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Non-EU nationals in irregular employment in Ireland

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NON-EU NATIONALS IN IRREGULAR EMPLOYMENT IN IRELAND

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December 2024

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The European Migration Network (EMN) provides up-to-date, objective, reliable and comparable information on migration and asylum of third country nationals to support policymaking in the European Union, Member States and Observer Countries as well as to inform the wider public. The Irish National Contact Point of the European Migration Network, EMN Ireland, sits within the Economic and Social Research Institute (ESRI) and the Department of Justice.

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	VII
CHAPTER 1 INTRODUCTION.....	1
1.1 Objectives and background to the study	1
1.2 Methodology and scope	3
1.3 Terminology	4
1.4 Study structure.....	5
CHAPTER 2 LEGAL AND POLICY CONTEXT	6
2.1 Introduction	6
2.2 Overview of legal and policy context in EU and Ireland	6
2.3 Legal framework in Ireland	8
2.4 Key issues and policy responses	10
2.5 Conclusions	18
CHAPTER 3 AVAILABLE DATA ON THE IRREGULAR EMPLOYMENT OF THIRD-COUNTRY NATIONALS.....	20
3.1 Introduction	20
3.2 Overview of Employment Permit legislation breaches.....	20
3.3 Overview of data on persons irregularly present and in employment.....	23
3.4 Employment Permits data	25
3.5 Trends in trafficking for the purposes of labour exploitation.....	26
3.6 Conclusions	27
CHAPTER 4 PREVENTION AND IDENTIFICATION OF IRREGULAR EMPLOYMENT IN IRELAND	28
4.1 Introduction	28
4.2 Measures to prevent irregular employment of migrants.....	28
4.3 Measures to identify irregular employment of migrants	32
4.4 Cooperation on prevention and identification	37
4.5 Conclusions	38
CHAPTER 5 PROTECTION, SANCTIONS AND OUTCOMES FOR NON-EU NATIONALS IN IRREGULAR EMPLOYMENT.....	39
5.1 Introduction	39
5.2 Potential sanctions for irregular employment.....	39
5.3 Revocation process upon identification of irregular employment.....	40

5.4	Outcomes for third-country nationals.....	42
5.5	Complaints against employers.....	43
5.6	Compensation and social security entitlements.....	47
5.7	Challenges in sanctioning employers.....	48
5.8	Conclusions	49
CHAPTER 6	CONCLUSIONS.....	50
REFERENCES	53

LIST OF TABLES

Table 3.1	Employment inspection cases and Employment Permits Act breaches 2017-2023	21
Table 3.2	WRC inspection activity and outcomes by employment sector (2022).....	22
Table 3.3	Revocations of employment permits (2017-2023*) by economic sector.....	25
Table 3.4	Revocations of employment permits (2017-2023*) by permit type	26
Table 3.5	Reactivation permits issued (2017-2023*)	26
Table 4.1	Calls to the WRC information and customer service unit relating to employment permits (2017-2023).....	29

LIST OF FIGURES

Figure 3.1	Sectors of employment of applicants for the 2022 regularisation of long-term undocumented migrants scheme	24
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LIST OF BOXES

Box 2.1	Employment permit system in Ireland.....	9
Box 5.1	Case: TA Hotels limited t/a Lynam's Hotel v Vireshwarsingh Khoosye and Preeti Khoosye (RPD1916, RPD1917)	46
Box 5.2	Examples of civil proceedings against an employer	48

ABBREVIATIONS

AWS	Atypical Working Scheme
DETE	Department of Enterprise, Trade and Employment
DOJ	Department of Justice
EEA	European Economic Area
ELSU	English Language Students' Union of Ireland
EMN	European Migration Network
ESRI	Economic and Social Research Institute
EU	European Union
GNIB	Garda National Immigration Bureau
GNPSB	Garda National Protective Services Bureau
HTICU	Human Trafficking Investigation and Co-ordination Unit of An Garda Síochána
ILO	International Labor Organization
IOM	International Organization for Migration
ITF	International Transport Workers' Federation
JFU	Justice for the Undocumented
MRCI	Migrant Rights Centre Ireland
MSO	Marine Survey Office
NGO	Non-Governmental Organisation
TCN	Third-country national
UNHCR	Office of the United Nations High Commissioner for Refugees
WRC	Workplace Relations Commission

EXECUTIVE SUMMARY

Irregular employment, broadly understood as employment that is insufficiently covered by formal arrangements either in law or in practice, presents problems for the State in terms of tax revenue and regulation, whether it is undertaken by Irish, EU or non-EU nationals. For non-EU nationals, working in an irregular situation can create additional precarity, due to difficulties in exercising labour rights and accessing social security.

This study discusses policy, law and data related to the irregular employment of non-EU nationals in Ireland, updating a 2017 EMN study on the topic. Reliable data on the extent of irregular employment of non-EU nationals are generally not available, in Ireland or internationally. However, information from employment inspections indicates that it occurs across a variety of sectors in Ireland, with food service activities the most prominent. Measures in place to prevent and identify the irregular employment of non-EU nationals in Ireland are presented, as well sanctions and outcomes for employers and employees.

POLICY AND LAW

Although addressing irregular employment in and of itself has not been a policy priority in Ireland in recent years, the regularisation of undocumented migrants emerged in this research as a pivotal strategy for curbing informal employment. Two regularisation schemes were held, one in 2018 targeting undocumented former students, and another in 2022: the Regularisation of Long-Term Undocumented Migrants Scheme. A further key development in recent years has been the closure of the Atypical Working Scheme for non-EEA fishers in 2022 in the context of allegations of forced labour and exploitation of migrant workers. Fishers can now access the employment permits system.

In order to work in Ireland, non-EU nationals must hold an employment permit, or a residence permit that allows them to access the labour market under certain conditions (for example in the case of students or family members). Ireland does not participate in the main EU legislation on illegal employment of non-EU nationals, the Employer Sanctions Directive 2009/52/EC. The Employment Permits Act 2024 significantly reformed the employment permit system recently, consolidating previous legislation.

DATA

Due to its hidden nature, reliable data on the extent of irregular employment of non-EU nationals is a challenge in Ireland and internationally. In 2020, MRCI estimated that there were approximately 17,000 to 20,000 undocumented persons

in the State (MRCI, 2020a). MRCI data and data on applicants to the 2022 Regularisation of Long-Term Undocumented Migrants Scheme confirm that the majority of irregularly staying non-EU nationals are employed. Of applicants to the regularisation scheme aged 18-64, 55 per cent were in employment and 11 per cent were self-employed. Among the 4,674 applicants who provided information on their employment history, half were employed in one of three sectors: 'hospitality/tourism', 'food and drink' and 'cleaning/maintenance'.

Employment inspections in Ireland are carried out by the Workplace Relations Commission (WRC). WRC carried out 4,727 employment inspection cases in 2023. Data from the Revenue Commissioners (Revenue) data indicate that there were 191,600 employers in the State in 2023 which gives an overall inspection rate of 2.5 per cent. In 2023, WRC detected 293 breaches of the Employment Permits Acts, mainly in food service activity, hair and beauty, and wholesale sectors. Of 166 employers identified as having breached the Employment Permits Acts in 2022, 83 per cent were small enterprises.

The Department of Enterprise, Trade and Employment (DETE) can revoke a worker's employment permit if they are found to be working irregularly. If a permit is revoked due to an employer's breach of legislation, the worker can apply for a reactivation permit. Both the number of revocations (277 between 2017 and September 2023) and reactivation permits (422 in the same period) are low. By way of context, in the period 2017-2023 almost 145,000 employment permits were issued.

PREVENTION AND IDENTIFICATION

The WRC plays an important role in preventing situations of irregular employment and works with the Department of Justice and DETE, among others. It monitors key sectors, including the food and service sectors, the fishing sector, services in households and agriculture. However, the low number of WRC inspectors has been identified as a challenge to effective prevention by Migrant Rights Centre Ireland. As of January 2024 there were 63 inspectors employed by the WRC for the country and this number was set to increase to 80 during 2024. DETE has an internal risk indicator list for employment permits which is used when processing applications for new and renewal employment permits.

The identification of a situation of irregular employment typically occurs either through WRC inspections or through a migrant worker making contact with an NGO for assistance. Cooperation between state bodies is important in ensuring inspections are effective, for example, in the form of joint inspections involving the WRC, the Garda National Immigration Bureau (GNIB), the Garda National Protective Services Bureau (GNPSB), as well as administrative cooperation and

information sharing with the relevant Departments. MRCI argue however that inspections should not be carried out jointly with the GNIB because undocumented people experiencing exploitation are unlikely to come forward due to a fear of deportation.

Among the good practices identified by the WRC was the presumption of employment (now) under section 61 of the Employment Permits Act 2024, which means that if a person is observed to be engaging in activity consistent with being employed, they will be treated as such. Migrant Rights Centre Ireland (MRCI) and International Transport Workers' Federation (ITF) identified the number of inspectors relative to the size of the workforce as a challenge also for identification.

SANCTIONS AND OUTCOMES

When a situation of irregular employment is detected, WRC directs legal actions towards the employer and not the individual migrant worker. For an employer, a breach of the Employment Permits legislation can result in the revocation of the permit by DETE, the resultant loss of the employee, and possible fines or imprisonment on conviction. The Workplace Relations Act 2015 has provisions to sanction employers for offences relating to a failure to uphold the terms and conditions of an employee's contract and failure to pay minimum wage, among others.

Challenges in pursuing and enforcing sanctions, reported by DETE, include in identifying offending employers due to changes in corporate names and directors, as well as instances of false documentation. The MRCI also highlighted difficulties with the enforcement of sanctions including court orders and labour inspector decisions, while the International Transport Workers' Federation observed that convictions are not dissuasive.

The consequences of detection in irregular employment for a non-EU national can depend on their immigration status. Non-EU nationals who are undocumented in the State and found to be working irregularly may be subject to deportation under section 3, Immigration Act 1999. Persons found to be working irregularly while residing regularly in the State are considered to have breached the conditions of their immigration permission and could be liable to having their immigration permission withdrawn or not renewed.

In terms of access to remedies, a non-EU national with permission to reside in the State can take a case against an employer to the WRC, with the aim of claiming compensation for instance. Non-EU nationals who are undocumented and in employment cannot lodge a complaint with the WRC. For undocumented non-EU

nationals, there is a provision under employment permits legislation that allows them or the Minister to take civil proceedings against an employer for compensation. However, it has not been widely used to date. The new Employment Permits Act 2024 seeks to bring further clarity to situations where the contract of employment is unenforceable due to the lack of an employment permit, meaning that some contractual protections are enforceable, however these provisions have yet to be tested.

CHAPTER 1

Introduction

1.1 OBJECTIVES AND BACKGROUND TO THE STUDY

Irregular employment – broadly understood as employment that is insufficiently covered by formal arrangements either in law or in practice (see Section 1.3)¹ – presents problems for the State in terms of tax revenue and regulation, whether it is undertaken by Irish, EU or non-EU (third-country) nationals.^{2, 3} For third-country nationals, working in an irregular situation can create additional precarity due to difficulties in exercising labour rights and accessing social security. Precarity is a central concept in regard to the irregular employment of third-country nationals, occurring at the intersection of precarious employment and precarious immigration status (Anderson, 2010; Mantouvalou, 2015).⁴ This precariousness is exacerbated by the concentration of irregular employment in labour-intensive sectors, which are often characterised by low pay and skill requirements, and where employers may exploit workers who have limited alternatives (EMN, forthcoming). Previous ESRI research has demonstrated that this is true in the Irish context, with persons who hold an irregular migration status more likely to face exploitation (Polakowski and Quinn, 2022), demonstrating the close connection between irregular employment and irregular migration (Pillinger, 2008).

This study discusses policy, law and data related to the irregular employment of non-EU nationals in Ireland. It is based on information gathered for a forthcoming EU-wide study: *Illegal Employment of third-country nationals: 2017-2022 situation analysis*. In this Ireland country report, measures in place to prevent and identify the irregular employment of non-EU nationals are presented, as well outcomes and sanctions for employers and employees. This study serves as an update to a previous EMN study on the illegal employment of non-EU nationals in Ireland which highlighted some irregular employment among non-EU students and irregularly staying migrants, that was most prevalent in the catering sector, including in fast food and take-away restaurants (Arnold et al., 2017).

¹ International Labour Organization (ILO) (2015). 'R204 Transition from the Informal to the Formal Economy Recommendation'. Available at:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R204.

² The terms third-country national and non-EU national are used interchangeably in this report.

³ Healy and Ó Riain (2021) show that the presence of workers in precarious employment (having 'No Contract' as defined in the research) is a significant feature of the labour market for a small number of Mediterranean countries, Ireland and the UK.

⁴ Precariousness 'involves instability, lack of protection, insecurity and social or economic vulnerability' (Rodgers and Rodgers, 1989: 5, cited in Anderson, 2010).

There is limited research on the irregular employment of non-EU nationals in Ireland. Additionally, while this type of employment occurs in a range of sectors in Ireland, its hidden nature makes it difficult to examine or to accurately estimate its prevalence, which highlights the challenges in addressing and regulating the phenomenon. Debates on the topic of irregular employment for non-EU nationals in Ireland tend to originate from the non-governmental sector (Pillinger, 2008) (see for example, MRCI, 2020a; 2017a). An Irish study on the illegal employment of foreign nationals in Ireland underscored the close relationship between illegal employment practices and irregular migration (Pillinger, 2008). Research on the experiences of migrant fishers by Murphy et al. (2021), for example, finds that migrant workers in an irregular situation who face exploitation do not experience the same institutional labour protections as other workers (Murphy et al., 2021). Murphy et al. (2019) further stress that third-country nationals in irregular employment in Ireland may be more vulnerable to exploitation, associated with their more precarious residence status and economic dependence on employers. For example, immigration status was found to be not only a barrier to reporting exploitation but also was leveraged by certain employers as a means of control. This research supports previous findings in Anderson's (2010) research on the UK, which demonstrated that precarious immigration statuses and a lack of legal residency⁵ can heighten a person's vulnerability to exploitation and limits their ability to access protection.

Previous Irish research has demonstrated that substantial numbers of those who arrive in Ireland and later become irregular migrants do so through no fault of their own (Pillinger, 2008). Pillinger (2008) called for further research to better understand irregular employment in Ireland, particularly regarding the numbers of persons and employers who are involved with irregular employment, as well as in relation to inspections and employment rights compliance. This study aims to further examine the key measures in place in Ireland for the prevention and identification of situations of irregular employment, as well as the consequences for employers and the outcomes for employees.

To fully understand the irregular employment of migrants, it is important to recognise its nuanced and complex nature, which encompasses a number of policy areas; notably migration and labour markets, but also human rights concerns (Anderson, 2010; EMN, forthcoming). It is in this context that this study seeks to present an overview of the key legislation and policies in place related to irregular employment, as well as the good practices and challenges in addressing irregular employment. By exploring the intricacies of this phenomenon, the study aims to provide valuable insights into Irish policy and measures which seek to tackle

⁵ Anderson (2010) argues that immigration controls and the route/ type of visa obtained can have long term effects on where migrants work in the labour market, that immigration controls effectively subject workers to a high degree of regulation, and legal migrants subject to immigration control can therefore also be seen as 'precarious workers'.

irregular employment in Ireland as well as the challenges and realities faced by non-EU nationals.

Although Irish, EU or non-EU may undertake irregular employment, this report is limited to the irregular employment of non-EU nationals. It adopts a broad interpretation of irregular employment and includes persons who are:

- Irregularly in the State and in employment (e.g. a person who has overstayed and is without a residence permission but employed in regular employment and paying income tax).
- Regularly staying but working outside the conditions of their immigration permission (e.g. a person who holds an employment permit but is working outside the provisions of that permit. This may mean the person works more hours than allowed or is working in a different job than the permit states).
- Regularly staying but irregularly employed in undeclared work (e.g. a person who holds a residence permission that allows them to work but who is not paying income tax).

There is no information on the relative sizes of these groups (see Section 3.1 for a discussion on data availability and limitations). The exploitation of workers can occur in all forms of irregular employment. Nonetheless, the level of vulnerability to exploitation can increase the more irregular the status of the third-country national, and can also change depending on their type and sector of work (EMN, forthcoming).

1.2 METHODOLOGY AND SCOPE

This study is based on information submitted by the Irish National Contact Point of the European Migration Network (EMN) to an EMN-wide study *Illegal employment of third-country nationals: 2017-2022 situation analysis*. The submissions of NCPs from across the EMN are compiled in this EMN synthesis report (EMN, forthcoming).

For the Irish study, desk research was conducted, including of relevant policy, legislation, and academic literature. In August 2023, one interview each was conducted with the Economic Migration Policy Unit in the Department of Enterprise, Trade and Employment (DETE), the Migrant Rights Centre Ireland and the International Transport Workers' Federation (ITF). Interviewees were sent questions in advance which related to their organisation's experience of irregular employment, prevention and identification of irregular employment, sanctions, challenges and good practices. The draft report was sent to interviewees, the Department of Justice and the Workplace Relations Commission (WRC) in

September 2023. Written observations and data were subsequently received from DETE, the Department of Justice, WRC and ITF. Findings from desk research and interviews were presented, fully sourced, in the common EMN study template and submitted to the European Commission, before the information was restructured for the national report. While the themes in the national report reflect the common template, additional desk research was undertaken to develop points of interest in the national context. The English Language Students' Union of Ireland (ELSU) was interviewed in April 2024. This study expands and updates information contained in the European-wide EMN synthesis report (EMN, forthcoming). The Ireland study was updated to take account of important legislative developments in September 2024 and limited updated data were supplied by WRC.

The temporal scope of the EMN-wide study was 2017 to 2022. This report updates to 2024 where there have been significant developments. The study also references misclassified 'self-employment', specifically platform work, undertaken by third-country nationals.

1.3 TERMINOLOGY

This report uses the term 'irregular employment' to refer to undeclared work undertaken by regularly staying third-country nationals, work that is outside the conditions of a third-country national's residence permit, and regular work by a third-country national who is residing irregularly.

This research study is based on the Irish contribution to an EMN-wide study which uses the term 'illegal employment' primarily due to the Employer Sanctions Directive 2009/52/EC, which is implemented in all EU Member States, except Denmark and Ireland. The *EMN Asylum and Migration Glossary* has defined illegal employment as 'economic activity carried out in violation of provisions set by legislation' (EMN, n.d.). The term is broken down in the Glossary more specifically for third-country nationals, highlighting the cases of the illegal employment of a *legally* staying third-country national 'and the illegal employment of an *illegally* staying third-country national.⁶

However, there are nuances and challenges regarding the terminology associated with this phenomenon, with definitions often remaining imprecise (Dell'Anno, 2022) and different terms used, including 'clandestine', 'undeclared', 'informal' or 'underground' employment (International Labour Organization (ILO), 2024; Franić

⁶ An illegal stay can also be understood as an 'irregular stay', defined in EMN (forthcoming, p. 5) as 'the presence on the territory of an EU Member State of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Article 5 of the Regulation (EU) 2016/399 (Schengen Borders Code) or other conditions for entry, stay or residence in that EU Member State'.

et al., 2023; OECD, 2004). Theoretical literature has increasingly used the term ‘informal employment’, which aims to capture the dynamism and heterogeneity of the informal economy across a spectrum, recognising that it is a ‘normal’ and regular feature found around the world (Hill, 2017).

For the purposes of this study, the term ‘irregular employment’ is used to capture the range of employment situations that a third-country national might be employed in and that fall outside the purview of law or policy. Concerns related to the terminology ‘illegal employment’, as used in the wider EMN study, were raised during data collection in Ireland.⁷ These echoed some of the critiques found in the European literature, such as, for example, Kupiszewski and Mattila (2008) who argued that the terminology ‘illegal employment’ may be too narrow for capturing the phenomenon, considering that the employment relationship may not be necessarily in violation of legislation, but rather linked to a person’s irregular status. Franić et al. (2023) also stressed the limitations of the scope of these different terms, with illegal economic activities such as the provision of unlawful goods and services (e.g. trafficking of persons) or unpaid work, not included in the scope of ‘undeclared work’ or its alternative labels. As mentioned previously, Ireland does not participate in the Employer Sanctions Directive, which uses the term illegal employment, and, on balance, the term irregular employment was considered most appropriate to the Irish context.

1.4 STUDY STRUCTURE

The second chapter of this study gives the Irish and EU legal and policy context, identifying key issues and policy responses while Chapter 3 provides an overview of data available on the irregular employment of third-country nationals. Chapter 4 provides information on the prevention and identification of irregular employment in Ireland and associated good practices and challenges. Chapter 5 investigates available protections and potential sanctions and outcomes for third-country nationals and employers engaged in irregular employment. Chapter 6 concludes the study.

⁷ Interview with MRCI, August 2023.

CHAPTER 2

Legal and policy context

2.1 INTRODUCTION

This chapter provides an overview of the legal and policy context of irregular employment in the European Union and Ireland. The Irish legal framework is outlined, including recent developments. Then the key issues in relation to irregular employment and related policy responses are discussed. Although addressing irregular employment has not been a policy priority in Ireland during the study period, there have been several relevant debates and developments, for example in relation to regularisation, human trafficking, the migration status of non-EEA fishers, migrant workers and COVID-19, the introduction of a seasonal employment permit, bogus self-employment, and the employment of au pairs and nannies. The most notable policy measures implemented were the 2018 and 2022 regularisation schemes and the abolishment of the Atypical Working Scheme for non-EEA fishers.

2.2 OVERVIEW OF LEGAL AND POLICY CONTEXT IN EU AND IRELAND

Addressing illegal employment has been a concern of European Union policymakers over recent decades, originally a labour market priority and later a migration policy objective, as it was considered to be a pull factor for illegal migration (Arnold et al., 2017). Preventing illegal employment is also a policy objective and priority for the EU Member States (EMN, forthcoming).⁸ Covering prevention, detection, sanctions, deterrence, and protection of employees, the Employers Sanctions Directive 2009/52/EC was introduced in 2009 by the European Commission to tackle the employment of illegally staying third-country nationals and increase coordination between Member States.⁹

Since 2009, the need for action against irregular employment has been reiterated at an EU-level including within the 2015 European Agenda on Migration,¹⁰ the 2020 Communication on a New Pact on Migration and Asylum,¹¹ and in the European

⁸ See for instance, Council resolution on transforming undeclared work into regular employment. (2003/C 260/01), the European Commission Green Paper on 'Modernising labour law to meet the challenges of the 21st century' (available at:

[https://www.europarl.europa.eu/meetdocs/2004_2009/documents/com/com_com\(2006\)0708_/com_com\(2006\)0708_en.pdf](https://www.europarl.europa.eu/meetdocs/2004_2009/documents/com/com_com(2006)0708_/com_com(2006)0708_en.pdf)) and the European Commission Communication 'Stepping up the fight against undeclared work' (available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007DC0628>).

⁹ Council of the EU, Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, 2009.

¹⁰ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'A European Agenda on Migration, 2015'.

¹¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, 2020.

Commission's 2021 Communication on the Employers' Sanctions Directive.¹² Managing irregular migration through secure external borders is a key pillar of the 2020 Pact on Migration and Asylum.¹³ Wagner et al. (2024) identify return as the main focus of the EU's response to irregular migrants and argue for more use of regularisation where returns are not implemented.

In Ireland, two recent regularisation schemes (one in 2018 targeting undocumented former students, and the 2022 Regularisation of Long-Term Undocumented Migrants Scheme) are significant. Ireland does not participate in the main EU legislation on illegal employment of non-EU nationals, the Employer Sanctions Directive 2009/52/EC. However, Irish officials engage in related activities through EU fora, attending meetings of the Contact Group on Legal Migration and the Labour Migration Platform, where wider labour migration topics are discussed including illegal employment, labour exploitation, and trafficking. Exchange of operational practice related to the Employer Sanctions Directive is also covered.¹⁴

Similarly, Ireland does not participate in much of the EU's legislation regulating labour migration, including the Single Permit Directive 2011/98/EU.¹⁵ Currently, a prospective labour migrant or their employer applies for an employment permit to the Department of Enterprise, Trade and Employment and, once issued, the person must then apply separately for an immigration permission to the Department of Justice. However, in May 2024 on foot of a report by an Inter-Departmental Working Group, the government agreed to begin implementation of a single permit to cover employment and residency and in principle to opt-in to the recast Single Permit Directive. The adoption of the Single Permit is expected to be completed in 2027. Under the new law, a decision to issue, amend, renew or reject a single permit will constitute a single administrative act combining a residence permit and an employment permit.¹⁶

In 2018 Ireland opted into the recast Reception Conditions Directive 2013/33/EU and introduced the right to work for international protection applicants and, as a result, applicants were less at risk of entering situations of irregular employment.¹⁷

¹² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, 2021.

¹³ https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en.

¹⁴ Correspondence with Migration Policy Unit, Department of Justice, October 2023.

¹⁵ Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

¹⁶ Houses of the Oireachtas (21 May 2024). Response to Parliamentary Question [22936/24]. Available at: <https://www.oireachtas.ie/en/debates/question/2024-05-21/466/>.

¹⁷ This development is not covered in detail in this report as previous EMN publications, such as the EMN Study of the Integration of applicants for international protection in the labour market, provide more detail (See Cunniffe and Polakowski, 2023).

The policy and legal context therefore continues to develop in Ireland and the EU. The following section outlines the legal framework currently in place.

2.3 LEGAL FRAMEWORK IN IRELAND

2.3.1 Current legal framework

The relevant legislation in Ireland comprises the Employment Permits Act 2024 (which repealed the Employment Permits Act 2003 and the Employment Permits Act 2006), the Employment Permits Regulations 2024, the Immigration Act 1999, and the Immigration Act 2004 (as amended). The Workplace Relations Act 2015 is also relevant for inspections and enforcement.

Unless their immigration permission states otherwise, non-EU nationals are prohibited from entering into employment in the State without an employment permit issued under the Employment Permits Act 2024.¹⁸ Some immigration permissions, including for students and for Stamp 4 holders (held by e.g. persons with refugee status, subsidiary protection status, leave to remain, and beneficiaries of family reunification), allow persons to work and do not require an employment permit.¹⁹

Under the employment permits legislation, an employer who hires an employee without an employment permit or a person who works without an employment permit is guilty of an offence.²⁰ Thus, both employers and employees are liable. Nonetheless, a defence is provided for both the employer and the employee where they took all steps reasonably open to them to ensure compliance with the legislation.²¹

The Employment Permits Act 2024 contains various provisions for the Minister to revoke an employment permit and to impose sanctions, such as for the fraudulent use of an employment permit (see Section 5.2 in this report).²² The Employment Permits Act 2024 makes provisions for civil proceedings for persons who were employed without an employment permit and who cannot access other means of redress available to other employees in the State. These provisions mean that a person who was employed without an employment permit and was not paid for

¹⁸ Section 7(1), Employment Permits Act 2024.

¹⁹ Workplace Relations Commission (2016). 'Changes to Employment entitlements of Non-EEA Students holding Immigration Stamp 2', www.workplacerelements.ie/en/news-media/workplace_relations_notices/changes_to_employment_entitlements_of_non-eea_students_holding_immigration_stamp_2.html.

²⁰ Section 7(6), Employment Permits Act 2024.

²¹ Section 7(7) and 7(8) Employment Permits Act 2024.

²² Section 40, 53-58, Employment Permits Act 2024.

their work, or was paid insufficiently for their work, can initiate civil proceedings against their employer, or the Minister can institute them on their behalf.²³ In other words, whereas the contract of employment is unenforceable due to the lack of an employment permit of the employee, the new provisions mean some contractual protections are enforceable. The Employment Permits Act 2024 provides that these civil proceedings can be instituted in a court of competent jurisdiction,²⁴ with the District Court given jurisdiction to hear and determine proceedings where the amount claimed does not exceed €15,000;²⁵ and where the amount claimed does not exceed €75,000 the Circuit Court is given jurisdiction.²⁶ These provisions replace sections 2B and 2C, Employment Permits Act 2003, and provide further clarity on the jurisdiction of courts.²⁷

Beyond employment permit legislation, irregular employment may also constitute a breach of immigration law. The Immigration Act 2004 (as amended), controls entry into and permission to remain in the State for third-country nationals. It provides that a person can be refused entry to the State if they intend to work without an employment permit,²⁸ and that any person – other than a refugee or an asylum applicant – in the State without a valid permission is considered to be unlawfully in the State.²⁹ Further, under the Immigration Act 1999 (as amended), persons who are present within the State without a valid immigration permission, or persons who contravene a restriction or condition of their residence, can be subject to removal from the State under section 3 of the 1999 Act (Arnold et al., 2017).

BOX 2.1 EMPLOYMENT PERMIT SYSTEM IN IRELAND

While UK and other EU nationals can live and work in Ireland without seeking a permission, many non-EEA nationals are required to have an Employment Permit for a specific job, with a specific employer, before entering the country. There are ten types of permits, the two most common of which are the Critical Skills Employment Permit and the General Employment Permit.³⁰ The Critical Skills Employment Permit is for occupations recognised as essential for economic growth, or occupations facing a skills shortage, including in the areas of information and communications technology, engineering and healthcare. It is

²³ Section 59, Employment Permits Act 2024.

²⁴ Section 59(2), Employment Permits Act 2024.

²⁵ Section 59(13), Employment Permits Act 2024.

²⁶ Section 59(15), Employment Permits Act 2024.

²⁷ See Chapter 5 and Box 5.2.

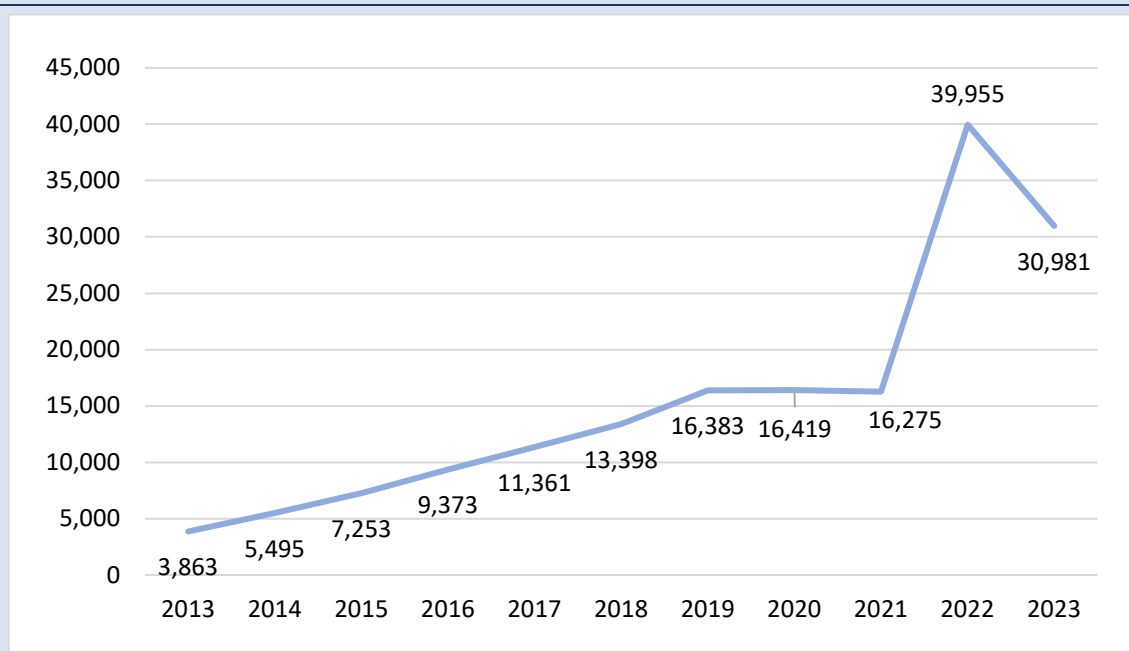
²⁸ Section 4(3)(b), Immigration Act 2004 (as amended).

²⁹ Section 5, Immigration Act 2004 (as amended).

³⁰ Other employment permit types are set out under section 9(2) of the Employment Permits Act 2024 and include: Dependant Employment Permit; Intra-Company Transfer Employment Permit; Contract for Services Employment Permit; Reactivation Employment Permit; Internship Employment Permit; Sport and Cultural Employment Permit; Exchange Agreement Employment Permit, and Seasonal Employment Permit.

intended to attract highly skilled workers to the Irish labour market and to encourage them to reside permanently in the State. General Employment Permits are available for occupations with an annual salary of €34,000 or more, and for a restricted number of occupations with salaries below this. A labour market needs test is required. While Critical Skills Employment Permit holders may be accompanied by family members on arrival to Ireland, a General Employment Permit holder can apply for family reunification after one year in the State. In all cases, an employment permit is issued to the employee and a certified copy to the employer.

FIGURE 1.1 EMPLOYMENT PERMITS ISSUED 2013-2023



Source: Department of Enterprise, Trade and Employment, Employment Permit Statistics. New permits plus renewals.

Prior to September 2024, in general, holders of General Employment Permits could only change employers after one year and had to apply for a new permit to do so. The 2024 Act and the related Employment Permits Regulations 2024 introduce a new provision allowing General Employment Permit and Critical Skills Employment Permit holders to change employer after nine months without applying for a new permit. General Employment Permit holders must stay within the same occupation, while Critical Skills Employment Permit holders may change within a broader occupation category. A Seasonal Employment Permit, designed to facilitate non-EEA nationals' employment in seasonally recurrent employment, has also been introduced (see Section 2.4.5).

2.4 KEY ISSUES AND POLICY RESPONSES

The irregular employment of third-country nationals has not been prominent in public and policy debates in Ireland since 2017, but several related issues have arisen, including the regularisation of undocumented migrants, human trafficking, the migration status of non-EEA fishers, migrant workers and COVID-19, the

introduction of a Seasonal Employment Permit, bogus self-employment, and the employment of au pairs and nannies. These are discussed below.

2.4.1 Regularisation schemes

Many third-country nationals engaged in irregular employment may be undocumented in the State. Between 2017 and 2022, Ireland ran two regularisation schemes for undocumented migrants. NGOs, such as MRCI, have long emphasised the insecurity of life for undocumented people in Ireland and their exclusion from state supports and services. They have also argued for the economic benefit of regularising the employment situation of thousands of persons (MRCI, 2020a).

The first regularisation scheme, in 2018, was targeted at undocumented former students who were previously in Ireland on a student permission between 2005 and 2010 and who remained in the country without an immigration permission. Through this scheme, 2,253 persons were granted residence permissions (Polakowski and Quinn, 2022).

In 2020, the newly elected government committed to pursuing a new regularisation scheme in their Programme for Government (Department of the Taoiseach, 2020). Some months later, MRCI and the Justice for the Undocumented (JFU) group published results from a survey of 1,000 undocumented persons in Ireland, which found that over 75 per cent of those surveyed had lived in Ireland for five years or more and that 93 per cent were in employment (MRCI, 2020a).

Following a public consultation in 2021, the Regularisation of Long-Term Undocumented Migrants Scheme was opened in 2022 (Polakowski and Quinn, 2022). It was the subject of much political discussion throughout the year. People who had been undocumented in the State continuously for four years were eligible; if they had minor children, this was reduced to three years. In total, 6,548 applications were submitted in respect of 8,311 people. As of 3 July 2023, 4,617 had been granted (70.5 per cent), 1,002 refused and 118 withdrawn.³¹ As discussed above, of those aged 18-64, 55 per cent stated that they were in employment and 11 per cent were self-employed (see Section 3.3 for additional data). Commenting on the lower proportion of people in employment than was found in the MRCI survey, MRCI observed that people may have chosen not to reveal their

³¹ Minister for Justice (11 July 2023). Written response to Parliamentary Question 33877/23. Available at: <https://www.oireachtas.ie/en/debates/question/2023-07-11/498/>.

employment because undocumented people do not have permission to work in the State.^{32, 33}

2.4.2 Human trafficking

Irregular employment also includes situations of extreme exploitative working conditions, which includes human trafficking for the purpose of labour exploitation. This type of human trafficking has been identified in Ireland in places such as restaurants, cannabis grow houses and in the fishing sector (Cunniffe and Ayodele, 2022). Human trafficking for the purpose of labour exploitation has been a recurring topic of public and political debate since 2017, typically discussed within broader discussions on human trafficking. A new ‘National Referral Mechanism’ for the identification and protection of victims of trafficking was introduced by way of the Criminal Law (Sexual Offences and Human Trafficking) Act 2024.

The annual publication of the US State Department’s ‘Trafficking in Persons’ (TiP) report results in renewed media and political attention each year, including with reference to alleged human trafficking in the fishing industry (see below).³⁴

In 2021, a Private Members Bill, the Labour Exploitation and Trafficking (Audit of Supply Chains) Bill 2021, was put forward by TDs from the Labour Party. It sought to introduce measures to prevent labour exploitation and trafficking businesses and supply chains. The Bill was not opposed by the Government but as yet, has not passed the Oireachtas.³⁵

2.4.3 Migrant fishers and the closure of the Atypical Working Scheme for non-EEA fishers

Another area where irregular employment of third-country nationals occurs is in the fishing sector. The Atypical Working Scheme (AWS) for the short-term employment of non-EEA national fishers was introduced in 2015 following significant criticism of exploitation of migrant workers in the sector. According to the International Transport Workers’ Federation (ITF), approximately 550 people were enrolled in the scheme over its life span.³⁶ The treatment of workers in this

³² Correspondence with MRCI, October 2023.

³³ ITF observed that many undocumented fishers were ineligible for this scheme as many had a stamp under the Atypical Working Scheme (AWS) for at least some of their time in Ireland. (Interview with ITF, September 2023).

³⁴ See for example: Houses of the Oireachtas (26 July 2022). Response to Parliamentary Question [41900/22]. Available at: <https://www.oireachtas.ie/en/debates/question/2022-07-26/1616/>; Houses of the Oireachtas (9 September 2021). Response to Parliamentary Question [42793/21]. Available at: <https://www.oireachtas.ie/en/debates/question/2021-09-09/935/>.

³⁵ Houses of the Oireachtas (2021). Labour Exploitation and Trafficking (Audit of Supply Chains) Bill 2021. Available at: www.data.oireachtas.ie/.

³⁶ Interview with ITF, September 2023.

sector, as well as the AWS itself, have been subject to extensive criticism,³⁷ ultimately leading to the end of the scheme in 2022.

Research by Murphy et al. (2021), which drew on semi-structured interviews with 24 migrant workers in the Irish fishing industry, over half of whom had lived in Ireland for ten years or more, found that conditions had worsened since the introduction of the AWS. The study demonstrated that migrant workers were often subject to long working hours with few breaks, wages below minimum wage and racist insults and verbal abuse. The ITF stressed also the risks that non-EEA fishers faced in regard to labour exploitation and human trafficking.³⁸ The AWS permission, and the need to renew it, was highlighted by those interviewed for this study as a means to threaten and exploit workers. Interviewees also reported that they were reluctant to engage with employers or inspectors as regards their working conditions due to a fear of losing their job and work permission (Murphy et al., 2021).

Throughout the period 2017-2022, migrant fishers were discussed in various debates in the Dáil, Oireachtas Joint Committees and Parliamentary Questions.³⁹ In the media, the situation of migrant fishers in Ireland has been a repeated news topic, both in national news outlets,⁴⁰ as well as international ones.⁴¹

In 2019, following legal proceedings brought by the ITF, a Settlement Agreement was announced between government departments and the ITF to improve the labour rights of fishers, including allowing fishers to change employers without having to obtain a new permit.⁴² The agreement also provided for the introduction

³⁷ These criticisms include a 2017 report from the Joint Committee on Business, Enterprise and Innovation in the Oireachtas (Irish parliament); US State Department's TiP annual reports (US State Department, Trafficking in Persons Report), Mandates of the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; and the Special Rapporteur on trafficking in persons, especially women and children (February 2019); MRCI, 2017.

³⁸ Interview with ITF, September 2023.

³⁹ Houses of the Oireachtas (20 October 2021). 'Joint Committee on Enterprise, Trade and Employment debate: Resourcing and capacity of the Workplace Relations Commission Discussion'. <https://www.oireachtas.ie/en/debates/>; Houses of the Oireachtas (7 February 2018). Dáil Éireann debate, Wednesday 7 February 2018'. <https://www.oireachtas.ie/en/debates/>; Houses of the Oireachtas (12 October 2022). 'Dáil Éireann debate: Employment Permits Bill 2022: Second Stage (Resumed)'. www.oireachtas.ie/en/debates/; Houses of the Oireachtas (17 June 2021). 'Dáil Éireann debate: Fisheries and Coastal Communities: Statements'. www.oireachtas.ie/. Houses of the Oireachtas (4 July 2017). 'Joint Committee on Jobs, Enterprise and Innovation debate: Atypical Work Permit Scheme: Discussion'. www.oireachtas.ie/.

⁴⁰ Maria Delaney and Geela Garcia (1 December 2021). 'Irish justice system 'failing' migrant fishing workers who report exploitation'. *Noteworthy* and *The Journal*, www.thejournal.ie/. RTÉ News (15 December 2022). 'Fisherman who worked 427 hours in a month wins action', www.rte.ie/.

⁴¹ Ella McSweeney (20 October 2021). 'Unsafe conditions and low pay for migrants on Irish fishing boats exposed', *The Guardian*, www.theguardian.com/; Geela Garcia and Maria Delaney (8 December 2022). 'I felt the punch land': Human trafficking of overseas fishermen in Ireland'. PhilStar.com.

⁴² Department of Enterprise, Trade and Employment (20 April 2019). 'Agreement reached in mediation on the scheme for employment of non-EEA fishers in parts of the Irish sea-fishing fleet'. Available at: <https://enterprise.gov.ie/>.

of new arrangements between the WRC and the Marine Survey Office (MSO) of the Department of Transport to enhance enforcement of the working time regulations relating to the fishing sector.⁴³

In 2021, a review of the AWS was launched by the Department of Enterprise, Trade and Employment, the Department of Justice and the Department of Agriculture, Food and the Marine. The review was published in 2022 and central among its recommendations was the closure of the AWS for non-EEA fishers (Department of Justice, 2022). At the end of 2022, the Department of Justice announced the closure of the scheme and that non-EEA fishers would now be eligible for Stamp 4 residence permits.⁴⁴

Moving forward, the employment of non-EEA migrant fishers falls under the Employment Permits system, a key recommendation of the AWS review. Under the Employment Permits Regulations 2024, specific provisions are made for fishers in the Irish sea fishing sector, including in terms of their work agreement or contract and training requirements.⁴⁵ The Regulations set the maximum number of permits that can be granted to sea fishers in the Irish fishing fleet at 884 from 2 September 2024.⁴⁶

2.4.4 COVID-19, employment in congregated settings such as meat factories and social welfare access

While much of the employment in the meat processing sector is regular employment, this is a sector where concerns have been raised about working conditions for third-country nationals, with recent Garda operations conducted to address this issue. In June 2022, for instance, Gardaí identified persons working at a meat processing premises as being irregularly present in the State and working in breach of the Employment Permits Acts.⁴⁷

While there is a lack of research of irregular employment of third-country nationals in this sector, previous MRCI research during the COVID-19 pandemic with 151 meat factory workers identified undocumented workers as 1 per cent of their sample, while a further 23 per cent did not disclose their immigration status. They found that these workers were particularly vulnerable to abuse in the meat processing sector, also finding that they earned less than minimum wage for several years (MRCI, 2020b). The report also indicated that approximately 59 per

⁴³ Correspondence with the Workplace Relations Commission, October 2023.

⁴⁴ Interview with ITF, September 2023.

⁴⁵ Regulation 8(2)(q), Employment Permits Regulations 2024.

⁴⁶ Schedule 5, Employment Permits Regulations 2024.

⁴⁷ SIPTU (2022). SIPTU welcomes Garda immigration operation at meat factory. Available at: <https://www.agriland.ie/farming-news>. An Garda Síochána. (2022). Garda National Immigration Bureau - Multi-Agency Operation in County Meath - 8 June 2022. Available at: <https://www.garda.ie/>.

cent of workers in the sector (2016 Census) are migrant workers, and of them 44 per cent are non-EU workers. Overall a ‘systemic culture of poor and dangerous working conditions, with employers who put profit before the health and safety of their workers’ was found (MRCI, 2020b, p.1), with concerns raised related to health and safety standards, low wages that do not equate with the difficult and demanding work (including pay below minimum wage), issues with contracts, including not having a contract, and barriers faced by migrant workers in speaking out and raising concerns.

During the COVID-19 pandemic, outbreaks also occurred in meat processing factories and brought the situation of migrant workers employed in the sector to the fore. These outbreaks were the focus of both media attention,⁴⁸ and political attention, becoming a key focus of a Special Committee on the COVID-19 response and congregated settings in the Oireachtas (Houses of the Oireachtas, 2020).^{49, 50, 51, 52}

More positively, during the COVID-19 pandemic, the government sought to assure migrants in an irregular situation that accessing healthcare and other State services would not lead to deportation. The Department of Justice published information on its website in March 2020 assuring irregular migrants that during the pandemic if they accessed services such as social welfare benefits and other cash benefits (such as Pandemic Unemployment Payment) or healthcare, their details would not be shared with the Department of Justice.⁵³ This information ‘firewall’ was welcomed by MRCI as it allowed persons, regardless of immigration status, to maintain an income during the pandemic (MRCI, 2020b). This was highlighted by NGOs in remarks to the Joint Committee on Committee on Children, Disability, Integration and Youth, on ‘Experiences of Migrant Communities engaging with State Bodies, the Health Care System and other Social Services’.⁵⁴ Also the State’s

⁴⁸ Charles O’Donnell (18 August 2020). ‘Number of cases of COVID-19 confirmed at Glanbia factory’, Agriland. Available at: <https://www.agriland.ie/>.

⁴⁹ The final report from the Special Committee highlighted, among other things, the concerns of representatives on workers’ rights, use of bogus self-employment schemes, a lack of sick pay schemes – which was a particular concern in the context of COVID-19 (Houses of the Oireachtas, 2020).

⁵⁰ Presentations were made in the Oireachtas Special Committee on COVID-19 Response debate on 13 August 2020 by the Irish Congress of Trade Unions (ICTU), the Services, Industrial, Professional and Technical Union (SIPTU), the Cork Operative Butchers Society – Independent Workers Union, MRCI, the Meat Industry Ireland, the Health and Safety Authority, Food Drink Ireland and the Department of Agriculture, Food and the Marine. More information available at: <https://www.oireachtas.ie/>.

⁵¹ At the Oireachtas Special Committee on COVID-19 Response debate on 10 July 2020, representatives from MRCI and trade unions described migrant workers’ concerns about poor working conditions and a lack of health and safety measures. More information available at: <https://www.oireachtas.ie/>.

⁵² In a submission from the Independent Workers Union in Cork, the use of agencies to employ third-country nationals in meat factories was also highlighted as a specific concern. More information available at: Independent Workers Union (2020).

⁵³ See Department of Justice (2020). ‘Information regarding the Justice Sector COVID-19 plans’, <http://www.justice.ie/>.

⁵⁴ MRCI (2021). Opening remarks to Joint Committee on Committee on Children, Disability, Integration and Youth, on ‘Experiences of Migrant Communities engaging with State Bodies, the Health Care System and other Social Services’. Available at: <https://www.oireachtas.ie/>.

practice of automatically renewing residence permissions during the pandemic ensured people did not enter into an irregular situation (Desmond and Heylin, 2024).

2.4.5 Reform to the employment permits system and the introduction of a seasonal employment permit

A key aspect of addressing irregular employment is also examining the formal structures in place in terms of the employment permit system. On 2 September 2024, the Employment Permits Act 2024 was enacted, and brought with it significant changes to the system that had been debated in the preceding years.

In 2018, an inter-departmental group published the *Review of Economic Migration Policy*.⁵⁵ Its long-term recommendations included the introduction of a Seasonal Employment Permit and a need to review remuneration and the legal definition of remuneration for an employment permit (Department of Business, Enterprise and Innovation, 2018). The following year, the general scheme of the Employment Permits (Consolidation and Amendment) Bill 2019 was published. The Bill sought to amend the employment permit system to make it more flexible and to introduce, among other changes, a Seasonal Employment Permit. Then a 2021 report on the pre-legislative scrutiny of the General Scheme of the Employment Permits Bill recognised the importance of improving the employment permit system, but raised concerns about its practical operation and ensuring the employment rights of workers.⁵⁶ Relevant to this study, it also highlighted the need to properly resource the Workplace Relations Commission to ensure an adequate number of inspections could be carried out, the need for adequate penalties for employers who break the terms and conditions of employment contracts, and clarity as to adequate levels of pay (Houses of the Oireachtas, 2021).

In July 2022, the Department of Enterprise, Trade and Employment introduced a new Employment Permits Bill 2022.⁵⁷ The MRCI, the Immigrant Council of Ireland and IBEC welcomed the proposed reform (Immigrant Council of Ireland, 2023).^{58, 59} However MRCI also stated that, in their view, it did not go far enough in ensuring a parity between workers, because Critical Skills Employment Permit holders would continue to have superior rights to change employer and job than General Employment Permit holders.⁶⁰ MRCI stressed the need to support workers to stay

⁵⁵ The review sought to take stock of the employment permit system at the time and propose both short-term and long-term recommendations to improve the system. One of the seven guiding principles of the review was employment rights in recognition of the vulnerable situation of migrant workers in lower paid work.

⁵⁶ The Committee stated that it did not have sufficient evidence to support the introduction of a Seasonal Employment Permit, it recommended amending the General Employment Permit already in place instead.

⁵⁷ DETE (2022). 'Minister English to Modernise the Employment Permits System'. Available at: <https://www.gov.ie/>.

⁵⁸ Interview with MRCI, August 2023.

⁵⁹ IBEC (25 October 2022). 'Modernisation of the Employment Permit System'. Available at: <https://www.ibec.ie/>.

⁶⁰ Interview with MRCI, August 2023.

in legal employment even when forced to leave employment due to poor conditions.⁶¹ Similarly, the Immigrant Council of Ireland urged caution with the introduction of a Seasonal Employment Permit, particularly given the risks of exploitation of seasonal workers, and urged the Department to instead allow for more flexibility within the employment permit system already in place (Immigrant Council of Ireland, 2023).

The Employment Permits Act 2024 allows workers on General Employment or Critical Skills Employment Permits to change employers without applying for a new permit.⁶² The Regulations set the minimum period after which an employee may change employers at nine months.⁶³ This has been welcomed by NGOs including the Migrant Rights Centre Ireland.

A Seasonal Employment Permit, designed to facilitate non-EEA nationals' employment in seasonally recurrent employment has been introduced.⁶⁴ The permit is valid for employment for seven months within a 12-month period and must be in a seasonally recurrent sector. Safeguards include a registration and annual approval process for employers who wish to avail of the permit. Employers must seek to become Approved Seasonal Employers and any breaches of conditions of permits or non-compliance may negatively impact any subsequent approval process. A person who holds a seasonal employment permit can also apply to change employer, subject to conditions.⁶⁵ A pilot scheme will run in 2025 and will be limited to specific employers in the horticultural sector, particularly the soft fruit sector.⁶⁶ The Economic Migration Policy Unit within DETE stated that a Memorandum of Understanding will be put in place with the WRC to ensure there are enough resources for the pilot.⁶⁷

2.4.6 Bogus self-employment arrangements and working conditions in the 'Gig' economy

While there is limited evidence available regarding the actual numbers of migrants working in the gig economy, European research has suggested that gig platforms depend on the cheap labour of migrants and minority groups (Van Doorn and Vijay, 2021). There is a lack of research on the issue in Ireland; however working conditions of food delivery drivers working for online platforms, such as Deliveroo

⁶¹ Correspondence with MRCI, October 2023.

⁶² Section 27, Employment Permits Act 2024.

⁶³ Regulation 19(1), Employment Permits Regulations 2024.

⁶⁴ Section 9(2)(j), Employment Permits Act 2024.

⁶⁵ Section 29 and 30, Employment Permits Act 2024.

⁶⁶ Employment Permits Bill 2022: From the Seanad – Dáil Éireann (33rd Dáil) – Wednesday, 19 Jun 2024 – Houses of the Oireachtas.

⁶⁷ Interview with DETE, August 2023.

and JustEat, have been the subject of a number of media reports.⁶⁸ MRCI observed that such workers hold a range of immigration permissions, including student and Stamp 4 permissions but also irregular status.^{69, 70} Some media reports have described how persons ‘rent’ an account on a delivery platform, due to restrictions on their visa.⁷¹ These jobs have low barriers to entry and their flexible hours may be attractive to workers; however the jobs are precarious in nature, with ‘zero-hour’ contracts, low wages, an unpredictable level of access to jobs and limited access to a social safety net (Hauben et al., 2020). Beyond issues related to employment rights, there have also been reports of verbal and physical abuse of food delivery drivers.⁷²

2.4.7 Employment of au pairs and nannies

The issue of exploitation of au pairs and nannies was raised in several reports by MRCI published between 2012 and 2014 (MRCI, 2012a; 2012b; 2014). Challenges highlighted included exploitation and abuse among domestic and childcare workers in Ireland, including excessively long working days, heavy workloads, health and safety issues, poor working conditions, low pay and, in extreme cases, some workers faced restrictions to their freedoms and had personal documents withheld (MRCI, 2012a).

In 2017, in their submission to the Consultation on the National Women’s Strategy, MRCI highlighted findings from a previous survey which indicated that au pairs provided childcare to families in Ireland often for as little as €100 per week for 60 hours of work, or more. MRCI argued that because domestic work is categorised as ineligible for an employment permit, migrant women are more likely to work in such exploitative situations (MRCI, 2017b).

2.5 CONCLUSIONS

This chapter outlined the legal and policy landscape surrounding irregular employment in Ireland, providing an overview of the existing legal framework and highlighting significant recent changes to the employment permits system. Other notable policy measures include the 2018 and 2022 regularisation schemes and the closure of the Atypical Working Scheme, reflecting ongoing efforts to address the complexities of irregular employment and uphold labour standards. While irregular employment has not been a primary policy focus over the research period,

⁶⁸ Carroll, Rory (20 September 2023). “‘It’s almost every day’: foreign delivery riders face gang attacks in Dublin”, *The Guardian*. www.theguardian.com/.

⁶⁹ Interview with MRCI representative, August 2023.

⁷⁰ The English Language Students’ Union of Ireland (ELSU) also highlighted the vulnerability of English language students to risks in this sector. Meeting with ELSU, April 2024.

⁷¹ Ellen O’Donoghue, Isabela Boechat (17 September 2023). ‘Food delivery workers paying up to 20 per cent of income to “landlord” account holders’. *The Irish Times*, www.irishtimes.com/.

⁷² Carroll, Rory (20 September 2023). “‘It’s almost every day’: foreign delivery riders face gang attacks in Dublin”. *The Guardian*.

regularisation of undocumented migrants has. Various other debates and developments identified related to the COVID-19 pandemic, employment in congregated settings and access to social welfare, and the introduction of a Seasonal Employment Permit, among others. The following chapter provides available data on the extent and characteristics of irregular employment in Ireland.

CHAPTER 3

Available data on the irregular employment of third-country nationals

3.1 INTRODUCTION

Due to its hidden nature, reliable data on the extent of irregular employment of non-EU nationals are generally not available in Ireland or internationally (Arnold et al., 2017; Williams et al., 2017; Pillinger, 2008).⁷³ Work is ongoing on improving data and information on irregular migration in the EU, notably within the MlrreM project.⁷⁴ In Ireland, data on detected breaches of Employment Permit legislation can provide some indicative information, and these are provided below. NGO estimates of the size and economic activity of the undocumented population are discussed, along with data from applications to the 2022 Long-Term Undocumented Migrants Scheme. Data on employment permits revoked and on reactivation permits issued in the period are supplied. Finally, data on trafficking for forced labour are briefly discussed.

In all, the data examined show that irregular employment occurs across a broad range of sectors in Ireland, but these are typically low paying sectors with low barriers to entry. The food service sector emerged as a prominent area of irregular employment across a range of indicators.

3.2 OVERVIEW OF EMPLOYMENT PERMIT LEGISLATION BREACHES

Employment inspections in Ireland are carried out by the Workplace Relations Commission (WRC) (see Chapter 4). Table 3.1 shows that in 2022 the number of inspection cases fell to the lowest level in the study period, reaching 3,943, before increasing again to 4,727 in 2023.⁷⁵ See Section 4.3.2 for further discussion.

The number of employers found to be in breach of employment legislation was 2,221 in 2023 (Workplace Relations Commission, 2024), which was the highest figure since 2018.⁷⁶ Most relevant to this discussion however are breaches of the Employment Permits legislation.⁷⁷ In 2023, a total of 293 such breaches were

⁷³ See Salihoğlu and Vargas-Silva (2024) for a consideration of methodological approaches to measuring the size of the informal economy, which aims to work towards methodologies for creating estimates of the participation of irregular migrants in the informal economy.

⁷⁴ See Kierans and Vargas-Silva (2024) and further Working Papers on <https://irregularmigration.eu/>.

⁷⁵ The 2023 inspection case total was also lower than annual inspection case totals for the period 2011-2016 (Arnold et al., 2017).

⁷⁶ Correspondence with the Workplace Relations Commission, August 2023.

⁷⁷ Until August 2024 refers to the Employment Permits Act 2003, the Employment Permits Act 2006 and the Employment Permits (Amendment) Act 2014. Since September 2024 refers to the Employment Permits Act 2024.

detected. Excluding 2018, for which no data are available, this is the highest number of breaches detected since 2017.

TABLE 3.1 EMPLOYMENT INSPECTION CASES AND EMPLOYMENT PERMITS ACT BREACHES 2017-2023

Year	No. of employment inspection cases	No. of employers in breach	%	No. of employers with breaches of the Employment Permits acts	No. of breaches of the Employment Permits acts	Top sectors where employment permit breaches found (as % of total number of EP breaches)
2017	4,747	2,032	43	NA	404	NA
2018	5,753	2,548	44	NA	NA	NA
2019	4,804	1,499	31	48	90	51% food service activity; 13% wholesale; 8% hair and beauty
2020	7,687	1,760	23	111	223	68% food service activity; 6% wholesale; 6% hair and beauty
2021	4,432	1,259	28	81	191	55% food service activity; 36% wholesale; 7% hair and beauty
2022	3,943	1,763	45	166	225	46% food service activity; 18% wholesale; 12% hair and beauty
2023	4,727	2,221	47	235	293	54% food service activity; 12% hair and beauty; 11% wholesale

Source: Correspondence with the Workplace Relations Commission, August 2023. Amended sectoral data for 2022 supplied by WRC in October 2023. Workplace Relations Commission, 2024. Correspondence with the Workplace Relations Commission, October 2024

Note: The introduction of the ERCES case management software in 2019 provided more detail and information around inspection activity. Correspondence with the Workplace Relations Commission, August 2023.

3.2.1 Overview of sectors and employer profiles

Data in Table 3.1 indicate that the sectors of food service activity, wholesale and hair and beauty are of most concern, with most breaches of Employment Permits legislation during the reference period found in these sectors.⁷⁸ Expressed as a proportion of the 235 cases of breaches of the Employment Permits Acts detected in 2023, 54 per cent were in the food service activity sector, 11 per cent in wholesale, and 12 per cent in hair and beauty.⁷⁹ Table 2.2 presents more detailed data from 2022, with the percentage of employers inspected in breach of employment permit legislation by sector. These data indicate that more than one-quarter of employers inspected in contract cleaning and half of employers inspected in equine activities were found to be in breach of employment permits legislation in 2022, though the number of inspections involved here is very low.

⁷⁸ Correspondence with the Workplace Relations Commission, August 2023; September 2024.

⁷⁹ *Ibid.*

TABLE 3.2 WRC INSPECTION ACTIVITY AND OUTCOMES BY EMPLOYMENT SECTOR (2022)

Sector	Employers inspected	No. in breach under all employment/ Employment Permit legislation	No. in breach under Employment Permits Acts	% of employers inspected in breach under EP Acts
Administration and Support	17	7	1	6
Agriculture	49	23	1	2
Beverage Service Activities	156	76	1	1
Contract Cleaning	19	12	5	26
Employment Placement Agencies	18	9	1	6
Equine Activities	4	4	2	50
Fishing	18	9	2	11
Food Service Activities	1,390	636	77	6
Hair and Beauty	280	132	15	5
Manufacturing	58	32	5	9
Meat Processing	20	15	2	10
Other Service Activities	174	74	5	3
Security	15	6	2	13
Transport	49	30	1	2
Wholesale and Retail Trade	1,212	535	33	3
Other	464	163	13	3
Grand Total	3,943	1,763	166	4

Source: WRC Annual Report 2022. Correspondence with the Workplace Relations Commission, October 2023.

According to the Workplace Relations Commission, most employers found to be in breach of employment legislation are small enterprises.⁸⁰ Of the 166 employers identified as having breached the Employment Permits Acts in 2022, 137 (83 per cent) were small enterprises (i.e. less than 50 employees), 20 were medium (12 per cent) and nine (5 per cent) were large enterprises (250+ employees).⁸¹

Categories used in sectoral data from the Revenue Commissioners on employer registrations and WRC data on inspections do not align, therefore it is not possible to show the percentage of employers inspected by sector.⁸² However, in their 2022 Annual Report, the WRC highlights the following sectors of interest for inspection: the fishing sector, services in households, agriculture and road transport. In the

⁸⁰ Not defined by WRC but presumed to follow DETE classification of enterprises with fewer 49 persons engaged. DETE (n.d.) 'Ireland's SME Test: The "Think Small First" Principle' Available at <https://enterprise.gov.ie/>.

⁸¹ Correspondence with the Workplace Relations Commission, August 2023.

⁸² WRC Annual Report includes inspection outcomes by NACE sector including numbers of cases closed by sector. Correspondence with Workplace Relations Commission, November 2023.

fishing sector in 2022, the WRC highlighted its work with other agencies to enforce the Atypical Working Scheme for non-EEA fishers (see Section 2.4.3). In 2022, 11 individual contraventions of employment legislation were detected in the fisheries sector (WRC, 2023, p. 22). The annual report highlights that this brings the total number of contraventions to almost 400 since the Atypical Working Scheme was launched. WRC previously noted that businesses with a high turnover of staff, low wages and long hours tend to indicate increased risk (Arnold et al., 2017).

3.3 OVERVIEW OF DATA ON PERSONS IRREGULARLY PRESENT AND IN EMPLOYMENT

Data on the size of the irregularly resident population, or the extent of irregular employment of non-EU nationals in Ireland, are not available from an official or objective source (Arnold et al., 2017; Polakowski and Quinn, 2022).

In 2014, MRCI and its Justice for the Undocumented (JRU) campaign carried out research with 540 undocumented migrants using a methodology that emphasises participation and action (MRCI, 2014). All participants were surveyed between July and September 2014⁸³ and an analysis of MRCI's case management system complemented and supported these data. MRCI estimated that there were between 20,000 and 26,000 undocumented migrant adults living and working in Ireland and that the vast majority entered the State legally, mainly as students or tourists (MRCI, 2014).

More recent MRCI/JFU estimates take into account, among other factors, policy changes that led to a reduction in the size of the group, such as the 2018 scheme for undocumented former students (Polakowski and Quinn, 2022). In November 2020 MRCI/JFU estimated that there were approximately 17,000 to 20,000 undocumented persons in the State, including 2,000 to 3,000 children.^{84, 85} The results of a further survey of 1,000 irregularly staying migrants published in November 2020 found that the vast majority (93 per cent) of undocumented migrants were economically active, with 46 per cent working for more than 40 hours a week. 26 per cent were paid below the minimum wage level (MRCI, 2020a).

⁸³ The research approach was agreed with Justice for Undocumented members to ensure representation of undocumented migrants throughout the process. Interviews consisted of 29 closed-ended questions, were administered in person and collected anonymously. The questions focused on the length of residency, family life, employment and engagement with the immigration system (Polakowski and Quinn, 2022).

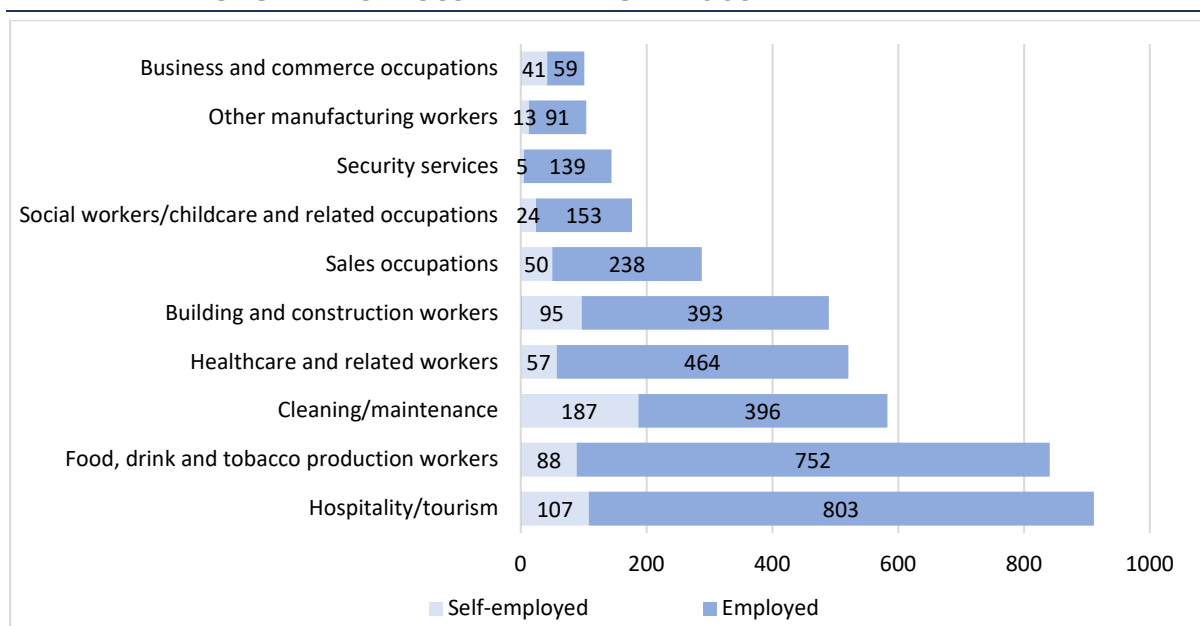
⁸⁴ For reference, in April 2021, there were 646,000 non-Irish nationals, including 180,000 individuals from neither the UK nor the EU residing in the State.

⁸⁵ Information obtained during an interview with a representative of MRCI on 3 November 2020 and reported in Polakowski and Quinn, 2022.

The Regularisation of Long-Term Undocumented Migrants Scheme, which ran between 31 January 2022 and 31 July 2022,⁸⁶ received 6,548 applications in respect of 8,311 people⁸⁷. Despite the fact that overall application numbers were low in light of the estimates cited above, data from applications provide insights. Application forms asked about individuals' employment status. Of those who were aged between 18 and 64 and provided this information, 55 per cent stated that they were in employment and 11 per cent were self-employed. One-quarter reported that they were unemployed, 7 per cent selected 'other', and 1 per cent were students.⁸⁸

Figure 3.1 shows the most common sectors of employment among 4,674 applicants who provided information on their employment history. 'Hospitality/tourism', 'food, drink and tobacco production' and 'cleaning/maintenance' accounted for 50 per cent of applicants.

FIGURE 3.1 SECTORS OF EMPLOYMENT OF APPLICANTS FOR THE 2022 REGULARISATION OF LONG-TERM UNDOCUMENTED MIGRANTS SCHEME



Source: Correspondence with the Department of Justice, August 2023.

Overall, data on applicants to the 2022 scheme show a lower proportion of undocumented people in employment than the previous MRCI research indicated. As noted above, MRCI observed that people may have chosen not to reveal their

⁸⁶ A separate scheme for international protection applicants was open until 7 August 2022 (Citizen's Information, 2022).

⁸⁷ Minister for Justice (11 July 2023). Written response to Parliamentary Question 33877/23. Available at: <https://www.oireachtas.ie/en/debates/question/2023-07-11/498/>.

⁸⁸ Correspondence with the Department of Justice, August 2023.

employment when applying for the scheme because undocumented people do not have permission to work in the State, and this could account for some of the gap.⁸⁹

The two data sources (MRCI and Department of Justice) use different occupation/sector categories; however there is clearly alignment: 20 per cent of MRCI survey respondents worked in ‘restaurant and catering’, while 20 per cent of applicants reported working in ‘hospitality/tourism’. MRCI found that the largest sector of employment was in ‘elder care in the private home’ (27 per cent), while Department of Justice data found that 11 per cent reported employment in ‘healthcare and related workers’. MRCI found that 17 per cent of survey respondents worked in ‘cleaning/maintenance’ compared to 12.5 per cent of applicants for the scheme stating they worked in this category (MRCI, 2020a).⁹⁰

3.4 EMPLOYMENT PERMITS DATA

Ireland has seen a large increase in employment permits issued in recent years, with 30,981 issued in 2023 and 39,955 in 2022 (see Box 2.1). Where there has been a breach of employment permit legislation, the permit may be revoked and this procedure is outlined in Section 5.3. Table 3.3 shows that there were 277 revocations of employment permits between 2017 and September 2023. The main sectors where permits were revoked in the period were ‘accommodation and food services activities’, ‘construction’ and ‘agriculture, forestry and fishing’. Table 3.4 shows that 86 per cent of permits revoked related to General Employment Permits.

TABLE 3.3 REVOCATIONS OF EMPLOYMENT PERMITS (2017-2023*) BY ECONOMIC SECTOR

Economic Sector	2017	2018	2019	2020	2021	2022	2023*		2017-2023
							Revoke pending	Revoked	
A - Agriculture, Forestry and Fishing	<5	0	<5	26	14	4	<5	0	50
F - Construction	0	0	0	36	23	8	0	<5	71
I - Accommodation and Food Services Activities	24	<5	20	14	21	<5	<5	8	93
J - Information and Communication Activities	9	0	<5	0	<5	<5	0	<5	14
Q - Health and Social Work Activities	6	0	<5	<5	0	<5	0	0	10
Other (Sectors C, D, E, G, H, K, M, N, P, S)	10	<5	6	13	0	5	0	<5	39
Total	50	<5	32	90	59	24	<5	18	277

Source: Correspondence with the Economic Migration Policy Unit, Department of Enterprise, Trade and Employment, September 2023.
Note: *As of September 2023. Table does not include details of appeals of permits revoked.

⁸⁹ Correspondence with MRCI, October 2023.

⁹⁰ Correspondence with the Department of Justice, August 2023.

TABLE 3.4 REVOCATIONS OF EMPLOYMENT PERMITS (2017-2023*) BY PERMIT TYPE

Permit Type	Total per type
Critical Skills Employment Permit	25
Dependant/Partner/Spouse Employment Permit	<5
General Employment Permit	241
Intra-Company Transfer Employment Permit	5
Reactivation Employment Permit	<5
Total	277

Source: Correspondence with the Economic Migration Policy Unit, Department of Enterprise, Trade and Employment, September 2023.
Note: *As of September 2023. Table does not include details of appeals of permits revoked.

If a permit is revoked due to an employer's breach of legislation, the worker can apply for a reactivation permit. Table 3.5 shows that just 422 reactivation permits were issued between 2017 and August 2023. By way of context, in the period 2017-2023, almost 145,000 employment permits were issued. The number of reactivation permits issued dipped 2018-2021, before increasing in 2022. The majority (79 per cent) of reactivation permits were issued to males, with Brazil and China being the main countries of nationality of recipients.

TABLE 3.5 REACTIVATION PERMITS ISSUED (2017-2023*)

	2017	2018	2019	2020	2021	2022	2023*	Total
Gender								
Male	61	45	42	31	22	72	57	330
Female	18	12	13	10	8	14	17	92
Nationality								
Brazil	<5	8	12	7	5	19	8	63
China	19	11	<5	11	5	7	<5	61
India	8	<5	7	<5	6	19	7	53
Pakistan	7	6	<5	<5	<5	6	7	31
Philippines	6	<5	7	7	<5	10	7	43
Other	35	25	22	13	10	25	41	171
Total	79	57	55	41	30	86	74	422

Source: Correspondence with the Economic Migration Policy Unit, Department of Enterprise, Trade and Employment, August 2023.
Note: *As of August 2023.

3.5 TRENDS IN TRAFFICKING FOR THE PURPOSES OF LABOUR EXPLOITATION

Human trafficking for labour exploitation was the second most identified purpose of human trafficking across most European countries in 2022, accounting for 37 per cent for all trafficking victims identified (EMN, 2023, p. 72). Similarly, in Ireland, labour exploitation was the second most identified purpose of human trafficking in Ireland between 2015 and 2020, behind human trafficking for sexual exploitation, with 144 people identified as victims of labour exploitation between

2015 and 2020 (42 women and 102 men) (Cunniffe and Ayodele, 2022). The *Annual Report on Migration 2022: Ireland* found that 30 non-EEA citizens were identified as victims of trafficking in humans in Ireland in 2022, with a further 12 people of EEA or Irish nationality. Labour exploitation was the second most identified purpose of trafficking at 35 per cent of the total victims identified. In 2022, 37 per cent of non-EEA national victims of human trafficking identified were from Nigeria (Murphy and Sheridan, 2023).

3.6 CONCLUSIONS

In the absence of official data on irregular employment of non-EU nationals in Ireland, this chapter provided a range of data to describe its extent and characteristics. WRC data show that most (83 per cent in 2022) employers found to be in breach of employment legislation are small enterprises. In terms of sectors, most breaches of Employment Permits legislation are seen in food service activity, wholesale and hair and beauty sectors, with contract cleaning also showing high incidence proportionately. The number of people working irregularly is unknown. In November 2020 MRCI/JFU estimated that there were approximately 17,000 to 20,000 undocumented persons in the State. Later research indicated the vast majority (93 per cent) were employed. Data from applications to the Regularisation of Long-Term Undocumented Migrants Scheme also offer insights. Of working age applicants, 55 per cent stated that they were in employment, 11 per cent were self-employed, 25 per cent reported that they were unemployed. The most common sectors of employment were ‘hospitality/tourism’, ‘food and drink production’ and ‘cleaning/maintenance’. Low numbers of revocations of employment permits have been issued, with 217 issuing between 2017 and 2022. Finally the *Annual Report on Migration 2022: Ireland* found that 30 non-EEA citizens were identified as victims of trafficking in humans in Ireland in 2022. Labour exploitation was the second most identified purpose of trafficking at 35 per cent of the total victims identified. In 2022, 37 per cent of non-EEA national victims of human trafficking identified were from Nigeria.

The following chapter provides a comprehensive examination of strategies aimed at preventing and detecting the irregular employment of non-EU nationals.

CHAPTER 4

Prevention and identification of irregular employment in Ireland

4.1 INTRODUCTION

This chapter provides an overview of measures in place to prevent and to identify the irregular employment of migrants, along with associated challenges and good practices. Regularisation of undocumented migrants is shown to be an important prevention mechanism against irregular employment. The provision of information to workers is also critical and WRC activity in this area is discussed. Workplace inspections are led by WRC in cooperation with the Revenue Commissioners, Department of Social Protection and An Garda Síochána, and are viewed by WRC to have an important role in deterring, as well as identifying, irregular employment. The number of employment inspection cases in 2023 was 4,727, having increased from 3,943 in 2022. NGOs are critical of the limited number of WRC inspectors, which stood at 63 nationally in January 2024, although an increase to 80 is planned. Existing cooperation at both national and international levels is also discussed in this section.

4.2 MEASURES TO PREVENT IRREGULAR EMPLOYMENT OF MIGRANTS

4.2.1 Regularisation measures

The link between irregular migration status and irregular employment has been demonstrated in the literature (Anderson, 2010; Pillinger, 2008). As discussed in Section 3.3, a 2020 survey of 1,000 undocumented persons in Ireland conducted by the MRCI and the Justice for the Undocumented (JFU), highlighted challenges faced by those with an irregular status, finding that over 75 per cent of the sample were in employment with high levels of exploitation (MRCI, 2020a).

Regularisation of undocumented persons was identified as a key prevention mechanism by stakeholders interviewed.^{91, 92} The two regularisation schemes discussed in Section 3.3 have sought to tackle such issues. MRCI stated that the 2022 regularisation scheme allowed people who were undocumented to ‘come out of the shadows’ and regularise their employment situation. MRCI is campaigning for an ongoing rolling system for regularisation.⁹³

⁹¹ Interview with representative from MRCI, August 2023.

⁹² Interview with the Economic Migration Policy Unit, August 2023 and correspondence with the Workplace Relations Commission, August 2023.

⁹³ Interview with representative from MRCI, August 2023.

4.2.2 Information provision and outreach

Providing information to irregular workers about their rights and available complaints mechanisms is vital in order to maintain standards and prevent exploitation (FRA, 2021; Keith and LeVoy, 2020). In Ireland, information provision and outreach are important activities for the WRC, while information is also provided to workers by NGOs.

The WRC's Information and Customer Service Unit receives a high and increasing volume of calls (61,800 in total in 2023; 59,700 in 2022; 55,800 in 2021) primarily from employees, but also from employers and other relevant parties, and the topic of these calls indicate some of the main concerns on the ground for workers and employers (WRC, 2023; 2024). In most years between 2017 and 2022, approximately 40 per cent of calls to the unit concerned employment permits (Table 4.1) and were generally related to the application process, i.e. which permit should be applied for, and requests for updates, questions on refusals (often where applicants do not understand the refusal letter), updates on appeals and issues in relations to Stamp 4 support letters,⁹⁴ as well as changing employers and other general queries.⁹⁵

TABLE 4.1 CALLS TO THE WRC INFORMATION AND CUSTOMER SERVICE UNIT RELATING TO EMPLOYMENT PERMITS (2017-2023)

Year	Percentage of calls relating to employment permits (%)
2017	37
2018	38
2019	40
2020	15
2021	41
2022	38
2023	31

Source: Workplace Relations Commission (WRC), Annual Reports 2017-2023.

MRCI also provide information to third-country national workers, through their drop-in centre and in information leaflets, such as an Employment Rights Booklet published in August 2023 (MRCI, 2023).

⁹⁴ Note that effective from 30 November 2023, applicants for a Stamp 4 immigration permission are no longer required to obtain a letter of support from the Department of Enterprise, Trade and Employment. For more information see: <https://enterprise.gov.ie/en/what-we-do/workplace-and-skills/employment-permits/latest-updates/notice-regarding-stamp-4-support-letters.html#:~:text=Effective%20from%2030%20November%202023,by%20the%20Department%20of%20Justice.>

⁹⁵ Correspondence with the WRC, August 2023.

The WRC aims to increase awareness of the service and resources through its website and social media as well as through stakeholder engagement (WRC, 2023). In 2022, the WRC published short animations on how to make a complaint and what happens at an adjudication hearing. The website (www.workplacerelations.ie) is translatable, and translated information resources on employment rights for beneficiaries of temporary protection have been developed and distributed (WRC, 2023).

4.2.2.1 *Migrant fishers and other vulnerable groups*

EMN (forthcoming) identifies outreach to irregularly employed workers as a challenge in several countries, while MRCI (2017a) found that language can be a significant barrier for migrant workers in the fishing sector accessing information on their rights. In Ireland, targeted information is made available for vulnerable groups (including fishers and domestic workers) by WRC that is translated into the main languages of workers in the sectors.⁹⁶ Inspectors also bring a multilingual information card when conducting inspections.^{97, 98}

WRC has increased engagement with stakeholders since 2016 as a means of enhancing employment rights awareness and compliance in the fishing industry, including with the International Transport Workers' Federation and fish producer organisations (WRC, 2022b). The WRC also reported that it now has a cohort of inspectors with experience in the fisheries sector who have built up specialised experience, such that enforcement presence in the fisheries sector is now significant and disproportionate to the size of the sector.⁹⁹

There has been debate over the most effective channels to reach migrant fishers, with the use of X (formerly Twitter) campaigns by WRC criticised by the ITF, who argued that WhatsApp, Facebook, and face-to-face were more effective means of communication.¹⁰⁰ Following consultation in December 2021 new measures on information provision, awareness and promotion, direct engagement with both fishers and vessel owners and representative organisations are being developed.¹⁰¹ WRC also highlighted the face-to-face engagement by WRC Inspectors with fishers both on in-port inspections and remotely.¹⁰²

⁹⁶ Correspondence with the WRC, August 2023.

⁹⁷ Liam Kelly (20 October 2021). Joint Committee on Enterprise, Trade and Employment debate. Resourcing and Capacity of the Workplace Relations Commission: Discussion. Available at: https://www.oireachtas.ie/en/debates/debate/joint_committee_on_enterprise_trade_and_employment/2021-10-20/2/.

⁹⁸ Languages include languages include French, Spanish, Russian, Portuguese, Arabic, Hindi and Mandarin (Correspondence with WRC, April, 2024).

⁹⁹ 530 fisheries inspections were carried out and 250 investigations completed by the WRC in the period 2016-2022. Correspondence with Workplace Relations Commission, October 2023.

¹⁰⁰ Interview with ITF, September 2023.

¹⁰¹ Correspondence with the Workplace Relations Commission, October 2023.

¹⁰² *Ibid.*

4.2.3 Challenges and good practices related to prevention measures

The WRC highlighted that establishing the identity of persons found to be working irregularly can be a challenge to prevention in a minority of cases, including where a person uses false documentation. To tackle this, where the employment status of a person is unclear, the employee and employer are referred to the Scope section in the Department of Social Protection, which provides information and advice on PRSI insurance, for clarification.¹⁰³ A further challenge is that non-compliant businesses may also have frequent changes of directors and changes to corporate identity; this can make it difficult to monitor these businesses.¹⁰⁴

In terms of visibility and access, the WRC reported that persons working in private homes can also be challenging to identify (unless the employee is registered with the Revenue Commissioners or the Department of Social Protection).¹⁰⁵ However, once the employment has been identified, WRC stated that they are able to carry out effective inspections. In these cases, if the employer refuses to grant access to the home, inspectors will meet and carry out the inspection in WRC premises or another venue.¹⁰⁶

WRC expressed the view that inspections also have a role in the prevention of irregular employment, highlighting how they can deter employers from engaging in illegal employment and third-country nationals from becoming illegally employed.¹⁰⁷ The Migrant Rights Centre Ireland argues that while inspections are important, there are not enough inspectors for the size of the workforce in Ireland (see below).¹⁰⁸

More broadly, MRCI stated that the housing crisis is a structural issue for all workers and a challenge for the prevention of irregular working. For migrant workers, moving to a new country requires significant funds and it can be difficult to secure affordable housing. As a result, it was argued, migrant workers may have to take up second jobs, some of which may be in the irregular labour market, to supplement their income. Relatedly, MRCI observed that some jobs, including those for employment for horticultural workers and meat processing operatives, are minimum wage remuneration, with a minimum required salary of €22,000 (based on a 39-hour week). Under the Employment Permits Regulations 2024, the minimum annual remuneration for these jobs is increased to €30,000.¹⁰⁹ For the

¹⁰³ Correspondence with the Workplace Relations Commission, October 2023.

¹⁰⁴ Correspondence with the Workplace Relations Commission, August 2023.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ Interview with representative from MRCI, August 2023.

¹⁰⁹ Regulation 38(b), Employment Permits Regulations 2024.

positions of healthcare assistant, care worker or home carer, the minimum annual remuneration is set at €27,000.¹¹⁰

MRCI welcomed the inclusion of a measure in the Employment Permits Bill 2022 to allow workers to change employer as a positive development that will ensure that employees will be able to leave exploitative conditions (see Box 2.1 for further information on the measures subsequently enacted). They also recommend an ongoing regularisation process, increased transparency in the development of labour migration policy and the right to work for all spouses and dependants coming to Ireland via family reunion procedures.¹¹¹

4.3 MEASURES TO IDENTIFY IRREGULAR EMPLOYMENT OF MIGRANTS

The identification of a situation of illegal employment typically occurs either through inspections, or through the third-country national seeking assistance from an NGO to lodge a complaint against their employer.

4.3.1 Risk assessments

EMN (forthcoming) found that most EMN Member Countries regularly identify and monitor high-risk sectors for illegal employment of third-country nationals. The main sectors targeted encompass both traditional sectors at risk – construction, accommodation and food services, manufacturing, agriculture, forestry, and fishing – as well as emerging areas of concern – beauty and wellness, delivery services, garage and motor vehicle industry, security services, event management and demolition work.

In Ireland, the WRC conducts general risk assessments of sectors as part of their annual planning process for inspections, and the risk of employment permit law breaches forms part of that. The risk assessment is based on previous experience and breach levels within sectors, coupled with international experience. Other factors include the level of non-compliance with other statutory obligations within sectors, information in the public domain and levels of referrals/complaints. Some campaigns are multi-annual in character. The WRC reported that since 2017 the meat processing, fishing and agriculture sectors have all been subject to scrutiny by the inspectorate and are multi-annual campaigns.¹¹² The European Labour Authority coordinates transnational inspection campaigns, in which Ireland participates. In 2022, the focus was on agriculture and road transport.¹¹³

¹¹⁰ Regulation 38(a), Employment Permits Regulations 2024.

¹¹¹ Interview with representative from MRCI, August 2023. Correspondence with MRCI, October 2023.

¹¹² Correspondence with the Workplace Relations Commission, August 2023.

¹¹³ *Ibid.*

The Economic Migration Policy Unit in the Department of Enterprise, Trade and Employment reported that they also have an internal risk indicator list for employment permits, which was developed in conjunction with the WRC.¹¹⁴ The risk indicator is used by staff when processing applications for new and renewal employment permits to ensure that permits are only granted where they are warranted. Where there is an indication of a risk, the WRC may be requested to validate that the proposed employer is trading and, in as far as possible, that a genuine job offer exists before the employment permit is issued. If it is considered that a check before issuing the permit would not address the concerns, a post-issue check can be requested and is conducted between four and six months after the permit is issued. This allows the holder of the permit to build up an employment permit history allowing the inspector to validate that they are working in the role specified and receiving the specified weekly remuneration. If it is found that there is a breach of employment permit legislation in respect of a permit that has been granted, consideration will be given to revoking the employment permit held.¹¹⁵ The process for revoking employment permits is discussed in Section 5.3.

4.3.2 Monitoring through inspections

As highlighted elsewhere in this report, a key mechanism of monitoring compliance with employment law is through inspections by the WRC. As of January 2024 there were 63 inspectors employed by the WRC operating across the country. This is due to be increased to 80, and an internal competition to fill the vacancies took place in December 2023.¹¹⁶

Table 3.1 (Chapter 3) showed that the number of employment inspection cases in 2023 was 4,727, having increased from 3,943 in 2022. Revenue data indicate that there were 191,600 employers in the State in 2023¹¹⁷ giving an overall inspection rate of 2.5 per cent. For further context, at the end of 2023 there were 2,338,500 employees in the State (CSO, 2024). With 80 inspectors, this equates to approximately one inspector for every 29,200 employees.

The majority of inspections that occurred in 2023 were unannounced (3,662) preliminary checks to ascertain the likelihood of compliance of the employer. Where concerns exist, a full inspection case is opened. There were 2,717 full workplace inspections in 2023 (WRC, 2024).

¹¹⁴ Interview with DETE, August 2023.

¹¹⁵ *Ibid.*

¹¹⁶ Response to Parliamentary Question 260 (23 January 2024), Departmental data, available at <https://www.oireachtas.ie/en/debates/question/2024-01-23/260/>.

¹¹⁷ Income tax 2023: Insights on PAYE Taxpayers (revenue.ie).

4.3.2.1 *Cooperation on inspections and information sharing*

In EMN countries labour inspectorates play a primary role in identifying third-country nationals in irregular employment, regularly collaborating with various other agencies (EMN forthcoming). In Ireland, in some cases, inspections are conducted in cooperation with authorities such as the Revenue Commissioners, Department of Social Protection, the Garda National Immigration Bureau (GNIB) and the Garda National Protective Services Bureau (GNPSB). Since 2019, the WRC and the Employment Permits Unit in the Department of Enterprise Trade and Employment started to carry out targeted inspections to verify the status and information provided by employers who have made applications for an employment permit or are trusted partners.¹¹⁸

According to the WRC, measures that have been implemented to ensure inspections are effective and adequate include the WRC's access to information on the working permission status of individuals from both the employment permits database and the Border Management Unit (BMU). Section 68 of the Employment Permits Act 2024 provides for the sharing of information between various government bodies, including the BMU and WRC, and such information generally relates to the employment permission and identity of a worker.¹¹⁹ Part 3 of the Workplace Relations Act 2015 provides for administrative cooperation with official bodies in Ireland and with foreign statutory bodies (in relation to law enforcement matters). The legislation also provides extensive powers to share information with a wide range of official bodies.

Joint inspections involving WRC, the GNIB, and the GNPSB were also identified by the WRC as an effective tool to deal with illegal employment. MRCI argue however that inspections should not be carried out jointly with the GNIB because undocumented people experiencing exploitation are unlikely to come forward due to a fear of deportation. Instead, MRCI recommend a firewall between the WRC and the GNIB (i.e. a provision, in relation to using services, guaranteeing that an undocumented migration status will not be forwarded to the migration authorities).¹²⁰

4.3.3 **Challenges and good practices related to identification**

As set out in previous sections, inspections are crucial for the identification of irregular employment; however the MRCI highlighted that despite their

¹¹⁸ Under the 'Trusted Partner Initiative', a person who makes an offer of employment/employers/connected persons and EEA contractors can apply for trusted partner status. The Trusted Partner Initiative aims to streamline the application process for the person making the offer of employment/employers/connected persons and EEA contractors when applying for Employment Permits. More information on trusted partners available at: <https://enterprise.gov.ie/en/what-we-do/workplace-and-skills/employment-permits/trusted-partner-initiative/>.

¹¹⁹ Correspondence with WRC, October 2023.

¹²⁰ Correspondence with MRCI, October 2023.

importance, there are not enough inspectors for the size of the workforce in Ireland.¹²¹ WRC refutes this, pointing to recent and planned increases in the number of inspectors (see above). Given the significant increase in issuing employment permits in recent years (see Box 2.1), MRCI was concerned there would be further limitations in the oversight of workplaces. WRC observed that inspections are targeted in a way that ensures that employers who are breaching employees' rights are more likely to be detected. They are generally focussed on sectors that indicate an increased risk based on experience from closed cases, sectoral intelligence and complaints.¹²²

Inspections of working conditions in the fishing sector have been an area of particular focus and raise a number of challenges due to the nature of work in the sector, with some boats at sea for long periods of time. The WRC reported that, given working patterns and seasons in the fishing industry, it can be difficult to resource inspections efficiently and effectively to ensure an enforcement presence during landings at ports.¹²³ The WRC liaises with the Fisheries Monitoring Centre to track vessel movements and inspectors are available to deploy at short notice to ports.¹²⁴ WRC deploys an average of three in-port three-day-long operations each year, undertaking detailed compliance assessments at owners' premises, liaising with the Department of Justice and Gardaí in relation to immigration matters, and with the Department of Transport, the Naval Service and the Fisheries Monitoring Centre.¹²⁵ The WRC reported that it now has a cohort of inspectors with experience in the fisheries sector and has developed dedicated inspection protocols and procedures. It further highlights that enforcement presence in the fisheries sector is significant and disproportionate to the size of the sector, with 530 fisheries inspections carried out and 250 investigations completed by the WRC in the period 2016-2022.¹²⁶

With regard to interaction with non-EU nationals working in the sector, Murphy et al. (2021) highlight a fear among some workers of the consequences of raising issues during inspections as well as the difficulties posed by language barriers. They found that there is typically no translator present during fisher inspections. In turn, the WRC has stated that its inspectors use interpretation and translation technologies and find that routine accompaniment by interpreters on

¹²¹ Interview with representative from MRCI, August 2023.

¹²² Correspondence with WRC, October 2023.

¹²³ In some sectors, such as fishing and meat or food processing, the WRC stated that inspectors require physical and biosafety preparation and training before the inspections can commence.

¹²⁴ Correspondence with Workplace Relations Commission, October 2023.

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*

unannounced inspections, often at unsocial hours, to be neither practical nor cost effective.¹²⁷

The WRC identified two good practices for the study. The first is that under section 61 of the Employment Permits Act 2024, where a member of An Garda Síochána or a WRC inspector observes a person engaged in an act consistent with that person being employed in that place, they can presume that the person observed was employed. This allows an inspector (or a member of the Gardaí) to form an opinion that a person is employed and not for example a visitor or friend. A second good practice identified was the sharing of data between the WRC and other State bodies regarding the immigration status of the third-country national.¹²⁸

The Department of Justice, via its work on trafficking, noted Joint Action Days as a good practice. Inspectors of the WRC participate in Joint Action Days with other colleagues under the EU EMPACT initiative (European Multidisciplinary Platform Against Criminal Threats). These operations involve WRC Inspectors, DSP Inspectors, An Garda Síochána and Revenue. These are focused on labour exploitation and human trafficking. Two campaigns were carried out in 2022. In June 2022 the WRC participated in the annual EMPACT Labour Exploitation campaign. The WRC carried out 172 inspections during the campaign and 171 contraventions of legislation were detected. A further EMPACT campaign aimed at the agricultural sector took place in September 2022 involving forestry, fruit and vegetable farms, and livestock farms (animals and poultry). A total of 28 unannounced inspections were undertaken, and 17 contraventions of employment legislation were detected.

In June 2022 multi-agency EMPACT Days of Action on Labour Exploitation were conducted. Inspections were carried out at 23 premises, with the WRC and Revenue leading under their powers of entry, and workers were assessed for indicators of human trafficking. The HTICU along with the WRC and Revenue inspectors also participated in EMPACT Joint Action Days for Workers in the agriculture sector in September 2022.¹²⁹

The ITF identified the National Referral Mechanism as a good practice, which means that after a period of 60 days for recovery and reflection, if a third-country national victim of trafficking does not have a residence permission, a temporary residence permit can be issued on Stamp 4 basis and these permit holders can

¹²⁷ Correspondence from the Workplace Relations Commission, October 2023.

¹²⁸ Correspondence with WRC, August, 2023. References to legislation have been updated to the 2024 Act.

¹²⁹ Correspondence with Migration Policy Unit, Department of Justice, October 2023.

immediately access the labour market and social welfare supports. ITF stated that Ireland compared favourably to the UK in this regard.¹³⁰

4.4 COOPERATION ON PREVENTION AND IDENTIFICATION

4.4.1 National level

In terms of data sharing between authorities, WRC inspectors are authorised officers under the Employment Permits Act 2024.¹³¹ They stated that in their role as authorised officers, they have access to data held on employment permits in the Department of Enterprise, Trade and Employment.¹³² The WRC also stated that inspectors have statutory access to information held by Revenue Commissioners and the Department of Social Protection.¹³³ In addition, the WRC can share information with official bodies relating to the detection, investigation or prosecution of an offence.¹³⁴ The WRC also cooperates with the Garda National Immigration Bureau and the Department of Justice regarding data on an individual's immigration status. Regarding fisheries operations, the WRC has information sharing or other cooperative arrangements with the Naval Service, the Fisheries Monitoring Centre, the Sea Fisheries Protection Authority and the Department of Transport.¹³⁵

There is also some cooperation between the ITF and the WRC, with the ITF bringing to the attention of the WRC Inspectorate cases of exploitation involving undocumented fishers.¹³⁶ MRCI emphasised the importance of information firewalls to encourage reporting of exploitation and to protect migrant workers.¹³⁷

4.4.2 International and European cooperation

The WRC has Memorandums of Understanding with the UK Gangmasters Licensing Authority, the European Labour Authority, the International Labour Organization and Autoridade para as Condições do Trabalho (Portuguese Labour Inspectorate), which permit information sharing¹³⁸ for the identification of irregularly employed TCNs. The WRC is also a party to the European Commission's Internal Market Information System (IMI) by means of which Member States can request information on workers posted to another Member State.¹³⁹

¹³⁰ Interview with ITF, September 2023.

¹³¹ Section 51, Employment Permits Act 2024.

¹³² Correspondence with the Workplace Relations Commission, October 2023.

¹³³ Section 31, Workplace Relations Act 2015.

¹³⁴ Section 32, Workplace Relations Act 2015.

¹³⁵ Correspondence with Workplace Relations Commission, October 2023.

¹³⁶ Interview with ITF, September 2023.

¹³⁷ Correspondence with MRCI, October 2023.

¹³⁸ Interview with the Economic Migration Policy Unit, August 2023.

¹³⁹ Correspondence with Workplace Relations Commission, October 2023.

While no specific international/European collaboration in regard to irregular employment in the fishing industry to date was found, ITF stressed the very poor conditions faced by non-EEA fishers working on some foreign flag vessels in Irish waters. ITF stated that, as Ireland has not ratified International Labour Organization Convention No. 188 on Work in Fishing Convention,¹⁴⁰ the Marine Survey Office and WRC have limited powers to inspect foreign flag vessels. Ireland has, nonetheless, transposed the EU legislation, the Work in Fishing Directive 2017/159/EU, which is based on the Work in Fishing Convention, but has some limitations.¹⁴¹ Based on this legislation, the MSO are the designated body to inspect health and safety matters on vessels.

4.5 CONCLUSIONS

This chapter provided an overview of measures in place to prevent and to identify the irregular employment of migrants, along with associated challenges and good practices. The regularisation of undocumented migrants, the provision of information and outreach on their rights and relevant complaint mechanisms, language supports, and the increased engagement of stakeholders were found to be key prevention mechanisms against irregular employment. Workplace inspections were shown to have an important role in the prevention and identification of employment. Nonetheless, the limited number of WRC inspectors were considered a challenge by NGOs. Data showed that the number of employment inspection cases in 2023 was 4,727. With 191,600 employers in the State in 2023, this gives an overall inspection rate of 2.5 per cent. Finally, cooperation between different national level authorities – for example for data sharing – and international and European cooperation were identified. The following chapter explores the sanctions for irregular employment, as well as protections and outcomes for TCN irregular workers.

¹⁴⁰ The International Labour Organization Convention No. 188 on Work in Fishing Convention is available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312333:NO.

¹⁴¹ Council Directive (EU) 2017/159 of 19 December 2016 implementing the Agreement concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organization, concluded on 21 May 2012 between the General Confederation of Agricultural Cooperatives in the European Union (Cogeca), the European Transport Workers' Federation (ETF) and the Association of National Organisations of Fishing Enterprises in the European Union (Europêche).

CHAPTER 5

Protection, sanctions and outcomes for non-EU nationals in irregular employment

5.1 INTRODUCTION

This chapter provides an overview of potential sanctions for irregular employment, the process for revoking an employment permit upon identification of irregular employment, and potential outcomes for third-country nationals found to be irregularly employed. The available complaints mechanisms are discussed. Third-country nationals must be legally entitled to work to avail of the services of the WRC Inspection and Adjudication services. However, where it can be proved that an undocumented worker took all reasonable steps to ensure they were compliant, they or the Minister can take a civil proceeding for compensation against their employer. Compensation and social security entitlements and challenges in sanctioning employers are also discussed.

5.2 POTENTIAL SANCTIONS FOR IRREGULAR EMPLOYMENT

As discussed in Section 3.2, the main relevant legislation is the Employment Permits Act 2024 and the Employment Permits Regulations 2024. The Workplace Relations Act 2015 has provisions to sanction employers for offences relating to failing to uphold the terms and conditions of an employee's contract, and failure to pay minimum wage, among other relevant offences. Third-country nationals with a permission to reside in the State can take a case to the WRC. However, it is important to note that third-country nationals who are undocumented and in employment cannot lodge a complaint with them.

Various activities are prohibited under the Employment Permits Act 2024, which, on conviction, can lead to a fine or a term of imprisonment for an employer or an employee. Where a third-country national is in employment in the State without an employment permit where they are required to hold one, or an employer employs a third-country national without an employment permit where they are required to hold one, they can be subject to fines and terms of imprisonment. Fines range from a class B fine, which starts at €2,500, to fines of €250,000; and terms of imprisonment range from up to 12 months to not exceeding five years depending on type of conviction.¹⁴² It is also an offence to not notify the Minister of the cessation or termination of employment within the prescribed period.¹⁴³ Other prohibitions under the Act include a prohibition on forgery, fraudulent alteration

¹⁴² Section 57(1), Employment Permits Act 2024.

¹⁴³ Section 43(4), Employment Permits Act 2024.

or fraudulent use of an employment permit;¹⁴⁴ the use of the employment permit for a different employment;¹⁴⁵ deduction from remuneration, and retention of personal documents.¹⁴⁶ It is also an offence to knowingly or recklessly furnish misleading information to the Minister.¹⁴⁷

Section 33 of the Workplace Relations Act 2015 enables the WRC to disclose to ‘public contracting authorities’¹⁴⁸ information in relation to contravention of employment legislation by a primary or secondary contractor of that public contracting authority. Additionally, WRC inspectors, as authorised officers, are empowered under the Employment Permits Act 2024 to issue fines. Where the WRC brings a prosecution, a convicted employer can be refused the grant of employment permits for a number of years.¹⁴⁹

The primary consequence for breach of the Employment Permits legislation is the revocation of the employment permit, and the resultant loss of the employee. An employment permit, once issued, can be revoked for several reasons.¹⁵⁰ Relevant for the employer, they can be revoked because it was obtained by fraud or misrepresentation, they have not complied with the prohibition on certain use of the employment permit (e.g. have transferred the permit to another permit, the employment in which the person is engaged is not the same as that on the employment permit), the employer has failed to provide appropriate accommodation and board (or either), or health insurance, where they are required to do so.

5.3 REVOCATION PROCESS UPON IDENTIFICATION OF IRREGULAR EMPLOYMENT

When a situation of irregular employment is detected, the WRC stated that they do not bring legal action against the third-country national themselves. They stated that employers are advised that for the third-country national to continue to work, this would expose the employer to further prosecutions, as described in the previous section on sanctions.¹⁵¹

¹⁴⁴ Section 53, Employment Permits Act 2024.

¹⁴⁵ Section 54, Employment Permits Act 2024.

¹⁴⁶ Section 55, Employment Permits Act 2024.

¹⁴⁷ Section 56, Employment Permits Act 2024.

¹⁴⁸ A public contracting authority includes organisations within the meaning of the European Communities (Award of Contracts by Utility Undertakings) Regulations 2007 (S.I. No. 50 of 2007); Directive 2004/17/EC and Directive 2004/18/EC.

¹⁴⁹ Correspondence with the Economic Migration Policy Unit, Department of Enterprise, Trade and Employment, September 2023.

¹⁵⁰ Section 40, Employment Permits Act 2024.

¹⁵¹ Correspondence with WRC, August 2023.

DETE indicated that where there has been a breach of employment permit legislation, the following process is taken:

1. The DETE Employment Permit Registration team writes to both the employer and employee to inform them that the Department is considering the case and is considering a revocation of the employment permit.¹⁵² The person(s) then has 28 days to reply.¹⁵³
2. If a reply is not received, then a decision to revoke is made. If there is a reply, the reply will be examined. If the outcome of the examination finds that the revocation decision is correct, the Department will again write to both the employer and employee to inform them that the employment permit is being revoked. The person(s) then has 28 days to appeal this decision.¹⁵⁴
3. If no appeal is made, then the employment permit is revoked. If an appeal is made, then the case passes through an appeals process. If the outcome of the appeals process is that the decision is to be upheld, the employment permit is then revoked. If the outcome is that the decision was incorrect then the revocation process is stopped.¹⁵⁵

However, it should be noted in cases where an Employment Permit is revoked due to an employer's breach of legislation,¹⁵⁶ the worker would be able to apply for a reactivation employment permit, as the employer's breach of the legislation was not the fault of the employee (see below). DETE stated that as a result of such cases, recognising that not all revocations impact on immigration permission, the DETE does not routinely inform the Department of Justice of revocations, although there is close communication between DOJ and DETE on individual cases if required.¹⁵⁷

Chapter 3 contains information on 227 employment permits revoked between 2017 and September 2023. Table 3.3 showed revocations of employment permits between 2017 and September 2023 by economic sector. As noted above, the main sectors concerned were 'accommodation and food services activities', 'construction' and 'agriculture, forestry and fishing'. As shown in Table 3.4, the vast majority (86 per cent) revocations related to General Employment Permits.

¹⁵² Section 40, Employment Permits Act 2024.

¹⁵³ Regulation 21, Employment Permits Regulations 2024.

¹⁵⁴ Section 41, Employment Permits Act 2024, with the prescribed period set out under Regulation 21, Employment Permits Regulations 2024.

¹⁵⁵ Correspondence with the Economic Migration Policy Unit, Department of Enterprise, Trade and Employment, September 2023.

¹⁵⁶ For example, due to the Employer hiring a person for occupation X which is eligible but setting them to work on occupation Y which is ineligible.

¹⁵⁷ Correspondence with the Economic Migration Policy Unit, Department of Enterprise, Trade and Employment, September 2023.

5.4 OUTCOMES FOR THIRD-COUNTRY NATIONALS

5.4.1 Third-country nationals with a residence permit and an employment permit

Persons found to be working irregularly while residing regularly in the State may be considered to have breached the conditions of their immigration permission and could therefore be liable to have their immigration permission withdrawn and their employment permit could be revoked, subject to section 40 of the Employment Permits Act 2024. Such persons would be subject to the same removal process (i.e. section 3, Immigration Act 1999) as persons who were found to be irregularly present in the State. They would be issued with an intention to deport letter ('section 3 letter'), in response to which they can make representations as to why a deportation order should not be issued against them. Where successful, they will be issued with a permission to remain in the State.¹⁵⁸

In terms of the impact of a deportation order on the employment permit system, where one is issued under section 3 of the Immigration Act 1999,¹⁵⁹ the Department of Justice informs the Department of Enterprise, Trade and Employment, and under section 42 of the Employment Permits Act 2024,¹⁶⁰ the employment permit ceases to be in force.¹⁶¹ If the deportation order is revoked, the employment permit can be re-activated.¹⁶²

5.4.2 Third-country nationals with a residence permit but without an employment permit

Some third-country nationals, including family reunification beneficiaries, students, persons with permission to remain, refugee and subsidiary protection status holders, international protection applicants among others, are entitled to access the labour market without an employment permit, but are subject to the conditions of the immigration permission they hold.

Students holding a Stamp 2 residence permission are allowed to access the labour market for up to 20 hours per week during term time and 40 hours during the summer and over the Christmas holiday period (15 December – 15 January). Where a student is found to be working in excess of those hours, the Department of Justice

¹⁵⁸ Department of Justice (2023). Repatriation Division. Available at: <https://www.irishimmigration.ie/my-situation-has-changed-since-i-arrived-in-ireland/spouse-civil-partner-of-irish-national-scheme/repatriation-division/#permission-to-remain>.

¹⁵⁹ Section 3, Immigration Act 1999 (as amended).

¹⁶⁰ Section 42, Employment Permits Act 2024.

¹⁶¹ Correspondence with the Economic Migration Policy Unit, Department of Enterprise, Trade and Employment, September 2023.

¹⁶² Section 42(1), Employment Permits Act 2024.

indicated they may not have their immigration permission renewed at next renewal date.¹⁶³

Where a third-country national who holds a residence permit that does not permit them to work takes up employment, they may be subject to the same removal process (i.e. section 3, Immigration Act 1999) as persons who were found to be irregularly present in the State.

If an employment permit holder falls out of the employment permit/immigration permission system through no fault of their own, or has been badly treated or exploited in the workplace, they can apply for a Reactivation Employment Permit (REP). The person applies first to the Domestic Residence and Permissions Unit in the Department of Justice and, if successful, they are issued with a temporary immigration permission, with which they can apply to DETE for an REP.¹⁶⁴ The REP allows the holder to work in any job.¹⁶⁵

Table 3.5 shows that a small number (422) of reactivation permits were issued between 2017 and August 2023.

5.4.3 Third-country nationals without a residence permit or an employment permit

Third-country nationals who are undocumented in the State (and if relevant found to be working irregularly) may be issued with an intention to deport letter ('section 3 letter') and in response to which they can make representations as to why a deportation order should not be issued against them. Where successful, they will be issued with a permission to remain in the State, otherwise a deportation order is issued under section 3 of the Immigration Act 1999.

5.5 COMPLAINTS AGAINST EMPLOYERS

The Fundamental Rights Agency (FRA) has highlighted how an effective complaints mechanism is a cornerstone for the protection of migrant workers from exploitation. Yet, their study showed that in some EU Member States, migrants in an irregular situation are not using the existing complaints mechanisms. Among the reasons were a lack of incentive to come forward, limited information on their rights, and a fear of being detected, detained and returned (FRA, 2021).

¹⁶³ Correspondence with Migration Policy Unit, Department of Justice, October 2023.

¹⁶⁴ Correspondence with Migration Policy Unit, Department of Justice, October 2023; DETE (n.d.) Reactivation Employment Permit. Available at: <https://enterprise.gov.ie/en/what-we-do/workplace-and-skills/employment-permits/permit-types/reactivation-employment-permit/>.

¹⁶⁵ Correspondence with MRCI, October 2023.

In the EMN study, nine EMN Member Countries identified a challenge related to the lack of reporting from third-country nationals. Migrants may not disclose labour-related abuses to the authorities because they fear a backlash from their employers, deportation or need to prioritise their immediate income needs, especially in the case of those with uncertain residency status. In addition language and communication barriers were reported (EMN, forthcoming).

In Ireland, to lodge a complaint against their employer, third-country nationals must be legally entitled to work in order to avail of the services of the WRC Inspection and Adjudication services. Depending on the legislation involved, a person can either request an investigation by an inspector or submit a complaint to an adjudication officer who will hear the complaint and make a decision on the case. An adjudication complaint can also be sent to a mediation officer where the complaint or dispute can be resolved by mediation (where both parties consent).¹⁶⁶ The WRC stated that complaints or information relating to a request for an inspection are treated as confidential and complainants are not identified.¹⁶⁷

It is important to note that Ireland's system of industrial relations is voluntary in nature (WRC, n.d.), and therefore employers cannot be compelled to respond to findings of the WRC adjudication officer or the Labour Court.

In the majority of EMN Member Countries, there is no distinction made between third-country nationals residing regularly in the country or not in the processes of claiming unpaid wages and enforcing remuneration for illegally employed third-country nationals (EMN, forthcoming). In Ireland, TCNs who are undocumented in the State and in employment cannot avail of the services of the WRC.¹⁶⁸ However, in the case of fishers, the ITF has provided support services to assist them to lodge complaints against their employers with the WRC, even when undocumented.¹⁶⁹

5.5.1 Perceived efficacy of procedures

In terms of whether the complaint procedures are seen to be effective in that they are used in practice and trusted by migrants, MRCI stated that migrants need to be empowered to stand up for their rights. While migrants may be aware of the terms of their contract and their rights, they might not want to raise an issue with their employer because they are dependent on the employer for the renewal of their employment permit or may fear that it may have repercussions for their immigration status in the State.¹⁷⁰ In research conducted by Murphy et al. (2021)

¹⁶⁶ Correspondence with the Workplace Relations Commission, October 2023.

¹⁶⁷ Correspondence with the Workplace Relations Commission, August 2023.

¹⁶⁸ *Ibid.*

¹⁶⁹ Interview with ITF, September 2023.

¹⁷⁰ Interview with MRCI, August 2023.

on workers in the fishing sector, research participants had little or no engagement with the labour inspection process. Among the reasons were a fear of losing their job and work permission, along with language barriers. There were reportedly similar barriers faced in seeking legal advice (Murphy, et al., 2021).

In research conducted on labour exploitation, Murphy et al. (2019) find that Ireland's employment legislation and industrial labour protections are not effective for migrant workers in Ireland for a combination of reasons. These were:

the intertwinement of employment and immigration enforcement; workers' lack of awareness of employment rights; the ineffectiveness of labour inspections; the uncertain impact of undocumented status on employment rights and difficulties with enforcing employment awards. (Murphy, et al., 2019, p.351)

5.5.2 Complaint procedures for persons in a situation of irregularity

While a third-country national with a permission to reside in the State can take a case to the WRC, third-country nationals who are undocumented and in employment cannot.¹⁷¹ This is because the contract of employment is considered illegal due to the lack of an employment permit for the third-country national. This issue was examined in the case of *Hussein v the Labour Court* in 2015.¹⁷²

Nonetheless, the Employment Permits (Amendment) Act 2014 brought in amendments to the Employment Permits Act 2003 to provide a defence to a charge of having been employed without an employment permit, where it can be proved that the foreign national took all reasonable steps to ensure they were compliant. This is now found under section 59, Employment Permits Act 2024. Under this provision, an undocumented third-country national or the Minister can initiate civil proceedings for compensation against an employer. According to MRCI, this provision been availed of on three occasions to date; one case where the matters were settled before legal action was initiated, one instance where the case was withdrawn following legal advice and in a recent case a settlement was also reached.¹⁷³ However, at the time of writing, it was understood that no case had successfully been brought under this procedure.

In the case of *TA Hotels Limited t/a Lynam's Hotel v Vireshwarsingh Khoosye and TA Hotels Limited t/a Lynam's Hotel v Preeti Khoosye* (see Box 5.1), the Labour Court held that it did not have jurisdiction to hear cases brought under the provisions as it was not a forum for civil proceedings. This interpretation meant the

¹⁷¹ Correspondence with the Workplace Relations Commission, August 2023.

¹⁷² *Hussein v Labour Court*, [2015] IESC 58.

¹⁷³ Correspondence with the Workplace Relations Commission, August 2023.

remedy was ‘extremely limited’ (Murphy et al., 2022). In the new Employment Permits Act 2024, section 59 seeks to bring some clarity to the jurisdiction of courts on these cases, and sets out provisions for the District and Circuit Courts to hear cases.¹⁷⁴ Nonetheless, it does not explicitly set out provisions for the Labour Court.

MRCI criticised the fact that illegality of contract excludes workers from taking WRC cases, particularly due to its impact on low wage workers.¹⁷⁵ WRC advised that they are prevented from seeking arrears of wages in such circumstances. However, the employer remains liable in respect of any breaches of employment law and may be still subject to prosecution.¹⁷⁶

BOX 5.1 CASE: TA HOTELS LIMITED T/A LYNAM’S HOTEL V VIRESHWARSINGH KHOOSYE AND PREETI KHOOSYE (RPD1916, RPD1917)

In 2020, two cases were brought to the Labour Court by two Mauritian nationals who had previously held student permissions in the State and continued to work for a hotel following the expiry of their permissions. They were initially awarded €10,000 by an adjudication officer of the WRC along with their statutory redundancy entitlements.

However, on appeal, which was brought to the Labour Court by the employer, the hotel argued that the contract of employment was illegal due to the complainants’ lack of employment permits and could not enforce their employment rights. The Labour Court examined section 2B and the ‘civil proceedings’ that can be initiated by undocumented migrants. It found that the definition of ‘civil proceedings’ meant that they could only seek compensation in the District Court, the Circuit Court and the High Court, and not in the Labour Court.

The Court held that their contracts were void due to their lack of employment permits and they were not eligible for a remedy from the Labour Court.¹⁷⁷

5.5.3 Third party assistance in proceedings against an employer

More limited remedies are therefore available to workers in an irregular situation. Other support may be obtained from third parties, such as NGOs and trade unions. MRCI stated that before a case is brought to the WRC, they can intervene on the employee’s behalf and speak to the employer. The MRCI can also support third-country nationals in bringing cases to the courts on a pro-bono basis.¹⁷⁸

¹⁷⁴ Section 59(13)-59(16), Employment Permits Act 2024.

¹⁷⁵ Interview with MRCI, August 2023.

¹⁷⁶ Correspondence with the Workplace Relations Commission, August 2023.

¹⁷⁷ <https://www.workplacerelements.ie/en/cases/2019/december/rpd1917.html>.

¹⁷⁸ Interview with MRCI, August 2023.

ITF have similarly represented third-country nationals in court, including in the Labour Court. ITF has engaged on behalf of third-country national fishers in both administrative and civil proceedings and helped workers to make a case with the Department of Justice for regularisation.¹⁷⁹ The ITF also support workers to bring cases to the WRC to adjudication.¹⁸⁰

Other supports can also be provided in the context of labour exploitation and human trafficking. The ITF may also ask An Garda Síochána to assess whether a fisher can be identified as a victim of trafficking,¹⁸¹ with the Gardaí conducting the assessment as to whether to admit them to the National Referral Mechanism, which may, if successfully identified as a victim, lead to the granting of a Stamp 4 residence permission.

5.6 COMPENSATION AND SOCIAL SECURITY ENTITLEMENTS

Third-country nationals who have permission to be employed in Ireland can make a complaint to WRC. A WRC inspection focuses on compliance with legislation and there is no statutory minimum period of an employment relationship for a case to be investigated. If a person believes that their rights may have been breached they can seek redress and compensation. Where it is found that the employer was in breach of legislation, the decision of the Adjudication Service of the WRC can be used to order the employer to compensate the complainant.

For undocumented third-country nationals, they may use the civil proceedings provisions described in the previous section to recover monies due to them. However, where the case has been brought by the Minister, the Court may not award costs in favour of the third-country national but may award in favour of the Minister.¹⁸² However, as described above, it has rarely been invoked to date.

Third-country nationals who were in employment and paying social security contributions are not eligible for social security benefits. In a case in the Supreme Court in 2021, *Sobhy v the Chief Appeals Officer, Minister for Employment Affairs and Social Protection and the Attorney General*,¹⁸³ it was found that social security payments made during a period in which a person was undocumented do not make them eligible for social welfare benefits, the individual must instead be refunded any payments made.

¹⁷⁹ Interview with ITF, September 2023.

¹⁸⁰ *Ibid.*

¹⁸¹ *Ibid.*

¹⁸² Section 59(9), Employment Permits Act 2024.

¹⁸³ *Sobhy v The Chief Appeals Officer and Ors* [2021] IESC 81.

BOX 5.2 EXAMPLES OF CIVIL PROCEEDINGS AGAINST AN EMPLOYER

In April 2018, DETE received a referral from the ITF requesting the initiation of civil proceedings against the employers of four Ghanaian fishers in order to recover monies which they alleged were due. An investigation by WRC followed, during which some delays were encountered in gathering the necessary information. ITF stated that the statutory deadline was missed for completing the investigation.¹⁸⁴ However the WRC view, supported by DETE, was that civil proceedings did not have a reasonable prospect of success if initiated and this was communicated to ITF in March 2020.¹⁸⁵

In November 2021, the ITF requested DETE to initiate civil proceedings under Section 2B (5) of the Employment Permits Act 2003 on behalf of two undocumented fishers who had worked on an Irish-registered fishing vessel in 2020/2021. DETE requested the WRC to investigate the matter and provide the Department with a report. The Minister decided in mid-December 2022, based on the WRC Report, that civil proceedings should be brought on behalf of one of the two fishers. The matter was referred to the State's solicitors and a date for the full hearing has yet to be scheduled.¹⁸⁶

5.7 CHALLENGES IN SANCTIONING EMPLOYERS

In terms of challenges faced in sanctioning employers, the Economic Migration Policy Unit in the Department of Enterprise, Trade and Employment stated that it can be hard to track employers who violate the Employment Permits legislation as they can change their licenced name and re-apply for employment permits.¹⁸⁷

In a Joint Oireachtas Committee on the resourcing of the Workplace Relations Committee and a discussion of the fishing industry, a representative of the International Transport Workers' Federation argued that convictions for employer non-compliance were not sufficiently dissuasive and that this could result in repeat offending. While vessel owners can be banned from using the Atypical Working Scheme for repeat offences by the Department of Justice, this was never done.¹⁸⁸

MRCI expressed the view that labour inspectors can only bring cases if they know workers are willing to testify. In their view, the best way to protect workers in this regard is to give them the ability to empower themselves. WRC counters this argument stating that, in most cases, non-compliance (and associated

¹⁸⁴ Interview with ITF, September 2023.

¹⁸⁵ Correspondence with the Workplace Relations Commission, October 2023.

¹⁸⁶ Interview with ITF, September 2023.

¹⁸⁷ Interview with DETE, August 2023.

¹⁸⁸ Houses of the Oireachtas (20 October 2021). 'Joint Committee on Enterprise, Trade and Employment debate: Resourcing and capacity of the Workplace Relations Commission Discussion'. Available at: https://www.oireachtas.ie/en/debates/debate/joint_committee_on_enterprise_trade_and_employment/2021-10-20/2/.

enforcement actions such as fixed payment notices and the initiation of prosecution proceedings) is determined based on a review, or the absence, of records.¹⁸⁹

A further challenge highlighted by MRCI is that even if an employer is sanctioned, it can be difficult to enforce the sanction,¹⁹⁰ despite the fact that WRC and Labour Court decisions have full legal force.¹⁹¹ Such a challenge occurred with the case of Mohammad Younis which was brought all the way to the Supreme Court.¹⁹² The Labour Court awarded the worker €91,000, the majority of which was backpay, however the employer refused to pay. Eventually MRCI organised crowdfunding to allow Mohammad Younis to return to Bangladesh and retire. Thus MRCI stated that, in their experience, employers can largely exploit with impunity, without consequences for failing to comply with an enforcement order.¹⁹³

5.8 CONCLUSIONS

This chapter firstly discussed the possible sanctions for irregular employment, which are provided for in the Employment Permits Acts and the Workplace Relations Act 2015. The chapter details the process of employment permit revocations and potential outcomes for TCNs, demonstrating that those who are identified to be irregularly working while regularly in the State may be liable to have their immigration permission withdrawn and employment permit revoked. Collaboration in workplace inspections, led by WRC in conjunction with relevant authorities, is identified as key in deterring and identifying irregular employment, but NGOs caution that undocumented people experiencing exploitation are unlikely to come forward during joint inspections due to a fear of deportation. Finally, challenges to sanctioning employers, which include language barriers, lack of engagement with the labour inspection process and fear, were discussed. The following chapter presents the concluding remarks of this study.

¹⁸⁹ Correspondence with Workplace Relations Commission, October 2023.

¹⁹⁰ Interview with the Migrant Rights Centre Ireland, August 2023.

¹⁹¹ With the exception of Recommendations under the Industrial Relations legislation, adjudication decisions are legally binding. An adjudication decision under employment legislation is appealable within 42 days of the date of the decision to the Labour Court. A decision under the Equal Status Acts is appealable to the Circuit Court. If an employer or a service user fails to comply with the decision, a party can enforce a decision of an Adjudication Officer or of the Labour Court by making an application to the District Court. A period of 56 days must elapse from the date that the decision was issued to the parties. (Correspondence with Workplace Relations Commission, October 2023).

¹⁹² *Hussein v Labour Court* [2015] IESC 58.

¹⁹³ Interview with the Migrant Rights Centre Ireland, August 2023.

CHAPTER 6

Conclusions

Irregular employment, broadly understood as employment that is insufficiently covered by formal arrangements either in law or in practice, presents problems for the State in terms of tax revenue and regulation, whether it is undertaken by Irish, EU or non-EU nationals. For non-EU nationals, working in an irregular situation can create additional precarity due to difficulties in exercising labour rights and accessing social security, and this is seen across EMN countries (EMN, forthcoming). Irregular employment as discussed in this report includes situations in which third-country nationals are employed in undeclared work, work outside the conditions of their residence permits, or work while irregularly residing in the country.

Although it is largely a hidden phenomenon, with a lack of reliable data on the extent of irregular employment of non-EU nationals in Ireland and internationally (Arnold, et al., 2017; Williams, et al., 2017; Pillinger, 2008), this study shows that irregular employment of third-country nationals is an issue in Ireland across a range of sectors. Of the 235 cases of breaches of the Employment Permits Acts detected in 2023, the majority were in the sectors of ‘food service activity’, ‘hair and beauty’ and ‘wholesale’. In Ireland, and across EMN countries, the vast majority of offending employers were small enterprises. Sectors deemed to be high-risk in EMN countries range from construction, accommodation and food services, agriculture, etc., to new areas of concern in beauty and wellness, delivery services, garage and motor vehicle industry and security services (EMN, forthcoming).

Addressing irregular employment is a high political priority across EMN countries (EMN, forthcoming). In Ireland, while addressing irregular employment is not found to be a policy priority in and of itself, the regularisation of undocumented migrants emerged in this research as a pivotal strategy for curbing informal employment, with two recent regularisation schemes: one in 2018 targeting undocumented former students; and a second in 2022, the Regularisation of Long-Term Undocumented Migrants Scheme. Siruno et al. (2024) highlight that within the EU only Ireland, Italy, Poland, and Spain have offered such legal pathways to migrants without the legal right to remain. A number of other relevant policy developments in Ireland included the closure of the Atypical Working Scheme for non-EEA fishers in 2022. The new Employment Permits Act 2024 includes enhanced worker mobility, which has been welcomed by NGOs as a way of supporting workers to leave poor working conditions while retaining regular migration status.

In Chapters 4 and 5, the study sheds light on the multifaceted aspects of addressing irregular employment, particularly focusing on prevention, identification and potential sanctions for incidences of irregular employment. The WRC, through inspections and in conjunction with other relevant authorities namely Revenue Commissioners, the Department of Social Protection, the Garda National Immigration Bureau and the Garda National Protective Services Bureau, was key to detecting instances of irregular employment, and deterring its occurrence. However, at 63 nationally in 2024, the number of employment inspectors raises concerns about the effectiveness of enforcement efforts. The number of employment inspection cases carried out by WRC in 2023 was 4,727. Revenue data indicate that there were 191,600 employers in the State in 2023, giving an overall inspection rate of 2.5 per cent.

Efforts to increase WRC inspector numbers are important, especially in light of the steep increase in employment permits issued in recent years, and the planned introduction of a new seasonal employment permit. EMN (forthcoming) shows that seasonal sectors such as tourism and agriculture are risk sectors in several EMN countries.

Challenges related to communication, language barriers and trust were found in both the national and EMN-wide studies. Workers in precarious situations can be reluctant to come forward during inspections, or pursue complaints against employers. The dissemination of information to workers was key to empowering TCNs to assert their rights. Finally, the significance of cooperation at both national and international levels in identifying instances of irregular employment was underlined by the WRC and Department of Justice, where, by leveraging partnerships and sharing best practices, stakeholders can strengthen their capacity to combat this phenomenon.

The study outlines provisions in relation to sanctions for cases of irregular employment, available complaints mechanisms and the role of the WRC Inspection and Adjudication services. Furthermore, the research sheds light on challenges including related to tracking employers who change their names, and repeat offending. There are challenges to ensuring fair compensation for all workers, regardless of their residence status. In this regard, a notable feature discussed in Chapter 5 is the provision allowing undocumented workers recourse through civil proceedings for compensation against employers, provided they can demonstrate clear attempts at being compliant. However, use of this provision has been limited to date. The Employment Permits Act 2024 seeks to bring further clarity to situations where the contract of employment is unenforceable due to the lack of an employment permit, however these provisions have yet to be tested.

While progress has been made in addressing irregular employment among migrants, continued efforts are needed to reinforce preventive measures, enhance enforcement mechanisms, and foster collaboration among relevant stakeholders. To address irregular employment, it emerged that there is a need for a comprehensive and coordinated approach, which combines rigorous enforcement with avenues for recourse and redress, while safeguarding the rights and well-being of workers.

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