals (see section 10 (2) of the Employment Permits Act 2006 (as amended));

(e) An application for any employment permit must be received at least 12 weeks before the proposed employment start date.

It is advised that if an applicant is unsure as to whether the role in question appears on the prescribed list of ineligible roles that an applicant consults the Employment Permit Section directly, or uses Cascot Web which is a useful tool that can be used to clarify what applicable 'Standard Occupational Classification System' code applies to the role applied for. A link to Cascot Web and a further explanation as to how the Standard Occupational Classification System works can be found on the Department of Enterprise website.³



² <https://enterprise.gov.ie/en/what-we-do/workplace-and-skills/employment-permits/employment-permit-eligibility/ineligible-categories-of-employment/>

³ <https://enterprise.gov.ie/en/what-we-do/workplace-and-skills/employment-permits/employment-permit-eligibility/classification-of-employments/>

6. How to apply for a General Employment Permit

Employees and employers can apply for an employment permit online, through the Employment Permits Online System (EPOS). The online application system allows for uploading supporting documents and also making the fee payments.

An application for an employment permit generally requires a Labour Market Needs Test. **It is important that employers in the arts sector note that the labour market needs test is not required where a job is an occupation included on the Critical Skills Occupations List or if the permit applied for is a Sport and Cultural Employment Permit.**

Employers should generally assume that a labour market needs test is required when hiring someone to work under a general employment permit.

7.

What is a Labour Markets Needs Test?

7. What is a Labour Markets Needs Test?

The idea behind the labour markets needs test is that employment opportunities which arise in Ireland should first be offered to suitably skilled Irish and other EEA nationals, and should only be offered to non-EEA nationals where no suitable candidate emerges from within the EEA to fill the vacancy.

In order to ensure that job opportunities are made available to Irish and EEA nationals, employers must satisfy a Labour Market Needs Test before a General Employment Permit or Contract for Services Employment Permit can be issued to a non-EEA national.

Any employment permit application where a Labour Market Needs Test is required must have published a EURES ad for at least 28 days before a valid application can be submitted.

EURES refers to the European Employment Services Network, which was established by the European Commission to facilitate the free movement of workers within the European Union and EEA countries.

The employer must advertise the vacancy:

- a. with the Department of Social Protection Employment Services/EURES employment network for at least 4 weeks, and
- b. in a national newspaper for at least 3 days, and also
- c. in either a local newspaper or jobs website (separate to Department of Employment Affairs and Social Protection/EURES websites) for 3 days.

In line with Regulations made under the Employment Permits Act 2006 (as amended) the vacancy must include the following information:

- a. a description of the employment,
- b. the name of the employer,
- c. the minimum annual remuneration,
- d. the location/s of employment, and
- e. the hours of work.

The Department of Social Protection Employment Services network ensures national coverage while the EURES network advertises the vacancy across the EU.

To arrange the advertisement with the Department of Social Protection and EURES, employers/contractors can log onto the Department of Social Protection Employment Services JobsIreland at jobsireland.ie or gov.ie/dsp and select the employer option for the online service. Alternatively, employers/contractors can contact JobsIreland on Tel 081 18 111 112 or 01 248 1389 to register their vacancy by phone, or email jobsireland@welfare.ie. The vacancy the employer/contractor has registered will be given a reference number.

An application for an employment permit can only be submitted when the Labour Market Needs Test has been completed and the application must be submitted within 90 days of the commencement of the advertisement on JobsIreland/EURES. Employers should note that vacancies should not be amended or extended, at any time, during the 28 days of advertising on the JobsIreland site. A sample advertisement which is needed to be deemed acceptable for a work permit is provided at **Appendix A**.

8.

Minimum Remuneration for General Work Permits

8. Minimum Remuneration for General Work Permits

Minimum annual remuneration is generally €30,000. However, some exceptions apply to this general rule that annual remuneration should be €30,000:

- a. €27,000 in respect of an employment as a healthcare assistant; where an application is made in respect of a healthcare assistant who has previously been in employment in the State on an employment permit as a healthcare assistant for two years or more, a copy of the permit holder's relevant Level 5 Quality and Qualifications Ireland (QQI) qualification.
- b. €27,000 in respect of a non-EEA student – who has graduated in the last 12 months, from an Irish third level institution, and has been offered a graduate position from the Critical Skills Occupations List; the minimum annual remuneration must be €30,000 at renewal stage;
- c. €27,000 in respect of a non-EEA student – who has graduated in the last 12 months, from an overseas third level institution, and has been offered a graduate position as an ICT professional from the Critical Skills Occupations List; in such cases the minimum annual remuneration must be €30,000 at renewal stage;
- d. €27,000 in respect of an employment which requires a person fluent in the official language of a state which is not a Member State of the EEA, where the employment is supported by an enterprise development agency and the employment is in:
 - i. a customer service and sales role with relevant product knowledge,
 - ii. a specialist online digital marketing and sales role, or
 - iii. a specialist language support and technical sales support role, and
- e. €27,500 in respect of an employment as a boner (meat).

9.

How to Apply for a Sports and Cultural Employment Permit

9. How to Apply for a Sport and Cultural Employment Permit

A prospective employee or the employer may apply for the Sports and Cultural Employment Permit.

The permit is issued to the prospective employee, and a certified copy sent to the employer, which permits their employment in the State, by the employer, in the occupation and location/s specified on the permit.

The Labour Markets Needs Test does not apply to the application process for the Sports and Cultural Employment Permit, unlike the General Employment Permit.

A Sport and Cultural Employment Permit may be issued for differing periods depending on whether the contract of employment is full-time up to a maximum of two years. The permits also may be granted for seasonal work. Usually, seasonal work is loosely defined as employment for a short or limited period and recurrent employment situations in seasonally dependent sectors such as the horticultural, agricultural and tourist sectors. The onus would be on the applicant and the employer to demonstrate that the work in question is seasonal.⁴

While there are plans to seek specific legislative amendments to existing work permit legislation to create a specific category of 'seasonal employment permit' which is appropriately defined this has not yet occurred and specific advice should be sought before making an application in this category.⁵

If the prospective employee is granted an employment permit for the first time in the State, then they are expected to stay with the initial employer for a period of 12 months, unless the work is seasonal.

In accordance with section 12(1)(e) Employment Permits Act 2006 (as amended), a new employment permit for a different employer cannot be considered if less than 12 months has elapsed since the permit holder first commenced employment in the State pursuant to an employment permit. However, where the following circumstances apply,



⁴ https://www.workplacerelations.ie/en/what_you_should_know/employment_types/seasonal-workers/seasonal-workers-in-ireland-2021.pdf

⁵ <https://www.gov.ie/en/press-release/d57d2-minister-english-to-modernise-the-employment-permits-system/>

the Department may permit a Sport and Cultural Employment Permit holder to change employer:

- a. the employee is made redundant;
- b. circumstances arise that fundamentally change the employment relationship.

Other than the exceptional circumstances set out above and for seasonal workers, after 12 months, the employee may move employer provided that a new application for a Sport and Cultural Employment Permit is made.

Remuneration for employment permit holders must be national minimum wage or higher.

An application can be made online on the Employment Permits Online System (EPOS).

The processing fee for a Sport and Cultural Employment Permit is €500 for an employment permit of 6 months or less duration or €1000 for an employment permit duration of up to 24 months.

The processing fee for a **renewal** Sport and Cultural Employment Permit is €750 for an employment permit of 6 months or less duration or €1500 for an employment permit from 6 months up to 24 months duration.

If an application is unsuccessful, 90% of the fee will be refunded. While the fee may be paid by a third party, current policy restricts refunds to applicants only (for example, if the applicant was an employee and the employer paid the fee, then the refund will still issue to the employee).

Where the employer is the applicant, in accordance with section 23 of the Employment Permits Act 2006 (as amended), the employer or an agent acting on their behalf may not make any deductions from the remuneration of, or seek to recover from, the holder of the employment permit concerned any charge, fee or expense related to the application.

Following a successful application for an employment permit, if a visa is required, an applicant should apply to their local Irish Embassy/Consulate for an entry visa to Ireland. This can only be applied for after the granted of a work permit and cannot be pre-emptively applied for. Note, that being granted a work permit from the Department of Enterprise, Trade and Employment does not guarantee that the applicant will be granted a visa from the Department of Justice. An applicant who has a work permit but is refused a visa should consider seeking legal advice.

Non-EEA nationals who have held valid Sport and Cultural Employment Permits for 5 years or more consecutively and have been working lawfully during that time may not require an employment permit to work in the State. In these circumstances the proposed employee may not be required to apply for a new Sport and Cultural Employment Permit or a renewal of their existing employment permit and should contact the Department of Justice and Equality to apply for a temporary Stamp 4.

If an applicant does not satisfy the qualifying criteria, they are still required to hold an employment permit to work in the State. If they have been in continuous employment with their current employer for 5 years or more, they may apply for a Renewal Employment Permit for an unlimited duration, in this case no fee will apply. If, however, they have not been with the same employer for 5 years or more, they may apply for a Renewal Employment Permit for a maximum duration of 3 years and the applicable fee for the specific permit type applies.

10.

Performance or Tournament Visas

10. Performance or Tournament Visas

A short stay performance or tournament visa allows an artist / athlete to come to Ireland for up to 90 days to stage a performance (for example, theatre or music) or to take part in a competitive tournament (for example, sport or dance). Examples of reasons why people would apply for this visa include attending theatre, music, dance or sporting events, or participating in competitions like chess or debating.

This visa also allows applicants to be paid to perform or take part in an event if the event lasts 14 days or less, for example a concert or sports competition with prize money. This visa does not allow applicants to:

- a. Be paid to perform or take part in an event that lasts 15 days or longer
- b. Work in any other way (paid or unpaid)
- c. Rely on Irish public services, such as public hospitals.

If an application is successful, the applicant must request 'permission to work' when you arrive at border control in Ireland. Make sure to bring documents with you when you travel, for example, the original contract.

In order to qualify for the Performance or Tournament Visa, the performance or event must start and end within a single 14 day period.

For example, the applicant may plan to perform for pay in Ireland for 3 days, then stop for 12 days (while remaining in Ireland) and then perform again for pay for 3 days. In this example, the paid work will not start and end within a single 14 day period (2 calendar weeks), so the applicant must apply for permission to work via the Atypical Working Scheme and (if successful) apply for a short stay employment visa.

11.

Atypical Working Scheme

11. Atypical Working Scheme

The Atypical Working Scheme was developed by agreement between the Department of Justice and the Department of Enterprise, Trade and Employment in order to facilitate specialised, highly-skilled employment of a short term nature (generally less than 90 days) that is not supported by current Employment Permit legislation. Certain other employment situations are also supported by the Atypical Working Scheme.

a. Who is eligible to apply for permission under the Atypical Working Scheme?

You are eligible to apply for an Atypical Working Scheme permission if you are a non-EEA national who, in certain circumstances, is required by a company/organisation based in the State to undertake work:

- a. Where a skill shortage has been identified
- b. To provide a specialised or high skill to an industry, business or academic institution for a short period. This could include artists or those in related disciplines.
- c. To facilitate a paid internship where the internship is either beneficial or integral (necessary for graduation) to the course being studied in respect of third level students studying outside the State in approved/accredited institutions (medical and unpaid internships are not permissible)
- d. As a locum doctor employed and paid by an agency – hospital sector or primary care sector (general practice)
- e. Clinical adaptation and assessment programme/RCSI examination

Appendix A

Sample

Advertisement

Appendix A- Sample Advertisement

(Comments/guidance provided in coloured boxes and bold text)



Script Writer

It is important to check to make sure the job does not appear on the ineligible ⁶ list and to avoid using any titles that appear on the list or that are overly similar. You should also be satisfied that it is not covered by a prohibited standards occupational classified system (SOC) Code. ⁷ If there is any doubt it is important to check with a qualified legal practitioner or directly with the work permit section at epos@enterprise.gov.ie before advertising

Company ABC

Insert company legal name as appears with the company registration website

Trading as ABC

Insert trading name if different or if applying as a sole trader

is currently looking to recruit a Script Writer to join its busy team.

Main roles and responsibilities include:

- Writing, editing and evaluate literary material including scripts and narrative for film and TV
- Developing story elements and developing creative ideas into stories for production, with a deep understanding of the storyline and target audience.
- Selecting material to form part of the ultimate script, checking style, grammar and accuracy of content, arranging for any necessary revisions and checking proof copies before printing
- Conducting primary research into storylines and characters as required



⁶ <https://enterprise.gov.ie/en/what-we-do/workplace-and-skills/employment-permits/employment-permit-eligibility/ineligible-categories-of-employment/>

⁷ For further guidance see <https://enterprise.gov.ie/en/what-we-do/workplace-and-skills/employment-permits/employment-permit-eligibility/classification-of-employments>

Appendix A- Sample Advertisement (continued)

(Comments/guidance provided in coloured boxes and bold text)

Ensure the roles largely accord to the Standard Occupational Classification System (SOC) Code and ensure that the employee begin hired will actually carry out the roles or ones that are ancillary to the main roles and responsibilities

Candidates would be expected to have a minimum of two years

Insert desired minimum level of qualification

Relevant experience working in an equivalent role and would also be expected to have a undergraduate level qualification in a connected discipline

It is important to ensure that any desired minimum level of qualifications sought to properly carry out the job are properly and clearly advertised. A purported employee will need to have demonstrable and tangible experience

Remuneration is €30,000 per year 39 hour working week at a rate of €14.79 per hour.

It is important to outline in the advertisement the hours of work, the rate of pay and annual remuneration in order for the advertisement to be deemed acceptable. Make sure that those represented in the advertisement are identical to those in the contract of employment.

Candidates who wish to be considered for the position should email their CVs with a covering letter to John Smith at john@abc.ie

Name and email of person responsible for offering the job should be included

With thanks to KOD Lyons for providing expert input in relation to this publication.



**Employment Permits for
Non-EEA Nationals in the Arts Sector**

The Arts Council | An Chomhairle Ealaíon |
www.artscouncil.ie

70 Merrion Square, South Dublin 2, D02 NY52