COONEY CAREY
CHARTERED ACCOUNTANTS

The Courtyard,
Carmenhall Road,
Sandyford, Dublin 18.

Tel: +353 1 677 9000
Fax: +353 1 677 9805
Email: info@cooneycarey.ie
www.cooneycarey.ie

In this issue...

A green light for foreign workers?

New Employment Permit Regulations

As all employers will be aware the number of foreign workers in the State has dramatically increased over the past number of years. Foreign workers have proved a tremendous asset to the economy and offer much in the way of skill, experience and general motivation. However employers are frequently faced with a situation of wanting to employ a foreign worker but are unsure of whether that worker is actually entitled to work here. It is often difficult to be fully sure of the potential worker's legal status in regard to working lawfully within the State.

Following the increased number of foreign workers who are seeking employment, the Government has implemented a number of measures to facilitate their employment. On 1 February 2007 new regulations were introduced governing the area of employment permits for foreign workers. This article aims to briefly introduce the new measures and offer guidance to employers in an area that may seem at first glance to be somewhat complicated.

Foreign workers have proved to be a tremendous asset to the Irish economy.

In summary the new regulations have introduced the following permits, in place of the previous employment permit schemes:

- Green Card Permits
- Work Permits
- Intra-Company Transfer Permits
- Spousal/Dependant Permits
- Graduate Scheme

Employment permits issued prior to 1 February 2007 remain valid until such time as they expire. However when such permits do expire the holder will need to apply for and be granted a permit under the new scheme in order to continue to be lawfully entitled to work in the State.

Persons who do not require an Employment Permit

A number of foreign workers will not require an employment permit to work in the State including:

- Citizens of any state within the European Economic Area or Swiss nationals
- Persons who have been granted permission to remain in the State on the ground that they are a spouse of an Irish or EEA citizen, or parent of an Irish citizen
- Persons who have been granted refugee status or temporary leave to remain during the asylum process
- Postgraduate students undertaking essential work experience and persons who are lawfully employed within in one EEA state and who are temporarily contracted to a position within the State

On occasion a prospective employee may believe that he does not require an employment permit. Employer's are advised to carefully check such claims and satisfy themselves that the worker does indeed qualify under one of the above grounds.

continued...

Entry Visas and Residency Stamps

Citizens of certain states require an entry visa to lawfully enter the state. International treaties govern which countries require entry visas.

A confusing aspect of employing foreign workers is that such persons must first be granted an entry visa which permits him or her to work within the State prior to any possible consideration of his eligibility for an employment permit. On many occasions an employer may be under the impression that a stamp on the prospective employees passport entitles the holder of that passport to lawfully work in the State. This is not the correct position.

All such foreign nationals will have their passport stamped on entry into the State. There are a number of different categories of stamps. Some of these stamps will indicate that the holder comes within the aforementioned categories of persons who are entitled to work within the State. However it is the fact that the worker qualifies under the requisite category that gives him or her the entitlement and not the stamp itself that permits him to work.

The New Employment Permit Scheme

As outlined above the new scheme lists out five categories of employment permit. It is proposed to deal with each permit individually.

The permit will allow the holder to work for a named employer in an occupation specified on the permit itself, this means that a permit holder will need to apply for a new permit on every occasion that he changes employment. Applications may be made by either the employer or the employee, and either party may pay the application fee.

Green Card Permit

The Green Card Permit is probably the most preferable permit which a prospective worker can be awarded. The permit is initially granted for a two year period, after which the permit will normally be extended to an indefinite duration. The cost is currently set at €1,000 for the initial two year permit and €1,500 for the second indefinite permit.

There are two categories available:

- Persons whose annual salary excluding bonuses is over €60,000
- Persons whose annual salary ranges between €30,000 and €59,000 and who qualify under a special list of job categories as set out by the Department of Enterprise, Trade and Employment

To successfully apply for a Green Card Permit the application must show that the candidate has been offered a two year contract of employment. Green Card Permits will not be awarded for lesser time periods. The application must also show that the position offered matches the Green Card Permit criteria either in terms of the salary requirements, or for positions in the €30,000 to €59,000 bracket that the position comes within one of the named categories. The candidate must have the requisite qualifications and/or experience for the position offered.

Work Permit

The Work Permit is suitable for foreign workers who fall short of the criteria required for a Green Card Permit. A Work Permit will initially be issued for a maximum period of two years and then for a second period of up to three years, after which an indefinite permit may be issued. Unlike Green Card Permits a Work Permit may be issued for a duration of less than two years, in circumstances where the job offer is for a shorter time period. The cost of a Work Permit is €500 (up to six months), €1,000 (between six months and two years), €1,500 (renewal permit) and there is no cost for an indefinite permit after the fifth year.

Usually such permits will only be available for persons who are offered positions where the annual salary is above €30,000. However salaries attracting less than this amount may be eligible for a limited number of categories. There are also a listed number of job categories for which a Work Permit will not be granted.

Before a Work Permit is issued the applicant will need to pass the Labour Market Needs Test in order to show that there is a labour market shortage of the relevant position. To do so the employer must advertise the vacant position with the FAS/EURES employment network as well as in local newspapers. The employer must first consider any applicants from EEA or Switzerland, then consider candidates from Romania or Bulgaria and only if there are no suitable candidates at this stage will the Work Permit be issued. The Labour Market Needs Test does not apply for subsequent renewal applications.

The Employment Permit Scheme is a welcome addition to the area of employment.

continued on back page

tax briefs

Accounting for VAT on a Cash Receipt Basis

Historically Revenue has allowed individuals or companies to account for VAT on a cash receipt basis provided the following conditions are satisfied:

- where not less than 90% of the turnover of the business relates to supplies made to non VAT registered persons.
- where the turnover of the business in a twelve month period does not exceed €635,000

From 1 March 2007 Revenue will allow businesses with a turnover not exceeding €1,000,000 in a twelve month period to account for VAT on a cash receipts basis, provided 90% of the supplies are made to non VAT registered persons.

Accounting for VAT on a cash receipts basis involves the practice of paying VAT to Revenue on sales at the date of payment of the relevant invoice instead of at the date of the invoice. Therefore for a sales invoice that was raised in December 2006 but was not paid until February 2007, the VAT on the invoice will be included in the January/February 2007 VAT return if the entity was accounting for VAT on a cash receipts basis. There is no change in how VAT on purchases is claimed under the regime.

Capital Acquisitions Tax Thresholds

The tax free thresholds for the transfer of a gift or inheritance to a benefactor have increased for 2007. The table hereunder sets out the various thresholds for all groups for 2006 and 2007.

Relationship of beneficiary to the donor/testator	2006	2007
Group A Child of the disponer Grandchild of a deceased child of the disponer	€478,155	€496,824
Group B Grandparent Brother/Sister Aunt/Uncle	€47,815	€49,682
Group C Any other person	€23,908	€24,841

The first €3,000 of a gift from any disponer in one calendar year is exempt from Capital Acquisitions Tax. The excess of a benefit received over the above thresholds for a particular group is taxed at a rate of 20%.

Refunds of Corporation Tax

As of 01 July 2007, all refunds of corporation tax to Irish based companies will be made directly to the company bank accounts. Refunds of cheques will be discontinued. Companies are asked to ensure the correct bank details are supplied on the corporation tax return payslip. Where no bank account is supplied the refund will be withheld by Revenue and bank details will be sought in writing from the company.

Any changes to bank account details already filed with Revenue should be submitted in writing to:

Inward Processing Unit,
Collector General's Office,
Sarsfield House,
Francis Street,
Limerick

VAT Rate Changes

The Finance Act 2007 includes many changes to existing legislation aimed at encouraging the growth of small businesses. One such amendment is the increase in the VAT registration thresholds.

With effect from 1 March 2007, traders will not have to register for VAT unless their annual turnover exceeds the following amounts:

- €70,000 where not less than 90% of the trader's business consists of the sale of goods.
- €35,000 for all other cases (including the provision of services).

Prior to the 1 March 2007, the registration thresholds where €55,000 and €27,500 respectively. Businesses whose annual thresholds do not exceed the current registration thresholds are not required to register for VAT however they may elect to do so.

PAY AND FILE SUMMARY

The following is a summary of upcoming pay and file dates:

Income Tax

Filing date for 2006 return of income	31 October 2007
Pay preliminary tax for 2007	31 October 2007

Capital Gains Tax

Payment of Capital Gains Tax for the disposal of assets made between 01 January 2007 and 30 September 2007.	31 October 2007
Payment of Capital Gains Tax for the disposal of assets made between 01 October 2007 and 31 December 2007	31 January 2008

Tax free thresholds have been increased for 2007.

Franchising - the pros and cons

Every single interaction of your day may have been facilitated by a franchise business. Franchising is becoming part of the fabric of people's lives, providing an ever increasing array of familiar products and services. If you are thinking of starting your own business, or expanding your existing business it may well be the key to success. Franchising is a method of product or service distribution that is governed by a contract. It is a form of marketing and distribution in which the franchisor grants to an individual or company, the franchisee, the right to run a business selling a product or service under the franchisor's business format and identified by the franchise trademark or brand. It is important to note that in starting a franchise, you are tied into a partnership arrangement for a defined period of time.

The term franchise is generally taken to mean the legal arrangement whereby one party grants a licence to another party for the purpose of retailing its goods or services often in a specified area or territory. This type of franchise is usually called a business format franchise or a turnkey franchise. This is because the franchisor presents the franchisee with a model of how the business works and imposes strict rules on the franchisee in respect of that business. In Ireland there is no direct legislation governing franchising. Therefore apart from competition law requirements there are no specific legislative obstacles to be overcome before a franchisee may commence business in the state.

Advantages of Franchising

For a business beginning or a business considering expansion there are many reasons why franchising is an advantage:

- Expanding a business by means of franchising offers the franchiser an opportunity to expand relatively quickly and at a reduced cost. For example, once a franchiser has carried out all the necessary background work to set up the franchise the blueprint developed is one which can be applied easily to many different locations and businesses and can be adopted with some modifications to facilitate development of franchises in various different areas and jurisdictions.
- The more members there are in a franchise network the greater the purchasing power that will be available to the franchiser. This will benefit the franchise system as a whole and not just the independent franchiser.
- Franchising gives many people the opportunity they would not otherwise have of becoming self employed as many franchises do not require an individual to have previous experience of the business he is proposing to franchise. In a well run franchise, the franchiser usually offers comprehensive training programmes for the franchisee and their staff.
- By taking out a franchise the lead-in time to establish a successful business is reduced. This will however depend on the nature of the franchise chosen and the amount of background research which has been carried out by the franchisee before taking on the franchise.
- Ongoing advice and support and the benefit of know-how and experience will always be available to a franchisee. This may cut down on start up mistakes normally associated with the running of a business.
- Individuals may find it easier to raise finance to buy a franchise than raise finance to set up a new business on ones own account especially where that franchise has a good reputation in banking and business circles.

Disadvantage of Franchising

For a business beginning or a business considering expansion there are many reasons why franchising is a disadvantage:

- Loss of Control – One major disadvantage of franchising is the loss of control suffered. For example, in the case of a entrepreneur who may have spent many years building up his business and who now decides to turn to franchising as a means of expansion, a lot of control will have to be handed over to the franchiser in order to set up a franchise arrangement.
- In any franchise agreement the franchiser will seek to impose many obligations and limitations on the franchisee with the objective of protecting the know-how and goodwill of the franchise.
- The franchisee will have to pay a percentage of its turnover to the franchiser.
- Ultimately the franchisee is liable for the success or failure of the business and will have to pay the franchiser weather or not they make a profit or a loss.

Despite the above possible pitfalls it is a mistake to believe that franchising as a means of doing business is not worthwhile. Franchising can be a very rewarding business venture where the franchise is well managed, properly supported and controlled.

Franchising has both advantages and disadvantages.

business briefs

New Laws regarding Companies Electronic Information

There is new legislation for all companies in relation to the information they include on their websites, in emails or in text messages.

The Office of the Director of Corporate Enforcement (ODCE) is expected to adopt a "reasonable" and "practical" approach when enforcing the new rule. Under the rule, limited liability companies must include similar information on their websites and emails as they include on headed business letters and company forms.

The new rule is an EU directive which is a recognition that companies are communicating in a number of different ways. The rule is brought in to empower customers so that they always know who they are dealing with in email and on websites.

Company emails and websites are now required to have the full company name, if it is a limited company or a plc, the companies tax registration number, where the company was registered and the address of the registered office.

The ODCE has publicly stated that it doesn't intend to actively go out and search for the information. Instead it will just be relying on the general public to inform it of non compliance. Even then the ODCE will ask a company to comply before imposing a fine.

The ODCE has been notifying companies since mid February.

The growth in the construction has been dominated by males.

Construction overtakes Industrial employment in 2006

The Central Statistics Office (CSO) says that Irish industrial employment was 241,500 in December 2006, an increase of 2,900 from December 2005. Between September 2006 and December 2006 there was a seasonally adjusted decrease of 2,200 in industrial employment.

Employment in the Irish construction sector increased by 28,400 (+11.2%) to 281,600 in the year to the fourth quarter of 2006. The growth in the Construction sector was dominated by males (+27,900) and accounted for just over 60% of the total annual increase in the number of males at work.

The number employed in the construction sector in April 1998 was 126,100.

Using mobile phones abroad: Commission proposal puts cap on roaming charges

The price of making and receiving calls when traveling in the EU may soon drop significantly. If the regulation recently proposed by the Commission is approved by the Council and the Parliament, the cost of using a mobile phone in another EU Member State will be reduced by up to 70%, saving consumers an estimated €5 billion a year.

On the one hand, the regulation would cut the wholesale charges that mobile phone operators charge each other for carrying calls from foreign networks, while ensuring that operators can recover the cost of providing these services. On the other hand, it would cut retail prices by putting a cap on the mark-up operators can add to their wholesale cost. The second measure, which would apply to calls made and received abroad, is aimed at ensuring that the benefits of the new regulation reach the consumers. Today, the average retail charge for a roaming call is €1.15 per minute, which is more than five times the actual cost of providing the wholesale service.

The proposed regulation foresees the following adjustments to existing prices:

- The cost of using mobile phones abroad would be cut by up to 70%;
- Calling third countries from abroad would cost a maximum of 49 cents per minute;
- For local calls, the retail price would be no more than 33 cents per minute;
- For receiving a call, the retail price would be about 16.5 cents per minute.

Business Expansion Schemes

The basis behind Business Expansion Schemes (BES) is to encourage investment in Irish small companies in certain sectors by providing tax relief to investors. The minimum qualifying investment in any one company is €250 per annum. However if the investment is made by way of a designated fund there is no minimum investment. Tax relief is granted to individuals who subscribe for ordinary shares in qualifying companies.

Under the rules of the BES scheme an individual cannot be connected with the company they are investing in for a period of two years prior to the issue of the shares and ending 5 years after the issue of shares. An individual is deemed connected with the company if he/she:

- is a partner of the company
- controls the company
- is a director or employee of the company
- directly or indirectly owns or is entitled to acquire 30% of the company. (If the issued share capital of the company does not exceed €317,500 throughout the term of the investment this restriction does not apply)

A qualifying company is a company, which is incorporated in Ireland and which for a period of three years from the date of issue of the shares:

- is resident exclusively in Ireland
- is an unquoted company
- carries on a qualifying trade
- is not connected with a non-qualifying company
- is not under the control / does not control another company

BES schemes are to be continued until 2013

A company can raise share capital to a limit of €1,000,000 under a BES scheme.

Tax relief is provided by way of an annual deduction from total income, thereby ensuring tax relief at the individual's marginal rate of tax. The maximum relief allowable in any one year up to 31 December 2006 is €31,750 per annum. A husband and wife can claim €31,750 each provided they each have sufficient income in there own right. Historically any amount unused in a tax year could be carried forward, however post 2006 any amounts unused within a year will be lost.

In last December's budget speech it was proposed that BES Schemes would be continued until 2013. The proposal included that the amount of share capital which could be raised by a company under the scheme would be increased to €2,000,000. Provision for the increase in the amount of tax relief available per annum to €150,000 was also included in the proposal. The Irish Congress of Trade Unions opposed the proposals and argued that they may be held as tax avoidance schemes and as such would be illegal. The proposals have been referred by the Irish Government to the European Commission for approval. Thus it would appear that the future of BES schemes is currently uncertain.

Windows Vista

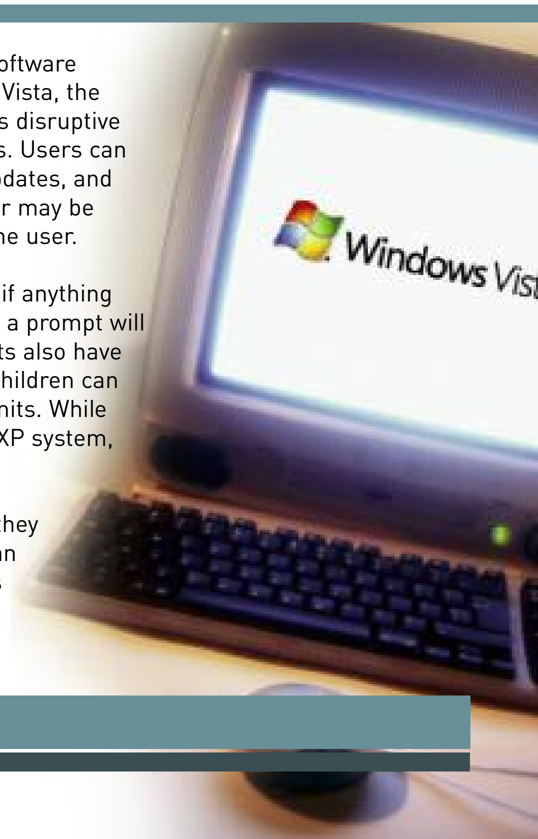
Sales of Windows Vista exceeded 20 million licenses in March, more than doubling the initial pace of sales for its predecessor, Windows XP. This reflects the broad interest in the security and usability enhancements in Windows Vista.

Windows Vista has made several new tools and programs available to help customers get the best experience with Microsoft's new programme. Windows Upgrade Advisor is a downloadable tool offered online at windowsvista.com that helps consumers determine whether their Windows XP-based PCs can be upgraded to Windows Vista, and also helps choose the edition of Windows Vista that best meets their needs. The tool scans the computer and creates an easy-to-understand report of all known system, device and program-compatibility issues, and recommends ways to resolve them.

Microsoft says that Windows Update keeps customers' computers up-to-date and more secure by providing Windows Vista software updates from Microsoft. In Windows Vista, the update process is designed to be less disruptive than in previous versions of Windows. Users can elect to automatically receive new updates, and updating occurs in the background or may be scheduled for a time convenient to the user.

Security is a big feature of Vista and if anything tries to download in the background, a prompt will pop up allowing you to stop it. Parents also have much more control over what their children can access, and they can impose time limits. While some of this is also available on the XP system, Vista is a lot more visual.

Users should consider waiting until they are ready to buy a new PC rather than consider upgrading as Vista requires more memory than XP.



legal briefs

1. Proposed Legislation on Property Services

The Minister for Justice Equality and Law Reform has published a Bill to establish a Property Services Regulatory Authority (PSRA) and to reform the law relating to the sale of property.

The PSRA will operate a licensing system covering all providers of property services including auctioneers, estate agents and property management agents. The PSRA will also set and enforce standards for the grant of licences including education, training and professional indemnity requirements as well as setting standards to be observed in the provision of services by licensees. It will also investigate and adjudicate on complaints and provide certain services relating to consumer protection and public awareness. The PSRA will be based in Navan and a Chief Executive Designate has been appointed.

The proposed Bill is substantial and runs to 73 sections. The proposed Bill also includes the following measures:

- Licensees will be required to use 'advised value' (see below) for the purposes of estimating the value of land for the purposes of sale; this will replace the practice of setting a 'guide price'
- The PSRA may require a licensee to present evidence of the reasonableness of the "advised value" in any particular case and impose sanctions if it uncovers an unsatisfactory system or pattern of "advised values"
- The proposed Bill specifically prohibits the practice of bidding up to the reserve price at an auction
- Where land is sold other than by auction (eg. by private treaty) the licensee will be required to retain a record of all offers received, including conditional acceptances and the PSRA will have the power to inspect such records.

2. Changes in Maternity Leave

If you become pregnant while in employment in Ireland, you are entitled to take maternity leave. The entitlement to a basic period of maternity leave from employment extends to all female employees in Ireland (including casual workers), regardless of how long you have been working for the organisation or the number of hours worked per week. You can also avail of additional unpaid maternity leave. The Maternity Protection Act 1994 and the Maternity Protection (Amendment) Act 2004 provide your statutory minimum entitlements in relation to maternity at work including maternity leave.

If you start maternity leave on or after 1 March 2007, you are entitled to 26 weeks' maternity leave, together with 16 weeks' additional unpaid maternity leave. If your maternity leave started before 1 March 2007 you are entitled to 22 weeks' maternity leave. If you started the additional unpaid maternity leave before 1 March 2007 you are only entitled to take an additional 12 weeks' unpaid maternity leave.

The Maternity Protection (Amendment) Act 2004 removed the compulsory requirement that women must take 4 weeks' maternity leave prior to the birth. At present, at least 2 weeks have to be taken before the end of the week of your baby's expected birth and at least 4 weeks after. You can decide how you would like to take the remaining weeks. Generally, employees take 2 weeks before the birth and the remaining weeks after.

Your entitlement to pay during maternity leave depends on the terms of your contract of employment. Employers are not obliged to pay women on maternity leave. You may qualify for Maternity Benefit which is a Department of Social and Family Affairs payment should you have sufficient PRSI contributions. However an employee's contract could provide for additional rights to payment during the leave period, so that, for example, the employee could receive full pay less the amount of Maternity Benefit payable.

An employer should carry out separate risk assessments in relation to pregnant employees and those who have recently given birth or are breastfeeding. If there are particular risks, these should be either removed or the employee moved away from them. If neither of these options is possible, the employee should be given health and safety leave from work. During health and safety leave, employers must pay employees their normal wages for the first 3 weeks, after which Health and Safety Benefit may be paid.

3. Residential Tenancies Board - Registration

Tenancies falling within the scope of the Residential Tenancies Act 2004 must be registered with the Private Residential Tenancies Board. It is the responsibility of the landlord to register the details with the Board. Both the landlord and the tenants are entitled to a copy of their details entered on the register.

To register a tenancy, a landlord must complete a PRTB1 tenancy registration form. Each tenancy registered with the PRTB will be allocated with a unique registration number. The registration number, along with the details of the registration entry, will be issued to both the landlord and the tenant.

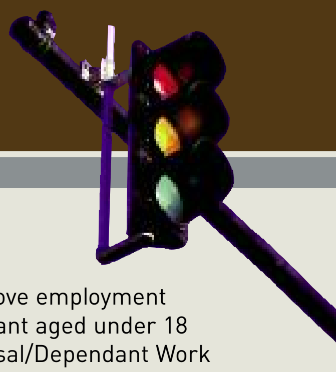
Registration Fees Payable

- €70 per tenancy being registered on time i.e. within 1 month after the commencement of the tenancy.
- €300 for multiple tenancies in the one building being registered at the same time and all on time (i.e. within one month of the commencement of the respective tenancies) by the one landlord.
- €140 (Late Fee) In all circumstances where the tenancy is being registered more than 1 month after the commencement of the tenancy, an additional fee of €70 is payable for these late registrations (i.e. the total fee is €140 per tenancy). There are no exceptions to the late fee and the composite fee is not available to late registrations of multiple tenancies within the one building.
- No Fee where 2 payments in respect of the dwelling have been made to the Private Residential Tenancies Board in the previous 12 months.

A green light for foreign workers?

New Employment Permit Regulations

continued...



Intra-Company Transfer Permits

The Intra-Company Transfer (ICT) Permit is available to enable foreign workers, employed by an overseas branch of a multinational organisation, to transfer to its Irish branch on a temporary basis. The duration of the ICT Permit will be for a specified time period that is dependent on the needs of the company. The initial permit will be for up to 24 months duration and may be renewed for a maximum stay of a further 36 months. The cost of an ICT Permit is €500 (up to six months), €1,000 (between six months and two years) and €1,500 (renewal permit, up to 36 months)

The ICT Permit is only available to senior management, key personnel and trainees, earning a minimum of €40,000 per annum. Detailed provisions are set out regarding each category. There is no requirement for an applicant to meet the Labour Market Needs Test but the application must clearly show that the proposed candidate qualifies as senior management, key personnel or a trainee.

Before an ICT Permit is issued there must be a direct link between the host company and the overseas transferring branch i.e. that one company owns the other or that both are subsidiaries of the same parent company etc. Furthermore transferees may only make up a maximum of 5% of the workforce, unless in small business or start-up situations where the limit is 50%.

Spousal/Dependant Work Permits

Where a person is granted one of the above employment permits, his/her spouse and any dependant aged under 18 years, will be entitled to apply for a Spousal/Dependant Work Permit. There is no cost for these permits and they will be of the same duration as the spouse or parent's permit.

Spousal/Dependant Work Permits are applicable for all occupations and positions and there is no requirement to pass the Labour Market Needs Test. The main criteria is that the spouse or parent holds and continues to work within the terms of a valid employment permit and that the applicant is legally resident within the State.

Graduate Scheme

Under the new Employment Permit Scheme any non-EEA national, who has been awarded a primary, masters or doctorate degree from an Irish third level institute, may apply to the immigration services to remain in the State for up to six months following receipt of their final examination results. This extension is to enable the graduate to secure an offer of employment in order to apply for either a Green Card Permit or a Work Permit.

Conclusion

The introduction of the above Employment Permit schemes is a welcome addition to the area of employment. The scheme aims to facilitate and encourage skilled workers to come from abroad into the Irish workforce, while at the same time ensure that restrictions are in place to protect jobs for citizens of Ireland and the EEA.

The removal of the advertising requirement for Green Card and Intra-Company Transfer Permits candidates is most beneficial as it fast-tracks the application process. Previously the need to advertise would delay an application by two or three months, which in turn would have a negative impact on the desire to employ persons requiring an employment permit.

The new scheme also offers foreign workers a chance of permanent integration with the opportunity to apply for permit of indefinite duration after a certain time period. The value of the Spousal/Dependant Permit must also be recognised in that it gives a foreign worker the comfort of knowing that his family will also be able to secure employment and travel with him to Ireland, should they so wish.

The manner in which the scheme runs in practice remains to be seen, in particular it is not yet clear what kind of approach will be taken when deciding if a person qualifies under the eligible jobs list for Green Card Permits. That said the framework that has been put in place is generally commendable and with sensible application there is no reason not to be optimistic about the new scheme.

Sarah Daly, BCL, Attorney-at-Law (New York)