

IRLANDA

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LEY DE INMIGRACIÓN DE 2004. (IMMIGRATION ACT 2004)¹¹⁰

La Ley de inmigración irlandesa de 2004, tiene como finalidad, en primer lugar, establecer los principales elementos operativos con que cuenta el Estado para el control de la entrada y permanencia en el mismo de los no nacionales. En este sentido, reconoce que es responsabilidad del Estado, en el ejercicio de sus funciones ejecutivas de gobierno, realizar estos controles en interés del bien común.

Este propósito de control de los extranjeros, se pone de manifiesto ya en la Ley de extranjería de 1935, que sirve de precedente a esta Ley de 2004. En ella se hace mención expresa a la definición, reconocimiento y protección de las fronteras del Estado y considera que es función de éste controlar la entrada de extranjeros, su salida y sus actividades, así como la duración de su permanencia en el mismo, puesto que, junto a los derechos fundamentales de los ciudadanos, el Estado reconoce otra serie de derechos y la protección de estos últimos, puede llevar aparejada restricciones de los primeros en situaciones de necesidad. Así, la integridad del Estado debe ser defendida de manera que se pueda

¹¹⁰ Promulgada el 13 de febrero de 2004.

garantizar el orden social dentro del territorio y se mantenga la paz con otras naciones, de acuerdo con los objetivos declarados en el preámbulo de la Constitución.

Precisamente la ley de 1935 ha sido la primera norma que establece un marco estatutario para la realización de estas funciones ejecutivas. Las órdenes dictadas a partir de la sección 5 de esta Ley, (principalmente la Orden de extranjeros de 1946, que ha sido modificada por una serie de Ordenes posteriores), estableció un esquema detallado para controlar la entrada de no nacionales en el Estado, garantizando permisos de residencia, exigiendo su registro periódicamente en los registros oficiales habilitados a tal efecto y ordenando su deportación en caso contrario.

A partir de las disposiciones de esta Ley, la Ley de inmigración de 2004, en su sección primera, reproduce, prácticamente, las definiciones contenidas en la Orden de extranjeros de 1946 y retomadas por la Ley de refugiados de 1996 y la Ley de inmigración de 1999, con mínimas modificaciones. Define conceptos tales como no nacionales, frontera, puerto, residencia, permiso, entre otros.

El marco general de aplicabilidad de la Ley aparece definido en las secciones 2 y 5 en las cuales se sustituye el término de extranjero por el de no nacional con el propósito de eximir del control de inmigración a los ciudadanos de algunos países expresamente designados por orden del gobierno (actualmente los ciudadanos británicos). También quedan excluidos de este control otras personas, como por ejemplo los representantes diplomáticos (y algunos miembros de su familia), así como las personas respecto de las cuales se establecen excepciones derivadas de los derechos que tienen por pertenecer a un Estado miembro de la Unión Europea o excepciones impuestas como consecuencia de las obligaciones asumidas por la Convención de Ginebra, como se refleja en la Ley de refugiados de 1996.

Por su parte, la sección 5 establece los principios generales aplicables a los no nacionales para legalizar su permanencia en el Estado y les exige estar en posesión de un permiso expedido por

el Ministerio (se refiere al Ministerio de Justicia), permiso que ya era necesario antes de la aprobación de esta Ley. Sin embargo, se reconocen algunas excepciones en el caso de las personas cuyo permiso de residencia se hubiera obtenido tras la promulgación de la Ley de refugiados de 1996. La presencia en el Estado en cualquier otra situación, se considera ilegal.

Los mecanismos establecidos para el control efectivo de fronteras (secciones 3, 4, 6, 7, 8, 11 y 17) son prácticamente los mismos que regulaba la Orden de 1946. Así, la sección 3 se refiere al nombramiento de oficiales de inmigración por parte de Ministerio para que ejerzan las funciones de control de inmigración. En el mismo sentido, la sección 17 concede al Ministro, (de acuerdo con los principios reconocidos en la subsección 1), la potestad de dictar órdenes en las que se especifiquen las clases de no nacionales a quienes no se les exige visado para entrar en el Estado a través de las fronteras y los no nacionales que deben tener visado de tránsito. La sección 6 se refiere a la entrada por mar y aire de fuera de país para aterrizar en un puerto (tales puertos deben ser predeterminados por el Ministerio). También se concede al capitán de un barco o al piloto de un avión la facultad de detener a bordo a un no nacional que provenga de un país extranjero, hasta que llegue a tierra para comprobar su documentación (sección 7). Similares obligaciones se imponen a los transportistas en relación con los pasajeros (sección 8), con el fin de facilitar el trabajo a las autoridades de inmigración. De la misma forma, todas las personas mayores de 16 años que aterricen en el Estado y procedan de un país que no sea Gran Bretaña o Irlanda del Norte, deben estar en posesión de un pasaporte válido o un documento de identidad. La excepción que se refiere a Gran Bretaña o Irlanda del Norte, no afecta a un no nacional (sección 11).

Finalmente, respecto a las operaciones de control de la entrada de inmigrantes en el Estado, la Ley de inmigración de 2004, en su sección 4, impone a los no nacionales que lleguen por mar o por aire, la obligación de presentarse en una oficina de inmigración para obtener un permiso. También regula la forma de concesión del permiso, las condiciones y cautelas de su concesión

y los motivos de su denegación. No obstante, reconoce una especial posición a los no nacionales que lleguen al Estado por tierra a través de las fronteras de Irlanda del Norte. Estas personas no pueden permanecer en el Estado durante más de un mes sin el permiso oportuno que les concede el Ministerio a través de la oficina de inmigración.

Siguiendo los mismos principios inspiradores, la Ley de inmigración de 2004 adopta una serie de medidas de control de los no nacionales una vez que se encuentran ya dentro del Estado (secciones 9, 10, 12 y 14), medidas que son prácticamente reproducción de las adoptadas por la Orden de 1946. En este sentido, en la sección 9 se obliga a un no nacional (sujeto a las excepciones a que se refiere la subsección 6), que tiene permiso para permanecer en el Estado, a registrarse en las oficinas del Departamento de Inmigración Nacional Garda y le obliga a proporcionar sus datos personales en la forma establecida en esta ley. La exención de la obligación de registrarse al viudo o viuda de un nacional irlandés, disposición contenida en la Orden de 1946, no se recoge en ley de inmigración de 2004. Según ésta, el certificado de registro es obligatorio también para estas personas.

Por su parte, la sección 12 reproduce prácticamente las disposiciones de 1946 y reconoce a los oficiales de inmigración y a los miembros de la Garda la facultad de solicitar ciertos documentos a un no nacional. Igualmente el responsable de los establecimientos de alojamiento o acomodación está obligado a llevar un registro de los no nacionales que se alojen en sus dependencias (sección 10).

El incumplimiento de las medidas de las secciones 4 a 12 y 14, da lugar a un acción criminal punible, sancionable con una multa de hasta 3000 € o una pena de prisión de hasta 12 meses e incluso ambas cosas (sección 13). También se reconoce a un miembro de la Garda la potestad para arrestar, sin mandamiento judicial, a una persona de quien sospeche razonablemente que ha cometido un delito, como se refleja ampliamente en la sección 17 de la Orden de 1946. Existe, sin embargo una diferencia con respecto a ésta, en el caso de que exista sospecha de que las

personas están a punto de actuar, a quienes no se les puede arrestar.

Finalmente, la Ley de inmigración de 2004 contiene disposiciones de carácter general referentes a las normas que se ven afectadas por esta Ley (sección 16), así como la potestad que tiene el Ministerio de dotar de nuevos presupuestos a los servicios de inmigración (sección 19). Y las secciones 18, 20, 21 y 22 establecen medidas relacionadas con las oficinas de información y contienen disposiciones encaminadas a que se pueda dictar la normativa de desarrollo de esta ley y así hacer real y efectivo el contenido de la misma. Por último, regula algunos aspectos financieros y pretende que para su efectivo cumplimiento se dote a los poderes públicos al menos de los mismos recursos económicos que aquellos con que contaban la Ley de extranjería y las Ordenes a las que viene a reemplazar esta ley, así como establece la posibilidad de que el servicio de inmigración pueda llegar a autofinanciarse en un futuro.

LEY DE IGUALDAD DE 2004 (EQUALITY ACT 2004)¹¹¹

La *Equality Act 2004*, en su tercera parte, recoge una serie de enmiendas a la *Equal Status Act* de 2000, modificando aspectos de la misma y añadiendo nuevos párrafos. De las enmiendas a las distintas secciones destacamos algunas:

La sección 7 se refiere a acuerdos en materia educativa e introduce en la ley de 2004 enmiendas que modifican la ley de 2000.

La ley de 2000, en su sección 7, se refiere a los distintos niveles educativos y a supuestos que no se consideran discriminatorios a la hora de admitir o expulsar a los alumnos de los centros. Asimismo, establece supuestos de no discriminación por razón de género y de creencias religiosas, permitiendo el acceso a los centros sólo a alumnos que tengan ciertas creencias religiosas y también a alumnos solo de género masculino o sólo de género femenino, sin que se considere discriminación.

¹¹¹ Promulgada el 17 de julio de 2004

Se admite el trato diferente, en cuanto al pago de las tasas, por parte de los alumnos, tratándose de universidades u otros niveles educativos superiores, si estos son nacionales de la Unión Europea, o si son becarios, así como también es posible ese trato diferente en la distribución de lugares en el establecimiento.

En la modificación de 2004 se añade la subsección (5), en la cual se establece el significado de las becas para ayudar a personas que pertenezcan a una institución de adultos, a la universidad o a un nivel educativo superior, ya sea o no soportado con fondos públicos. Y además se considera que el Ministro de educación y ciencia no estará discriminando, cuando se limiten las becas o ayudas a ciudadanos de países de la Unión Europea, así como cuando requiera un trato diferente a ciudadanos comunitarios respecto a otras personas que también tengan derecho a las ayudas.

La sección 11 referida al acoso sexual y otro tipo de acosos de la ley de 2000 es sustituida por las subsecciones 4 y 5 de la ley de 2004, de modo que no se deberá tener en cuenta, para tomar decisiones sobre la víctima del acoso, la actitud que adopte la misma respecto al acoso.

Por acoso se entiende en esta sección, toda forma de conducta no deseada, relacionada con alguno de los criterios discriminatorios, y las referencias al acoso sexual comprende cualquier forma de conducta no querida de naturaleza sexual, ya sea de contenido verbal, no verbal o físico.

Esas conductas no deseadas pueden consistir en actos, peticiones, expresiones habladas, gestos o la producción, reproducción o circulación de escritos, fotos u otro material.

La sección 14 (sobre ciertas medidas o actividades permitidas) de la ley de 2000 se enmienda para añadir unos párrafos después de la palabra “Estado”.

En la ley de 2000 se permite que el Estado se comprometa por acuerdos o instrumentos internacionales, añadiéndose en la ley de 2004, tras la expresión “estado”, “en base a la nacionalidad”. De modo que cuando un acuerdo imponga una obligación al Estado en base a criterios de nacionalidad, se prevé

que, o bien la decisión la tome una autoridad pública respecto a un no nacional (que se encontrase fuera del estado atendiendo a la ley de inmigración de 2004) o, la tome el ministro, respecto a un no nacional si trae causa de la actuación anterior. Además, se añaden nuevas subsecciones aclarando el concepto de “autoridad pública”.

ANEXO

IMMIGRATION ACT 2004

AN ACT TO MAKE PROVISION, IN THE INTERESTS OF THE COMMON GOOD, FOR THE CONTROL OF ENTRY INTO THE STATE, THE DURATION AND CONDITIONS OF STAY IN THE STATE AND OBLIGATIONS WHILE IN THE STATE OF NON-NATIONALS AND TO PROVIDE FOR RELATED MATTERS. [13th February, 2004] BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act, except where the context otherwise requires—

“the Act of 1996” means the Refugee Act 1996;

“the Act of 1999” means the Immigration Act 1999;

“embarking” includes departure by any form of conveyance and departure over a land frontier;

“Great Britain” includes the Channel Islands and the Isle of Man;

“immigration officer” shall be construed in accordance with *section 3*;

“keeper”, in relation to premises where accommodation is provided for reward, includes any person who for reward receives another person to lodge or sleep in the premises, either on his or her own behalf or as manager or otherwise on behalf of another person;

“landing” includes arrival or entry by any form of conveyance and includes entry over a land frontier, and references to landing include references to attempting to land;

“master of a ship” includes the pilot of an aircraft;

“member of a crew” means any person employed in the working or service of a ship;

“the Minister” means the Minister for Justice, Equality and Law Reform;

“non-national” has the meaning assigned to it by the Act of 1999;

3

Interpretation.

[No. 1.] *Immigration Act 2004*. [2004.]

S.1

Application of Act.

4

“passenger” means any person, other than a member of a crew, travelling or seeking to travel on board a ship, railway train or passenger road vehicle;

“passenger road vehicle” means a vehicle employed on a passenger road service which is licensed under the Road Transport Act 1932;

“permission” shall be construed in accordance with *section 4*;

“port” includes any place whether on a land or sea frontier where a person lands in or embarks from the State and includes an airport;

“prescribed” means prescribed by regulations made by the Minister and “prescribe” shall be construed accordingly;

“registration district” means the Dublin Metropolitan Area or a Garda Síochána District situated outside that Area;

“registration officer” means the officer in charge of the Garda National Immigration Bureau in the Dublin Metropolitan Area or the Superintendent of the Garda Síochána in a Garda Síochána District outside that Area;

“residence” means a dwelling-place where a non-national ordinarily resides and, where a non-national has more than one

dwelling-place, each of such dwelling-places; and “resident” shall be construed accordingly;

“seaman” means an officer or member of a crew;

“ship” includes aircraft.

(2) In this Act—

(a) a reference to any enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended or extended by or under any subsequent enactment including this Act,

(b) a reference to a section or Schedule is a reference to a section of or a Schedule to this Act unless it is indicated that reference to some other enactment is intended,

(c) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

2.—(1) This Act shall not apply to any of the following persons, that is to say:

(a) a person entitled in the State to privileges and immunities under section 5 of the Diplomatic Relations and Immunities Act 1967;

(b) a person entitled in the State to privileges and immunities under section 6 of that Act;

(c) a person entitled in the State to privileges and immunities under any other Act of the Oireachtas or any instrument made thereunder.

[2004.] *Immigration Act 2004.* [No. 1.]

S.2 (2) Nothing in this Act shall derogate from—

(a) any of the obligations of the State under the treaties governing the European Communities within the meaning of the European Communities Acts 1972 to 2003,

(b) any act adopted by an institution of those Communities,

- (c) section 9(1) of the Refugee Act 1996,
(d) the European Communities (Aliens) Regulations 1977 (S.I. No. 393 of 1977), or
(e) the European Communities (Right of Residence for Non-Economically Active Persons) Regulations 1997 (S.I. No. 57 of 1997).

(3) If, in any proceedings, whether civil or criminal, any question arises under or in relation to a provision of this Act, the Act of 1999 or the Immigration Act 2003 as to whether any person is or is not a non-national, or is or is not a non-national of a particular nationality or otherwise of a particular class, or is or is not a particular nonnational specified in an order made under the Act of 1999, the onus of proving (as the case may require) that such person is not a nonnational, or is not a non-national of a particular nationality or of a particular class, or is not such a particular non-national, shall lie on

such person.

3.—(1) The Minister may appoint such and so many persons as he or she considers appropriate (referred to in this Act as “immigration officers”) to perform the functions conferred on immigration officers by this Act and every person so appointed shall hold office on such terms and conditions as may be determined by the Minister at the time of the appointment.

(2) The Minister may, with the consent of the Minister for Health and Children, appoint such and so many registered medical practitioners (referred to in this Act as “medical inspectors”) as he or she considers appropriate to perform the functions conferred on medical inspectors by this Act and every person so appointed shall hold office on such terms and conditions as may be determined by the Minister (with the consent of the Minister for Health and Children) at the time of the appointment.

(3) An immigration officer or a medical inspector appointed under this Act shall have power to enter or board any vessel, and to detain and examine any person arriving at or leaving any port in the State who is reasonably believed by the officer or inspector

to be a non-national, and to require the production of a passport or other equivalent identity document by such person, and shall have such other powers and duties as are conferred upon him or her by this Act.

(4) A person appointed by the Minister to be an immigration officer before the commencement of this Act and who was acting as such an officer immediately before such commencement shall upon such commencement be deemed to have been appointed as an immigration officer under this section.

(5) A reference in any Act passed before the commencement of this section or in any instrument made under such an Act to an immigration officer shall be construed as a reference to an immigration

5

Appointment of officers.

[No. 1.] *Immigration Act* 2004. [2004.]

S.3

Permission to land.

6

officer appointed under this section and, accordingly, a function standing vested in an immigration officer immediately before such commencement under a provision of such an Act or instrument that continues in force after such commencement shall, upon such commencement, stand vested in, and may be performed by, such an officer.

(6) The Minister may revoke an appointment made or deemed to have been made under this section.

4.—(1) Subject to the provisions of this Act, an immigration officer may, on behalf of the Minister, give to a non-national a document, or place on his or her passport or other equivalent document an inscription, authorising the non-national to land or be in the State (referred to in this Act as “a permission”).

(2) A non-national coming by air or sea from a place outside the State shall, on arrival in the State, present himself or herself to an immigration officer and apply for a permission.

(3) Subject to *section 2(2)*, an immigration officer may, on behalf of the Minister, refuse to give a permission to a person referred to in *subsection (2)* if the officer is satisfied—

(a) that the non-national is not in a position to support himself or herself and any accompanying dependants;

(b) that the non-national intends to take up employment in the State, but is not in possession of a valid employment permit (within the meaning of the Employment Permits Act 2003);

(c) that the non-national suffers from a condition set out in the *First Schedule*;

(d) that the non-national has been convicted (whether in the State or elsewhere) of an offence that may be punished under the law of the place of conviction by imprisonment for a period of one year or by a more severe penalty;

(e) that the non-national, not being exempt, by virtue of an order under *section 17*, from the requirement to have an Irish visa, is not the holder of a valid Irish visa;

(f) that the non-national is the subject of—

(i) a deportation order (within the meaning of the Act of 1999),

(ii) an exclusion order (within the meaning of that Act), or

(iii) a determination by the Minister that it is conducive to the public good that he or she remain outside the State;

(g) that the non-national is not in possession of a valid passport or other equivalent document, issued by or on behalf of an authority recognised by the Government, which establishes his or her identity and nationality;

(h) that the non-national—

[2004.] *Immigration Act 2004*. [No. 1.]

S.4 (i) intends to travel (whether immediately or not) to Great Britain or Northern Ireland, and

(ii) would not qualify for admission to Great Britain or Northern Ireland if he or she arrived there from a place other than the State;

(i) that the non-national, having arrived in the State in the course of employment as a seaman, has remained in the State without the leave of an immigration officer after the departure of the ship in which he or she so arrived;

(j) that the non-national's entry into, or presence in, the State could pose a threat to national security or be contrary to public policy;

(k) that there is reason to believe that the non-national intends to enter the State for purposes other than those expressed by the non-national.

(4) An immigration officer who pursuant to *subsection (3)* refuses to give a permission to a non-national shall as soon as may be inform the non-national in writing of the grounds for the refusal.

(5) (a) An immigration officer may, on behalf of the Minister, examine a non-national arriving in the State otherwise than by sea or air (referred to subsequently in this subsection as "a non-national to whom this subsection applies") for the purpose of determining whether he or she should be given a permission and the provisions of *subsections*

(3), (4) and (6) shall apply with any necessary modifications in the case of a person so examined as they apply in the case of a person coming by sea or air from a place outside the State.

(b) A non-national to whom this subsection applies and who is not exempt, by virtue of an order under *section 17*, from the requirement to have an Irish visa shall have a valid Irish visa.

(c) A non-national to whom this subsection applies and who is arriving in the State to engage in employment, business or a profession in the State shall within 7 days of entering the State—

(i) report in person to the registration officer for the place in which he or she intends to reside,

(ii) produce to the officer a valid passport or other equivalent document, issued by or on behalf of an authority recognised by

the Government, which establishes his or her identity and nationality, and

(iii) furnish such information as the officer may reasonably require regarding the purpose of his or her arrival in the State.

(d) A non-national to whom this subsection applies shall not remain in the State for longer than one month without the permission of the Minister given in writing by him or her or on his or her behalf by an immigration officer.

7

[No. 1.] *Immigration Act* 2004. [2004.]

S.4

Presence in State of non-nationals.

8

(6) An immigration officer may, on behalf of the Minister, by a notice in writing to a non-national, or an inscription placed on his or her passport or other equivalent document, attach to a permission under this section such conditions as to duration of stay and engagement in employment, business or a profession in the State as he or she may think fit, and may by such a notice or inscription at any time amend such conditions as aforesaid in such manner as he or she may think fit, and the non-national shall comply with any such conditions.

(7) A permission under this section may be renewed or varied by the Minister, or by an immigration officer on his or her behalf, on application therefor by the non-national concerned.

(8) A non-national, being a member of a class of persons declared by order under *section 17* to require a transit visa to enter the State, shall have a valid transit visa.

(9) A non-national who contravenes *subsection (2), paragraph (b), (c) or (d) of subsection (5) or subsection (6) or (8)* is guilty of an offence.

(10) In performing his or her functions under *subsection (6)*, an immigration officer shall have regard to all of the circumstances of the non-national concerned known to the officer or represented

to the officer by him or her and, in particular, but without prejudice to the generality of the foregoing, to the following matters:

- (a) the stated purpose of the proposed visit to the State,
- (b) the intended duration of the stay in the State,
- (c) any family relationships (whether of blood or through marriage) of him or her with persons in the State,
- (d) his or her income, earning capacity and other financial resources,
- (e) the financial needs, obligations and responsibilities which he or she has or is likely to have in the foreseeable future,
- (f) whether he or she is likely to comply with any proposed conditions as to duration of stay and engagement in employment, business or profession in the State,
- (g) any entitlements of him or her to enter the State under the Act of 1996 or the treaties governing the European Communities within the meaning of the European Communities

Acts 1972 to 2003.

5.—(1) No non-national may be in the State other than in accordance with the terms of any permission given to him or her before the passing of this Act, or a permission given under this Act after such passing, by or on behalf of the Minister.

(2) A non-national who is in the State in contravention of *subsection*

(1) is for all purposes unlawfully present in the State.

(3) This section does not apply to—

(a) a person whose application for asylum under the Act of 1996 is under consideration by the Minister,

[2004.] *Immigration Act 2004*. [No. 1.]

S.5 (b) a refugee who is the holder of a declaration (within the meaning of that Act) which is in force,

(c) a member of the family of a refugee to whom section 18(3)(a) of that Act applies, or

(d) a programme refugee within the meaning of section 24 of that Act.

6.—(1) A non-national (other than a seaman) coming by sea or air from outside the State shall not, without the consent of the Minister, land elsewhere than at an approved port.

(2) Such ports as may be prescribed shall be approved ports for the purposes of *subsection (1)*.

(3) A non-national who lands in the State in contravention of this section shall be deemed to be a non-national who has been refused a permission.

(4) A non-national who lands in the State in contravention of this section shall be guilty of an offence.

7.—(1) The master of any ship arriving at a port in the State may detain on board any non-national coming in the ship from a place outside the State until the non-national is examined or landed for examination under this section, and shall, on the request of an immigration officer, so detain any such non-national, whether seaman or passenger, whose application for a permission has been refused by an immigration officer, and any such non-national so detained shall be deemed to be in lawful custody.

(2) The master of a ship who fails to comply with a request of an immigration officer under *subsection (1)* shall be guilty of an offence.

(3) (a) Any non-national landing or embarking at any place in the State shall, on being required so to do by an immigration officer or a member of the Garda Síochána, make a declaration as to whether or not he or she is carrying or conveying any documents and, if so required, shall produce them to the officer or member.

(b) The officer or member may search any such non-national and any luggage belonging to him or her or under his or her control with a view to ascertaining whether the nonnational is carrying or conveying any documents and may examine and detain, for such

time as he or she may think proper for the purpose of such examination, any documents so produced or found on the search.

(c) In this section, “documents” includes—

- (i) any written matter,
- (ii) any photograph,
- (iii) any currency notes or counterfeit currency notes,

9

Approved port. Examination and detention of nonnationals.

[No. 1.] *Immigration Act* 2004. [2004.]

S.7

Notices to be displayed on ships, railway trains and passenger road vehicles.

Obligation of nonnationals to register.

10

(iv) any information in non-legible form that is capable of being converted into legible form, or

(v) any audio or video recording.

(4) A non-national who contravenes *subsection (3)* shall be guilty of an offence.

8.—(1) The master of any ship and the person in charge of any railway train or passenger road vehicle bringing passengers into the State shall display in such ship, railway train or passenger road vehicle in such manner as the Minister may from time to time direct such notice of the provisions of this Act and of any directions given thereunder as the Minister may from time to time direct.

(2) A person who contravenes *subsection (1)* shall be guilty of an offence.

9.—(1) (a) A register of non-nationals who have permission to be in the State shall be established and maintained by registration officers in such manner as the Minister may direct.

(b) The register may be in a form that is not legible if it is capable of being converted into a legible form.

(c) A registration officer may amend an entry in, or delete an entry from, the register.

(2) Subject to *section 2(2)*, a non-national shall comply with the following requirements as to registration:

(a) he or she shall, as soon as may be, furnish to the registration officer for the registration district in which he or she is resident, the particulars set out in the *Second Schedule*, and, unless he or she gives a satisfactory explanation of the circumstances which prevent his or her doing so, produce to the registration officer a valid passport or other equivalent document, issued by or on behalf of an authority recognised by the Government, which establishes his or her identity and nationality;

(b) he or she shall furnish to the registration officer for the registration district in which he or she is resident particulars of any matter affecting in any manner the accuracy of the particulars previously furnished by him or her for the purpose of registration, within 7 days after the matter has occurred, and generally shall supply to the registration officer all information (including, where required by the registration officer, a recent photograph of him or her) that may be necessary for maintaining the accuracy of the register;

(c) he or she shall, if about to change his or her residence, furnish to the registration officer for the registration district in which he or she is then resident particulars as to the date on which his or her residence is to be changed and as to his or her intended place of residence;

(d) on effecting any change of residence from one registration district to another, he or she shall, within 48 hours of his [2004.] *Immigration Act 2004*. [No. 1.]

S.9 or her arrival in the other registration district, report his or her arrival to the registration officer for that district;

(e) if at any time he or she is absent from his or her residence for a continuous period exceeding one month, he or she shall report

to the registration officer for the district of his or her residence his or her current address and every subsequent change of address, including his or her return to his or her residence;

(f) he or she shall—

(i) subject to *section 19(3)*, on registration obtain from the registration officer a registration certificate;

(ii) on every subsequent alteration or addition of any entry in the register relating to his or her registration, produce the certificate to the registration officer in order that, if necessary, a corresponding alteration or addition may be made in the certificate.

(3) If a non-national has no residence in the State, he or she shall attend at the office of a registration officer and, so far as possible, supply the particulars that would be required under this section if he or she were resident in the district of that officer, and shall report to the registration officer for any other district in which he or she stays for more than 24 hours and also give notice of any intended change of address to the registration officer to whom he or she has last reported.

(4) If a non-national who is required under this section to register or report is lodging with, or living as a member of the household of, any other person, it shall be the duty of that person to take reasonable steps (either by giving notice to the registration officer of the presence of the non-national in his or her household or otherwise) to secure compliance with the terms of this Act in respect of the registration of or reporting by the non-national.

(5) A registration certificate shall be in such form and contain such particulars as may be prescribed.

(6) This section shall not apply to—

(a) a non-national who is under the age of 16 years;

(b) a non-national who was born in Ireland;

(c) a non-national not resident in the State who has been in the State for a period of not more than 3 months since the date of his or her last arrival in the State;

(d) a non-national seaman not resident in the State whose ship remains at a port in the State and who does not land in the State for discharge.

(7) A person who before the commencement of this Act obtained a registration certificate from a registration officer shall be deemed until the date on which the certificate is expressed to expire to have complied with the requirements of this section.

(8) A non-national who contravenes *subsection (2), (3) or (4)* shall be guilty of an offence.

11

[No. 1.] *Immigration Act 2004.* [2004.]

S.9

Hotel registers. Requirements as to documents of identity and supply of information. Requirement as to production of documents. 12

(9) In this section, “register” means the register maintained under *subsection (1)* and cognate words shall be construed accordingly.

10.—(1) It shall be the duty of the keeper of every premises to which this section applies to keep in the premises a register in the prescribed form of all non-nationals staying at the premises.

(2) The Minister may make regulations in relation to the following matters:

(a) the duties of keepers of premises to which this section applies and of persons staying at such premises in relation to the making of entries in a register,

(b) the maintenance of a register,

(c) the furnishing and gathering of information required for entry in a register,

(d) the period for which a register is to be kept.

(3) A register shall be produced by a keeper to a member of the Garda Síochána or an immigration officer if so requested by the member or officer.

(4) A person who contravenes *subsection (1)* or a provision of regulations under this section that is stated in the regulations to be a penal provision shall be guilty of an offence.

(5) This section applies to a hotel or other place in which lodging or sleeping accommodation is provided on a commercial basis.

11.—(1) Every person (other than a person under the age of 16 years) landing in the State shall be in possession of a valid passport or other equivalent document, issued by or on behalf of an authority recognised by the Government, which establishes his or her identity and nationality to the satisfaction of an immigration officer.

(2) Every person landing in or embarking from the State shall furnish to an immigration officer such information in such manner as the immigration officer may reasonably require for the purposes of the performance of his or her functions.

(3) A person who contravenes this section shall be guilty of an offence.

(4) This section does not apply to any person (other than a nonnational) coming from or embarking for a place in the State, Great Britain or Northern Ireland.

12.—(1) Every non-national shall produce on demand, unless he or she gives a satisfactory explanation of the circumstances which prevent him or her from so doing—

(a) a valid passport or other equivalent document, issued by or on behalf of an authority recognised by the Government, which establishes his or her identity and nationality, and

(b) in case he or she is registered or deemed to be registered under this Act, his or her registration certificate.

[2004.] *Immigration Act* 2004. [No. 1.]

S.12 (2) A non-national who contravenes this section shall be guilty of an offence.

(3) In this section “on demand” means on demand made at any time by any immigration officer or a member of the Garda Síochána.

(4) This section does not apply to—

(a) a non-national who is under the age of 16 years, or

(b) a non-national who was born in Ireland.

13.—(1) A person guilty of an offence under this Act shall be liable on summary conviction to a fine not exceeding \3,000 or to imprisonment for a term not exceeding 12 months or to both.

(2) A member of the Garda Síochána may arrest without warrant a person whom he or she reasonably suspects to have committed an offence under this Act (other than *section 10*) or section 2(1) of the Employment Permits Act 2003.

14.—(1) The Minister may, by notice in writing, require a nonnational who does not have permission to be in the State to comply with either or both of the following conditions:

(a) that he or she reside or remain in a particular district or place in the State,

(b) that he or she report at specified intervals to an immigration officer or member of the Garda Síochána specified in the notice or to the registration officer of the registration district in which he or she is resident, and the non-national shall comply with the requirement.

(2) A non-national who contravenes this section shall be guilty of an offence.

15.—(1) Where, on the sworn information of a member of the Garda Síochána not below the rank of sergeant, a judge of the District Court is satisfied that—

(a) it is reasonably necessary for the purpose of the enforcement of this Act that a place specified in the information should be searched by members of the Garda Síochána, or

(b) there are reasonable grounds for suspecting that evidence of or relating to an offence under this Act is to be found at a place specified in the information, the judge may issue a warrant for the search of that place and any persons found at that place.

(2) A warrant issued under this section shall authorise a named member of the Garda Síochána, alone or accompanied by such

other members of the Garda Síochána and such other persons as may be necessary—

13

Offences and power of arrest without warrant.

Provision for particular nonnationals. Entry, search and seizure.

[No. 1.] *Immigration Act* 2004. [2004.]

S.15

Amendment of certain enactments.

14

(a) to enter, within 7 days from the date of the warrant and if necessary by the use of reasonable force, the place named in the warrant,

(b) to search that place and any persons found there, and

(c) to seize anything found there, or anything found in the possession of a person present there at the time of the search,

which that member reasonably believes to be evidence of or relating to an offence under this Act.

(3) A member of the Garda Síochána acting in accordance with a warrant issued under this section may require any person found at the place where the search is carried out to give the member his or her name and address.

(4) Any person who—

(a) obstructs or attempts to obstruct any member of the Garda Síochána acting in accordance with a warrant issued under *subsection (1)*,

(b) fails or refuses to comply with a requirement under this section, or

(c) gives a name or address to such a member which is false or misleading, shall be guilty of an offence.

(5) In this section, “place” includes any dwelling, any building or part of a building and any vehicle, vessel, structure or

container used or intended to be used for the carriage of goods by road.

16.—(1) Section 16A (inserted by section 6 of the Irish Nationality and Citizenship Act 2001) of the Irish Nationality and Citizenship Act 1956 is amended—

(a) by the insertion, in subsection (1)(b)(i), after “the Aliens Act, 1935,”, of “or the *Immigration Act 2004*”, and

(b) by the substitution, in subsection (1)(b)(ii), for “that Act” of “those Acts”.

(2) Section 7 of the Air Navigation and Transport (Preinspection) Act 1986 is amended, in subsections (1) and (2), by the substitution, for “the Aliens Act, 1935,”, of “the Aliens Act 1935, the *Immigration Act 2004*”.

(3) Subsection (4)(a)(ii)(IV) (inserted by section 13 of the Social Welfare (Miscellaneous Provisions) Act 2003) of section 179 of the Social Welfare (Consolidation) Act 1993 is amended by the addition of “or the *Immigration Act 2004*”.

(4) Section 9(3) of the Act of 1996 is amended by the substitution of the following paragraph for paragraph (c):

“(c) A certificate shall be deemed to be a registration certificate for the purposes of *section 12* of the *Immigration Act 2004* and a person who is the holder of a certificate that is in force shall be deemed to have complied with *section 9* of that Act.”.

[2004.] *Immigration Act 2004*. [No. 1.]

S.16 (5) Section 6(1)(b) (as amended by section 10(c)(i) of the Illegal Immigrants (Trafficking) Act 2000) of the Act of 1999 is amended by the insertion before “, or to the Refugee Applications Commissioner” of “or *section 9* of the *Immigration Act 2004*”.

(6) Section 5(1) of the Illegal Immigrants (Trafficking) Act 2000 is amended by the insertion of the following paragraph after paragraph (d):

“(dd) a refusal under *section 4* of the *Immigration Act 2004*,”.

(7) Section 24 of the Criminal Justice (Theft and Fraud Offences) Act 2001 is amended by the addition to paragraph (o) of the definition of “instrument” of “or the *Immigration Act 2004*,”.

(8) Section 5(1) of the Immigration Act 2003 is amended by the addition of the following paragraphs after paragraph (d):

“(e) a non-national who has failed to comply with *section 4(2)* of the *Immigration Act 2004*,

(f) a non-national who has been refused a permission under *section 4(3)* of that Act,

(g) a non-national who is in the State in contravention of *section 5(1)* of that Act,

(h) a non-national who has landed in the State in contravention of *section 6(1)* of that Act,”.

17.—(1) The Minister may, for the purposes of ensuring the integrity of the immigration system, the maintenance of national security, public order or public health or the orderly regulation of the labour market or for the purposes of reciprocal immigration arrangements with other states or the promotion of tourism, by order declare—

(a) that members of specified classes of non-nationals are not required to be in possession of a valid Irish visa within the meaning of the Immigration Act 2003 when landing in the State, or

(b) that members of specified classes of non-nationals are required to be in possession of a valid Irish transit visa within the meaning of that Act.

(2) The Minister may by order amend or revoke an order under this section (including an order under this subsection).

18.—(1) Where a notice is required or authorised by or under this Act to be served on or given to a person, it shall be addressed to him or her and shall be served on or given to him or her in some one of the following ways:

(a) by delivering it to him or her, or

(b) by sending it by post in a prepaid registered letter, or by any other form of recorded delivery service prescribed by the Minister, addressed to him or her at the address most recently furnished by him or her to the registration officer pursuant to *section 9*, or to the Refugee Applications Commissioner pursuant to *section 9(4A)* of the Act of

15

Visa orders.

Service of notices.

[No. 1.] *Immigration Act 2004*. [2004.]

S.18

Fees. Regulations and orders.

16

1996, as the case may be or, in a case in which an address for service has been furnished, at that address.

(2) Where a notice under this Act has been sent to a person in accordance with *subsection (1)(b)*, the notice shall be deemed to have been duly served on or given to the person on the third day after the day on which it was so sent.

19.—(1) (a) There shall be paid to the Minister by the nonnational concerned in respect of the giving of a permission a fee of such amount as may be prescribed with the consent of the Minister for Finance.

(b) There shall be paid to the registration officer concerned by the non-national concerned in respect of the issue of a registration certificate a fee of such amount as may be prescribed with the consent of the Minister for Finance.

(c) There shall be paid to the Minister by the nonnational concerned in respect of the issue of a travel document a fee of such amount as may be prescribed with the consent of the Minister for Finance.

(2) The Minister may refuse to give a permission or issue a travel document if the appropriate fee in respect of the issue has not been paid.

(3) The registration officer concerned may refuse to issue a registration certificate if the appropriate fee has not been paid.

(4) A fee payable under this section may be recovered by the person to whom it is payable from the person by whom it is payable as a simple contract debt in any court of competent jurisdiction.

(5) The Public Offices Fees Act 1879 shall not apply in relation to a fee under this section.

(6) Regulations under this section may provide for the waiver in specified circumstances of any prescribed fees, including fees payable by—

(a) adult persons unable without undue hardship to arrange for their payment for themselves and their dependants,

(b) applicants within the meaning of the Act of 1996, and

(c) persons in respect of whom a declaration (within the meaning of that Act) is in force.

(7) In this section, “travel document” means a document (other than a document to which section 4(1) of the Refugee Act 1996 refers) issued solely for the purpose of providing the holder with a document which can serve in lieu of a national passport.

20.—(1) The Minister may—

(a) by regulations provide, subject to this Act, for any matter referred to in this Act as prescribed or to be prescribed, and

[2004.] *Immigration Act 2004*. [No. 1.]

S.20 (b) in addition to any other power conferred on him or her by this Act to make regulations, make regulations generally for the purpose of giving full effect to this Act.

(2) Regulations under this Act may contain such incidental, supplementary and consequential provisions as appear to the

Minister to be necessary or expedient for the purposes of the regulations.

(3) Every order or regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made, and, if a resolution annulling the order or regulation is passed by either such House within the next subsequent 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

21.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

22.—This Act may be cited as the Immigration Act 2004.

FIRST SCHEDULE

Conditions referred to in section 4(3)(c)

1. Diseases subject to the International Health Regulations for the time being adopted by the World Health Assembly of the World Health Organisation.
2. Tuberculosis of the respiratory system in an active state or showing a tendency to develop.
3. Syphilis.
4. Other infectious or contagious parasitic diseases in respect of which special provisions are in operation to prevent the spread of such diseases from abroad.
5. Drug addiction.
6. Profound mental disturbance, that is to say, manifest conditions of psychotic disturbance with agitation, delirium, hallucinations or confusion.

SECOND SCHEDULE

Particulars to be furnished on registration

1. Name in full and sex.

2. Present nationality and how and when acquired and previous nationality (if any).

3. Date and place of birth.

4. Profession or occupation.

5. Date, place and mode of arrival in the State.

17

Expenses.

Short title.

Section 4.

Section 9.

[No. 1.] *Immigration Act* 2004. [2004.]

Sch.2

18

6. Address of residence in the State.

7. Address of last residence outside the State.

8. Photograph of the non-national (which, if not furnished by the non-national, may be taken by the registration officer).

9. If in government service, the service concerned, nature and duration of service, and rank and appointments held.

10. Particulars of passport or other document establishing nationality and identity.

11. Signature (which, if required, shall be in the characters of the language of the non-national's nationality) and fingerprints if required by the registration officer.

12. Any other matter of which particulars are required by the registration officer.

EQUALITY ACT 2004

PART 3

AMENDMENTS TO EQUAL STATUS ACT 2000

(...)

50.- Section 7 (educational establishments) of the act of 2000 is amended by the addition of the following subsection:

“(5) (a) In this subsection “grants” means grants to assist persons to attend or continue to attend or continue to attend-

(i) an institution providing adult, continuing or further education,

(ii) a university, or

(iii) any other third-level or higher-level institution, whether or not supported by public funds.

(b) The Minister for Education and science does not discriminate where he or she-

(i) requires grants to be restricted to persons who are nationals of a member state of the European Union, or

(ii) requires such nationals and other persons to be treated differently in relation to the making of grants”.

51.- Section 11 (sexual and other harassment) of the Act of 2000 is amended by substituting the following subsections for subsections (4) and (5):

“(4) A person’s rejection of, or submission to, sexual or other harassment may not be used by any other person as a basis for a decision affecting that person.

(5) (a) In this section-

(i) references to harassment are to any form of unwanted conduct related to any of the discriminatory grounds, and

- (ii) references to sexual harassment are to any form of unwanted verbal, no verbal or physical conduct of a sexual nature,

being conduct which in either case has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

(b) Without prejudice to the generality of paragraph (a), such unwanted conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material.”.

52.—Section 14 (certain measures or activities not prohibited) of the Act of 2000 is amended—

(a) by inserting the following paragraph after “State,” in paragraph (a):

“(aa) on the basis of nationality—

- (i) any action taken by a public authority in relation to a non-national—

- (I) who, when the action was taken, was either outside the State or, for the purposes of the Immigration Act 2004, unlawfully present in it, or

- (II) in accordance with any provision or condition made by or under any

- enactment and arising from his or her entry to or residence in the State,

or

- (ii) any action taken by the Minister in relation to a non-national where the

- action arises from an action referred to in subparagraph (i),”

and

(b) by adding the following subsections:

“(2) In subsection (1) (*aa*)—

‘non-national’ has the meaning given to it by the Immigration Act 1999 and includes a category of nonnationals; ‘public authority’ means—

(*a*) a Minister of the Government,

(*b*) an immigration officer appointed or deemed to have been appointed under section 3 of the Immigration Act 2004,

(*c*) the Commissioners of Public Works in Ireland,

(*d*) a local authority within the meaning of the Local Government Act 2001,

(*e*) the Eastern Regional Health Authority,

(*f*) an area health board within the meaning of the Health (Eastern Regional Health Authority) Act 1999,

(*g*) a health board,

(*h*) a harbour authority within the meaning of the Harbours Act 1946,

(*i*) a board or other body (not being a company) established by or under statute,

(*j*) a company in which all the shares are held by, or on behalf of, or by directors appointed by, a Minister of the Government, or

(*k*) a company in which all the shares are held by a board or other body referred to in paragraph (*i*), or by a company referred to in paragraph (*j*).

(3) Nothing in subsection (1)(*aa*) shall derogate from any of the obligations of the State under the treaties governing the European Communities within the meaning of the European Communities Acts 1972 to 2003 or any act adopted by an institution of those Communities.”

