

DISPUTE RESOLUTION THROUGH ADJUDICATION GAINING TRACTION

MARTIN COONEY, Head of Construction Law, ByrneWallace, outlines some key developments of which construction stakeholders should be aware.

As a construction lawyer, you can nearly track the economic performance of the industry by the nature of the work you are doing at any given time. In good times, the majority of your work is non-contentious, with disputes occurring on a sporadic basis and usually in respect of significant issues and sums of money. The disputes have to be big to take people away from the primary task of the industry. When things are not going so well, disputes are prolific, and you wonder whether there was ever a time when anyone got along. Indeed, it is at such times that the professional indemnity insurance policies of the professionals come into their own.

Things are changing, however, and adjudication has a big part to play in this. Adjudication offers the ability to deal with a wide range of payment disputes in relatively short timeframes. So, where parties would once rue the time and costs involved in pursuing outstanding sums, they are now giving serious consideration to using adjudication for that purpose. This is borne out by the significant increase in the use of statutory adjudication in 2018, which is continuing this year. While its existence was ignored for a while after its introduction, we are seeing it gain real traction in the last year. The word is spreading, and it is becoming a realistic option for industry participants. We are seeing adjudications more frequently, but for lower sums of money.

Fundamentally, the High Court's approach to enforcement will be the making or breaking of the process. If the High Court does not support adjudicators' decisions or the process, it will essentially undermine the intent of the statutory process. So, the growth in the use of adjudication is predicated on robust support from the judiciary.

CHANGES TO PERMITS SCHEME

Everyone is feeling the effects of the skills shortage in the sector at the moment. It is affecting nearly every discipline, from professionals to general operatives on site. Fortunately, the Government has taken some action to try to deal with the issue and to accommodate what might transpire if a 'No Deal' Brexit becomes a reality.

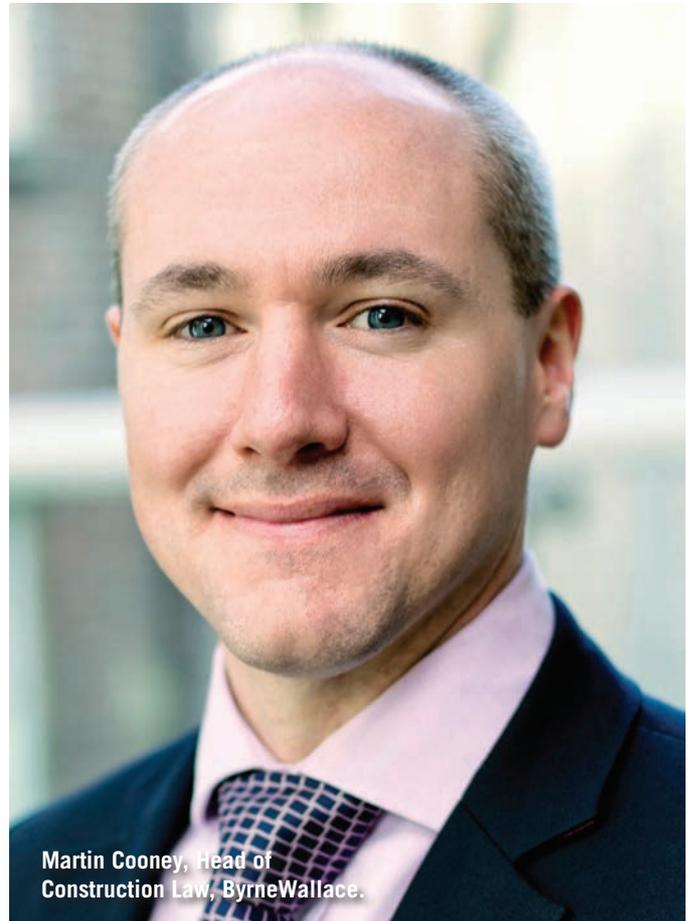
On 22nd April 2019, there were changes introduced to the Irish employment permits scheme, easing restrictions on non-EEA nationals with construction qualifications seeking to be employed in Ireland.

The Irish Government has recognised the need to broaden the scope of eligible applicants under the employment permits scheme, particularly in the construction sector, and below are some of the most recent developments in this area.

Construction-related roles added to the Critical Skills Occupations List

The Critical Skills Employment Permit (CSP) may be granted to non-EEA nationals who possess a skill or qualification which is deemed to be critically important to growing Ireland's economy and in respect of which there is a significant shortage of supply in the Irish labour market.

To qualify for a CSP, an applicant must either be paid a minimum annual remuneration of €60,000 or, where their occupation is on the Highly Skilled Eligible Occupations List 1, a minimum annual



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remuneration of €30,000.

In recognition of the shortage of homegrown talent in the Irish construction industry, from 22nd April 2019 civil engineers, quantity surveyors, construction project managers and mechanical and electrical engineers with BIM expertise have been added to the Critical Skills Occupations List and will be eligible for a CSP.

Construction-related roles removed from the Ineligible List of Occupations for Employment Permits

Since 22nd April 2019, several construction-related occupations have been removed from the Ineligible Occupations List and are now eligible for a General Employment Permit. These include sheet metal workers; welding trades; pipefitters; shuttering carpenters; scaffolders, stagers and riggers; crane drivers; plasterers (subject to a quota of 250); and bricklayers (subject to a quota of 250).

For the construction industry, changes in the permits scheme can be seen as positive steps towards filling some of the gaps that exist in the Irish labour market. Indeed, you could go as far as saying that these may help address any possible future skills shortages in the years to come as the construction industry attempts to remedy Ireland's housing shortage. **C**

For further information or advice on adjudication contact Martin Cooney, Head of Construction Law, or on work permits, contact employment law partners Loughlin Deegan or Emmet Whelan, ByrneWallace, Phone: 01 691 5000. Web: www.byrnewallace.com