



Number 27 of 2015

INDUSTRIAL RELATIONS (AMENDMENT) ACT 2015

REVISED

Updated to 6 March 2018

This Revised Act is an administrative consolidation of *Industrial Relations (Amendment) Act 2015*. It is prepared by the Law Reform Commission in accordance with its function under *Law Reform Commission Act 1975 (3/1975)* to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Public Service Superannuation (Amendment) Act 2018 (2/2018)*, enacted 28 February 2018, and all statutory instruments up to and including *Sectoral Employment Order (Mechanical Engineering Building Services Contracting Sector) 2018 (S.I. No. 59 of 2018)*, made 6 March 2018, were considered in the preparation of this Revised Act.

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Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

Industrial Relations Acts 1946 to 2015: this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Industrial Relations (Amendment) Act 2015* (27/2015), s. 1(2) and (3)). The Acts in this group are:

- *Industrial Relations Act 1946* (26/1946)
- *Industrial Relations Act 1969* (14/1969)
- *Industrial Relations Act 1976* (15/1976)
- *Industrial Relations Act 1990* (19/1990), other than Part II
- *Industrial Relations (Amendment) Act 2001* (11/1976)
- *Industrial Relations (Miscellaneous Provisions) Act 2004* (4/2004)
- *Industrial Relations (Amendment) Act 2012* (32/2012), other than ss. 16, 17 and 18
- *Industrial Relations (Amendment) Act 2015* (27/2015), other than ss. 24 and 36

Unfair Dismissals Acts 1977 to 2015: this Act is one of a group of Acts included in this collective citation (*Industrial Relations (Amendment) Act 2015* (27/2015), s. 1(4)). The Acts in this group are:

- *Unfair Dismissals Act 1977* (10/1977)
- *Worker Protection (Regular Part-Time Employees) Act 1991* (5/1991) (repealed)
- *Unfair Dismissals (Amendment) Act 1993* (22/1993)
- *Protection of Employees (Part-Time Work) Act 2001* (45/2001), insofar as it relates to the *Unfair Dismissals Acts 1977 to 1993*
- *Civil Service Regulation (Amendment) Act 2005* (18/2005), Part 6
- *Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007* (27/2007), insofar as it relates to the *Unfair Dismissals Acts 1977 to 2005*
- *Industrial Relations (Amendment) Act 2015* (27/2015), s. 39

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1989, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Workplace Relations Act 2015 (16/2015)*

All Acts up to and including *Public Service Superannuation (Amendment) Act 2018 (2/2018)*, enacted 28 February 2018, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *Sectoral Employment Order (Mechanical Engineering Building Services Contracting Sector) 2018 (S.I. No. 59 of 2018)*
- *Sectoral Employment Order (Construction Sector) 2017 (S.I. No. 455 of 2017)*
- *Labour Affairs and Labour Law (Transfer of Departmental Administration and Ministerial Functions) Order 2017 (S.I. No. 361 of 2017)*
- *European Union (Posting of Workers) Regulations 2016 (S.I. No. 412 of 2016)*
- *Industrial Relations (Amendment) Act 2015 (Commencement) Order 2015 (S.I. No. 329 of 2015)*

All statutory instruments up to and including *Sectoral Employment Order (Mechanical Engineering Building Services Contracting Sector) 2018 (S.I. No. 59 of 2018)*, made 6 March 2018, were considered in the preparation of this revision.



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An Act to make further and better provision for promoting harmonious relations between workers and employers and, in particular, to make provision for a system of registered employment agreements and sectoral employment orders; to amend and extend the Industrial Relations (Amendment) Act 2001; to amend and extend the Industrial Relations (Miscellaneous Provisions) Act 2004; to provide for certain interim relief for certain persons in respect of actions taken by them in relation to investigations of trade disputes and, for that purpose, to amend the Unfair Dismissals Act 1977; to amend the Workplace Relations Act 2015 and certain other enactments; and to provide for related matters.

[22 nd July, 2015]

Be it enacted by the Oireachtas as follows:

Annotations

Modifications (not altering text):

- C1** Certain functions under collectively cited *Unfair Dismissals Acts* transferred and references construed (1.09.2017) by *Labour Affairs and Labour Law (Transfer of Departmental Administration and Ministerial Functions) Order 2017* (S.I. No. 361 of 2017), arts. 2, 3 and sch., in effect as per art. 1(2), subject to transitional provisions in arts. 4-8.

2. (1) The administration and business in connection with the exercise, performance or execution of any functions transferred by Article 3 are transferred to the Department of Social Protection.

(2) References to the Department of Jobs, Enterprise and Innovation contained in any Act or any instrument made under such Act and relating to any administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Social Protection.

3. (1) The functions vested in the Minister for Jobs, Enterprise and Innovation—

(a) by or under the Acts specified in Part 1 of the Schedule and the provisions of the Acts specified in Part 2 of the Schedule, and

(b) under the Regulations specified in Part 3 of the Schedule, are transferred to the Minister for Social Protection.

(2) References to the Minister for Jobs, Enterprise and Innovation contained in any Act or instrument made under such Act and relating to any functions transferred by this Article shall, on and after the commencement of this Order, be construed as references to the Minister for Social Protection.

...

SCHEDULE

PART 2

Provisions of Acts of the Oireachtas

...

Unfair Dismissals Acts 1977 to 2015, other than section 8C(1) (inserted by section 80 (1)(h) of the Workplace Relations Act 2015) of the Unfair Dismissals Act 1977

...

PART 1

PRELIMINARY AND GENERAL

Short title, collective citations, construction and commencement

1. (1) This Act may be cited as the Industrial Relations (Amendment) Act 2015.

(2) The Industrial Relations Acts 1946 to 2012 and this Act, other than *sections 24 and 36*, may be cited together as the Industrial Relations Acts 1946 to 2015.

(3) The Industrial Relations Acts 1946 to 2015 and *Part 3*, other than *section 36*, shall be construed together as one Act.

(4) The Unfair Dismissals Acts 1977 to 2007 and *section 39* may be cited together as the Unfair Dismissals Acts 1977 to 2015.

(5) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes or different provisions.

Annotations**Editorial Notes:**

E1 Power pursuant to subs. (5) exercised (1.08.2015) by *Industrial Relations (Amendment) Act 2015 (Commencement) Order 2015* (S.I. No. 329 of 2015).

2. The 1st day of August 2015 is appointed as the day on which the Industrial Relations (Amendment) Act 2015 (No. 27 of 2015) comes into operation.

Definitions

2. In this Act—

“Act of 1946” means the Industrial Relations Act 1946;

“Act of 1990” means the Industrial Relations Act 1990;

“Act of 2015” means the Workplace Relations Act 2015;

“Minister” means the Minister for Jobs, Enterprise and Innovation.

Expenses

3. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of monies provided by the Oireachtas.

Repeals

4. The following provisions are repealed:

- (a) section 10 of the Industrial Relations Act 1969;
- (b) paragraphs (d), (e) and (f) of subsection (1) of section 23 of the Act of 1990;
- (c) subsections (2), (5) and (6) of section 23 of the Act of 1990;
- (d) sections 51 to 54 of the Act of 1990.

PART 2

REGISTERED EMPLOYMENT AGREEMENTS AND SECTORAL EMPLOYMENT ORDERS

Annotations

Editorial Notes:

- E2** Part included in definitions of “employment enactment” and “relevant enactment” (1.10.2015) by *Workplace Relations Act 2015* (16/2015), s. 2 and sch. 1 part 2 item 19, S.I. No. 410 of 2015, as inserted (1.08.2015) by *Industrial Relations (Amendment) Act 2015* (27/2015) s. 24(c), S.I. No. 329 of 2015, with the following effects:
- Authorised officers or inspectors under employment enactments deemed to be appointed under *Workplace Relations Act 2015* (16/2015), s. 26(2) and subject to termination under s. 26(4).
 - Powers of inspectors for purposes of relevant enactments defined in *Workplace Relations Act 2015* (16/2015), s. 27.
 - Workplace Relations Commission, an inspector or an adjudication officer authorised to disclose employer’s registered number or employee’s PPSN to enable Labour Court to perform functions under relevant enactments by *Workplace Relations Act 2015* (16/2015) s. 31(5).
 - Power of Workplace Relations Commission and official body to disclose information to each other concerning the commission of offence under relevant enactment provided by *Workplace Relations Act 2015* (16/2015), s. 32.
 - Power of Workplace Relations Commission and contracting authority to disclose information to each other concerning the commission of offence under employment enactment/ relevant enactment provided by *Workplace Relations Act 2015* (16/2015), s. 33.
 - Powers of Minister to prosecute under relevant enactments transferred to Workplace Relations Commission and references construed by *Workplace Relations Act 2015* (16/2015), s. 37.
 - Functions of EAT to hear claims under employment enactments transferred to Workplace Relations Commission and references to EAT construed by *Workplace Relations Act 2015* (16/2015) s. 66(1), (2), not commenced as of date of revision.

CHAPTER 1

Definitions

Definitions (Part 2)

5. In this Part—
- “Court” means the Labour Court;
- “trade union” has the same meaning as it has in the Act of 1946;
- “worker” has the same meaning as it has in Part III of the Act of 1990.

CHAPTER 2

Registered employment agreements

Annotations**Editorial Notes:**

- E3** Subcontracted posted workers provided with remedy for breach of registered employment agreement within meaning of chapter (27.07.2016) by *European Union (Posting of Workers) Regulations 2016* (S.I. No. 412 of 2016), reg. 9(1)(c).
- E4** Redress and appeal procedures for contraventions of registered employment agreements under Chapter provided (1.10.2015) by *Workplace Relations Act 2015* (16/2015), ss. 41, 44 and sch. 5 part 1 item 29, sch. 6 part 1 item 35, sch. 6 part 2 item 35, S.I. No. 410 of 2015, as inserted (1.08.2015) by *Industrial Relations (Amendment) Act 2015* (27/2015), s. 24(d)(i) and (e), S.I. No. 329 of 2015.

**Definitions
(Chapter 2)****6.** In this Chapter—

“employment agreement” means an agreement relating to the remuneration or the conditions of employment of workers of any class, type or group made between a trade union or trade unions of workers and one or more than one employer or a trade union of employers, that is binding only on the parties to the agreement in respect of the workers of that class, type or group;

“enactment” has the same meaning as it has in the Interpretation Act 2005;

“parties to the agreement” means—

- (a) in the case of the workers, the trade union or trade unions specified in the agreement, and
- (b) in the case of the employers, the employer, employers or trade union of employers specified in the agreement;

“Register of Employment Agreements” has the meaning assigned to it by *section 7* ;

“registered employment agreement” means an employment agreement for the time being registered in the Register of Employment Agreements;

“trade dispute” has the same meaning as it has in the Act of 1946.

**Register of
Employment
Agreements**

7. (1) The Court shall establish and maintain a register of employment agreements, in this Chapter referred to as the Register of Employment Agreements.

(2) The Register of Employment Agreements shall include—

- (a) notice of the registration of an employment agreement in accordance with *section 8*, together with such particulars of the agreement as the Court considers necessary,
- (b) notice of the variation of a registered employment agreement in accordance with *section 9*, together with such particulars of the variation as the Court considers necessary,
- (c) notice of the cancellation of the registration of an employment agreement in accordance with *section 10*, and
- (d) details of any other matters the Court considers appropriate.

(3) The Court shall publish the Register of Employment Agreements on the internet.

(4) References to the Register of Employment Agreements in any enactment in force immediately before the commencement of this section shall, on and after such commencement, be construed as references to the Register of Employment Agreements maintained under this section.

Registration of employment agreements

8. (1) Any party to an employment agreement may apply to the Court to register the agreement in the Register of Employment Agreements.

(2) An application to register an employment agreement shall be accompanied by—

(a) a copy of the agreement, and

(b) confirmation, in such form and accompanied by such documentation as the Court may specify, that the trade union of workers is, or trade unions of workers are, substantially representative of the workers in the class, type or group to which the agreement is expressed to apply.

(3) Where an application is made to the Court to register an employment agreement in the Register of Employment Agreements, the Court shall, subject to this section, register the agreement if it is satisfied that—

(a) there is agreement amongst all of the parties to the agreement that it should be registered,

(b) the agreement is expressed to apply to all workers of a particular class, type or group and their employers and that it is normal and desirable practice or that it is expedient to have a separate agreement for that class, type or group,

(c) the trade union of workers is, or trade unions of workers are, substantially representative of the workers to whom the agreement relates, and in satisfying itself in that regard the Court shall take into consideration the number of workers to whom the agreement relates represented by the trade union or trade unions specified in the agreement that are employed by the employer or employers specified in the agreement,

(d) the agreement provides that if a trade dispute occurs between workers to whom the agreement relates and their employers, industrial action or a lock-out shall not take place until the dispute has been submitted for settlement by negotiation in the manner specified in the agreement,

(e) the agreement specifies the circumstances in which a party or parties to the agreement may terminate the agreement,

(f) registration of the agreement is likely to promote—

(i) harmonious relations between the workers concerned and their employer, and

(ii) the avoidance of industrial unrest,

and

(g) the agreement is in a form suitable for registration.

(4) Where an application is made to the Court to register an employment agreement, the Court shall direct such parties to the agreement as the Court shall specify to publish specified particulars of the agreement in such manner as, in the opinion of the Court, is best calculated to bring the application to the notice of all persons concerned.

(5) (a) The Court shall not register an employment agreement until at least 14 days after publication of particulars of the agreement in accordance with *subsection (4)*.

(b) If, within 14 days of publication of particulars of the agreement in accordance with *subsection (4)*, the Court receives notice of an objection to the agreement being registered, the Court shall, unless it considers the objection frivolous, consider the objection and shall hear all parties appearing to the Court to be interested and desiring to be heard, and if, after such consideration, the

Court is not satisfied that the agreement complies with the requirements specified in *subsection (3)*, the Court shall refuse to register the agreement.

(6) A registered employment agreement shall not prejudice any rights as to rates of remuneration or conditions of employment conferred on any worker by or under this or any other Act.

(7) References to a registered employment agreement in any enactment in force immediately before the commencement of this section shall, on and after such commencement, be construed as references to a registered employment agreement within the meaning of this Chapter.

(8) In this section—

“industrial action” has the same meaning as it has in Part II of the Act of 1990;

“lock-out” has the same meaning as it has in Part II of the Redundancy Payments Act 1967.

Variation of registered employment agreements

9. (1) Subject to this section, a party to a registered employment agreement may apply to the Court to vary the agreement in its application to any worker or workers to whom it applies.

(2) Where all of the parties to the registered employment agreement agree to vary the agreement in the terms of the proposed application, the Court shall within 6 weeks of receipt of an application under *subsection (1)* consider the application and shall hear all persons appearing to the Court to be interested and desiring to be heard.

(3) Not later than 4 weeks after considering an application under *subsection (2)* and where it is satisfied that it is appropriate to do so, having regard to the matters specified in *subsection (3)* of *section 8*, the Court shall, as it thinks fit, refuse the application or make an order varying the agreement in such manner as it thinks proper.

(4) Where a party to a registered employment agreement wishes to apply to the Court to vary the agreement, and one or more parties to the agreement does not agree with the proposed variation, a party to the agreement may invoke the dispute resolution procedures contained in the agreement.

(5) Where the dispute resolution procedures have been invoked under *subsection (4)* and the parties to the registered employment agreement have failed to reach agreement, a party to the registered employment agreement may refer the dispute to the Workplace Relations Commission for conciliation.

(6) Following a referral of a dispute to the Workplace Relations Commission under *subsection (5)*, where the parties have failed to arrive at a settlement of the dispute through conciliation, the Commission shall, within 6 weeks of referral of the dispute, forward a report to the Court stating that it is satisfied that no further efforts on its part will advance the resolution of the dispute and, notwithstanding section 26 of the Act of 1990, the Commission shall request the Court to investigate the dispute.

(7) On receipt of a report under *subsection (6)*, the Court shall consider the request and shall hear all persons appearing to the Court to be interested and desiring to be heard, and the Court shall, within 6 weeks of receipt of the report, issue a recommendation to the parties to the registered employment agreement setting out its opinion on the merits of the dispute and the terms on which it should be settled.

(8) Where, 6 weeks after the date on which a recommendation under *subsection (7)* has issued, the dispute has not been resolved, a party to the agreement may apply to the Court to vary the agreement in the terms of the Court’s recommendation.

(9) The Court shall consider an application under *subsection (8)* and shall hear all persons appearing to the Court to be interested and desiring to be heard, and after

such consideration, where it is satisfied that it is appropriate to do so having regard to the matters specified in *subsection (3) of section 8*, the Court shall, within 6 weeks of receipt of the application, as it thinks fit, refuse the application or make an order varying the agreement in such manner as it thinks proper.

(10) Where a registered employment agreement provides that a party may withdraw from the agreement where the Court has made an order under *subsection (9)*, the Court shall where it has—

(a) made an order under that subsection, and

(b) received notice from a party to the agreement of that party's proposal to withdraw from the agreement,

cancel or amend the agreement as appropriate.

Cancellation of registration

10. (1) The registration of an employment agreement may be cancelled by the Court on the joint application of all parties to the agreement if the Court is satisfied that the consent of all such parties to its cancellation has been given voluntarily.

(2) Where a registered employment agreement does not provide for its duration, the Court may, after the lapse of 12 months from the date of registration, cancel the registration on the application, made after 6 months' notice to the Court, of all parties to the agreement.

(3)(a) Where a registered employment agreement is expressed to be for a specified period, it shall, if in force at the end of that period, and notwithstanding any provision that it shall cease to have effect at the expiration of such period, continue in force until its registration is cancelled in accordance with this section.

(b) The registration of an employment agreement continued in force under *paragraph (a)* may be cancelled by the Court on the application of any party to the agreement, made after 3 months' notice to the Court, and consented to by all parties to the agreement.

(4) Where a registered employment agreement is terminated by any party to the agreement in accordance with any provision contained in the agreement, the Court shall, on receiving notice of the termination, cancel the registration.

(5) The Court may cancel the registration of an employment agreement if it is satisfied, having regard to *subsection (3)(c) of section 8*, that a trade union who was a party to the agreement is no longer substantially representative of the workers concerned.

Adaptation of contracts of service consequential upon registration of employment agreement

11. (1) A registered employment agreement shall, so long as it continues to be registered, apply, for the purposes of this section, to every worker of the class, type or group to which it is expressed to apply, and the employer or employers to which it is expressed to apply.

(2) If a contract between a worker of a class, type or group to which a registered employment agreement applies and his or her employer provides for the payment of remuneration at a rate (in this subsection referred to as the "contract rate") less than the rate (in this subsection referred to as the "agreement rate") provided by such agreement and applicable to such worker, the contract shall, in respect of any period during which the agreement is registered, have effect as if the agreement rate were substituted for the contract rate.

(3) If a contract between a worker of a class, type or group to which a registered employment agreement applies and his or her employer provides for conditions of employment (in this subsection referred to as the "contract conditions") less favourable than the conditions (in this subsection referred to as the "agreement conditions")

fixed by the agreement and applicable to such worker, the contract shall, in respect of any period during which the agreement is registered, have effect as if the agreement conditions were substituted for the contract conditions.

Interpretation of registered employment agreements

12. (1) The Court may at any time, on the application of any person, give its decision on any question as to the interpretation of a registered employment agreement or its application to a particular person.

(2) A court of competent jurisdiction, in determining any question arising in proceedings before it as to the interpretation of a registered employment agreement or its application to a particular person, shall have regard to any decision of the Court on the said agreement referred to it in the course of the proceedings.

(3) If any question arises in proceedings before a court of competent jurisdiction as to the interpretation of a registered employment agreement or its application to a particular person, the court may, if it thinks proper, refer the question to the Court for its decision.

CHAPTER 3

Sectoral employment orders

Annotations

Editorial Notes:

- E5** Subcontracted posted workers provided with remedy for breach of sectoral employment order within meaning of chapter (27.07.2016) by *European Union (Posting of Workers) Regulations 2016* (S.I. No. 412 of 2016), reg. 9(1)(d).
- E6** Redress and appeal procedures for contraventions of sectoral employment orders under Chapter provided (1.10.2015) by *Workplace Relations Act 2015* (16/2015), ss. 41, 44 and sch. 5 part 2 item 11, sch. 6 part 1 para. 35 and sch. 6 part 2 item 35, S.I. No. 410 of 2015, as inserted (1.08.2015) by *Industrial Relations (Amendment) Act 2015* (27/2015), s. 24(d)(ii) and (e), S.I. No. 329 of 2015.

Definitions (Chapter 3)

13. In this Chapter—

“Act of 2000” means the National Minimum Wage Act 2000;

“economic sector” means a sector of the economy concerned with a specific economic activity requiring specific qualifications, skills or knowledge;

“overtime” means any hours worked in excess of normal working hours;

“remuneration” means basic pay and may include pay in excess of basic pay in respect of—

- (a) shift work,
- (b) piece work,
- (c) overtime,
- (d) unsocial hours worked,
- (e) hours worked on a Sunday, or
- (f) travelling time (when working away from base),

but shall not include remuneration paid by an employer to his or her spouse, civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, step-son, step-daughter, grandson, grand-daughter, brother, sister, half-brother or half-sister;

“sectoral employment order” has the meaning assigned to it by *section 17*.

Submission of request to Court

14. (1) Subject to *subsection (3)* —

- (a) a trade union of workers,
- (b) a trade union or an organisation of employers, or
- (c) a trade union of workers jointly with a trade union or an organisation of employers,

may request the Court to examine the terms and conditions relating to the remuneration and any sick pay scheme or pension scheme, of the workers of a particular class, type or group in the economic sector in respect of which the request is expressed to apply.

(2) A request under this section shall include confirmation, in such form and accompanied by such documentation as the Court may specify that—

- (a) where the request is made by a trade union of workers or jointly with the trade union of workers, the trade union of workers is substantially representative of the workers of the particular class, type or group in the economic sector in respect of which the request is expressed to apply, and
- (b) where the request is made by a trade union or an organisation of employers or jointly with a trade union or an organisation of employers, the trade union or organisation concerned is substantially representative of the employers of the workers specified in *paragraph (a)*.

(3) Where the Minister has made a sectoral employment order in relation to a class, type or group of workers in a particular economic sector, the Court shall not consider a request under *subsection (1)* in relation to the same class, type or group of workers in that sector, until at least 12 months after the date of the order, unless the Court is satisfied that exceptional and compelling circumstances exist which justify consideration of an earlier request.

(4) A request under *subsection (1)* shall be in a form prescribed by the Court.

Examination by Court

15. (1) Where the Court receives a request under *section 14* it shall not undertake an examination in accordance with this section unless it is satisfied that—

- (a) following consideration of any documentation submitted under *subsection (2) of section 14*—
 - (i) the trade union of workers is substantially representative of the workers of the particular class, type or group in the economic sector in respect of which the request is expressed to apply, and in satisfying itself in that regard, the Court shall take into consideration the number of workers in that class, type or group represented by the trade union of workers, and
 - (ii) where the request is made by a trade union or organisation of employers or jointly with a trade union or organisation of employers, the trade union or organisation concerned is substantially representative of the employers in the particular class, type or group in the economic sector in respect of which the request is expressed to apply, and in satisfying itself in that regard, the Court shall take into consideration the number of workers

employed in the particular class, type or group in the economic sector concerned by employers represented by the trade union or organisation of employers concerned,

- (b) the request is expressed to apply to all workers of the particular class, type or group and their employers in the economic sector in respect of which the request is expressed to apply,
- (c) it is a normal and desirable practice, or that it is expedient, to have separate terms and conditions relating to remuneration, sick pay schemes or pension schemes in respect of workers of the particular class, type or group in the economic sector in respect of which the request is expressed to apply, and
- (d) any recommendation is likely to promote harmonious relations between workers of the particular class, type or group and their employers in the economic sector in respect of which the request is expressed to apply.

(2) Prior to undertaking an examination under this section, the Court shall publish in such manner as, in the opinion of the Court, is best calculated to bring the request to the notice of all interested persons concerned, notice of its intention to undertake an examination under this section.

(3) A notice under *subsection (2)* shall invite representations to be made to the Court from any interested parties not later than 28 days after the date of the notice.

(4) Not earlier than 28 days after the date of a notice under *subsection (2)*, the Court may hear all parties appearing to the Court to be interested and desiring to be heard.

Court recommendation to Minister

16. (1) Subject to this section, the Court shall, where it considers it appropriate to do so, having heard all parties appearing to the Court to be interested and desiring to be heard, and having regard to the submissions concerned and the matters specified in *subsection (2)*, make a recommendation to the Minister.

(2) When making a recommendation under this section, the Court shall have regard to the following matters:

- (a) the potential impact on levels of employment and unemployment in the identified economic sector concerned;
- (b) the terms of any relevant national agreement relating to pay and conditions for the time being in existence;
- (c) the potential impact on competitiveness in the economic sector concerned;
- (d) the general level of remuneration in other economic sectors in which workers of the same class, type or group are employed;
- (e) that the sectoral employment order shall be binding on all workers and employers in the economic sector concerned.

(3) A recommendation under this section shall—

- (a) specify the class, type or group of workers and the economic sector in relation to which the recommendation shall apply,
- (b) be accompanied by a report on the circumstances surrounding the making of the recommendation, including confirmation that the Court has had regard to the matters set out in *subsection (2)*, and
- (c) be made not later than 6 weeks after a hearing under *section 15*.

(4) The Court shall not make a recommendation under this section unless it is satisfied that to do so—

- (a) would promote harmonious relations between workers and employers and assist in the avoidance of industrial unrest in the economic sector concerned, and
- (b) is reasonably necessary to—
 - (i) promote and preserve high standards of training and qualification, and
 - (ii) ensure fair and sustainable rates of remuneration,in the economic sector concerned.

(5) A recommendation under this section may provide for all or any of the following in respect of the workers of the class, type or group in the economic sector concerned:

- (a) a minimum hourly rate of basic pay that is greater than the minimum hourly rate of pay declared by order for the time being in force under the Act of 2000;
- (b) not more than 2 higher hourly rates of basic pay based on—
 - (i) length of service in the economic sector concerned, or
 - (ii) the attainment of recognised standards or skills;
- (c) minimum hourly rates of basic pay for persons who—
 - (i) have not attained the age of 18 years,
 - (ii) enter employment for the first time after attaining the age of 18 years,
 - (iii) having entered into employment before attaining the age of 18 years, continue in employment on attaining that age, or
 - (iv) have attained the age of 18 years and, during normal working hours, undergo a course of study or training prescribed by regulations made by the Minister under section 16 of the Act of 2000, reduced to the percentage set out in section 14, 15 or 16 of that Act for the category of worker concerned;
- (d) minimum hourly rates of basic pay for apprentices;
- (e) any pay in excess of basic pay in respect of shift work, piece work, overtime, unsocial hours worked, hours worked on a Sunday, or travelling time (when working away from base);
- (f) the requirements of a pension scheme, including a minimum daily rate of contribution to the scheme by a worker and an employer; and
- (g) the requirements of a sick pay scheme.

(6) A recommendation under this section shall include procedures that shall apply in relation to the resolution of a dispute concerning the terms of a sectoral employment order.

(7) Subject to *sections 14 and 15*, a recommendation under this section may provide for the amendment or cancellation of a recommendation previously made under this section and confirmed by the Minister by a sectoral employment order.

(8) In this section “apprentice” has the same meaning as it has in the Industrial Training Act 1967.

Sectoral employment orders

17. (1) Subject to *subsection (4)*, the Minister shall, not later than 6 weeks after receiving a recommendation of the Court under *section 16*, where he or she is satisfied, having regard to the report referred to in *section 16(3)(b)*, that the Court has complied with the provisions of this Chapter, accept the recommendation and by order confirm the terms of the recommendation, from such date, (on or after the date of the order) as the Minister shall specify in the order.

(2) An order under this section shall, in this Chapter, be referred to as a sectoral employment order.

(3) Where the Minister is not satisfied that the Court has complied with the provisions of this Chapter, he or she shall—

(a) refuse to make a sectoral employment order confirming the terms of the recommendation, and

(b) notify the Court in writing of his or her decision and the reasons for the decision.

(4) Where it is proposed to make an order under this section, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made unless a resolution approving of the draft has been passed by each such House.

Annotations**Editorial Notes:**

- E7 Power pursuant to subs. (1) exercised (19.10.2017) by *Sectoral Employment Order (Construction Sector) 2017* (S.I. No. 455 of 2017).

Review of sectoral employment orders

18. (1) Subject to *subsection (2)*, the Minister may request the Court to review the terms of a sectoral employment order.

(2) The Minister shall not make a request under *subsection (1)* —

(a) until at least 3 years after the date of a sectoral employment order in relation to which the request relates, or

(b) where a sectoral employment order has been amended, at least 3 years after the date on which the order was amended.

(3) Where the Minister makes a request under *subsection (1)*, the Court shall examine the terms and conditions of the class, type or group of workers in the economic sector concerned as if the request were a request under *section 14* and *sections 13 to 17* shall apply with the necessary modifications in relation to a request under *subsection (1)*.

Adaptation of contracts of service consequential upon sectoral employment orders

19. (1) A sectoral employment order shall apply, for the purposes of this section, to every worker of the class, type or group in the economic sector to which it is expressed to apply, and his or her employer, notwithstanding that such worker or employer was not a party to a request under *section 14*, or would not, apart from this subsection, be bound by the order.

(2) If a contract between a worker of a class, type or group to which a sectoral employment order applies and his or her employer provides for the payment of remuneration at a rate (in this subsection referred to as the “contract rate”) less than the rate (in this subsection referred to as the “order rate”) provided by such order and applicable to such worker, the contract shall, in respect of any period during which the order applies, have effect as if the order rate were substituted for the contract rate.

(3) If a contract between a worker of a class, type or group to which a sectoral employment order applies and his or her employer provides for conditions in relation to a pension scheme or a sick pay scheme (in this subsection referred to as the “contract conditions”) less favourable than the conditions (in this subsection referred to as the “order conditions”) fixed by the order and applicable to such worker, the contract shall, in respect of any period during which the order applies, have effect as if the order conditions were substituted for the contract conditions.

Prohibition on penalisation of worker by employer

20. (1) An employer shall not penalise or threaten penalisation of a worker for—

- (a) invoking any right conferred on him or her by this Chapter,
- (b) making a complaint to the Workplace Relations Commission that a provision of this Chapter has been contravened, or
- (c) giving notice of his or her intention to do either of the matters referred to in paragraph (a) or (b).

(2) *Subsection (1)* does not apply to the making of a complaint that is a protected disclosure within the meaning of the Protected Disclosures Act 2014.

(3) In proceedings under Part 4 of the Act of 2015 in relation to a complaint that *subsection (1)* has been contravened, it shall be presumed, until the contrary is proved, that the worker concerned has acted reasonably and in good faith in forming the opinion and making the communication concerned.

(4) If a penalisation of a worker, in contravention of *subsection (1)*, constitutes a dismissal of the worker within the meaning of the Unfair Dismissals Acts 1977 to 2015, relief may not be granted to the worker in respect of that penalisation both under *section 23* and under those Acts.

(5) In this section “penalisation” means any act or omission by an employer or a person acting on behalf of an employer that affects a worker to his or her detriment with respect to any term or condition of his or her employment, and, without prejudice to the generality of the foregoing, includes—

- (a) suspension, lay-off or dismissal (including a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2015), or the threat of suspension, lay-off or dismissal,
- (b) demotion or loss of opportunity for promotion,
- (c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- (d) imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty), and
- (e) coercion or intimidation.

Annotations

Editorial Notes:

- E8** Redress and appeal procedures for contraventions of subs. (1) provided (1.10.2015) by *Workplace Relations Act 2015* (16/2015), ss. 41, 44 and sch. 5 part 1 item 30, sch. 6 part 1 item 35, sch. 6 part 2 item 35, S.I. No. 410 of 2015, as inserted (1.08.2015) by *Industrial Relations (Amendment) Act 2015* (27/2015), s. 24(d)(i) and (e), S.I. No. 329 of 2015.

Exemption from obligation to pay remuneration provided by sectoral employment orders

21. (1) The Court may, in accordance with this section, exempt an employer from the obligation to pay the remuneration otherwise payable by the employer to a worker or workers in accordance with a sectoral employment order.

(2) An exemption under *subsection (1)* shall remain in force for such period, being not less than 3 months and not more than 24 months from the date on which the exemption is granted, as is specified in the exemption.

(3) (a) Subject to *paragraph (b)* the Court shall not grant an exemption to an employer under *subsection (1)* if the employer has been granted an exemption in respect of the same worker or workers under that subsection within the previous 5 years.

(b) Where an exemption under *subsection (1)* has been granted for a period of less than 24 months, an employer or employer's representative with the employer's consent may, prior to the date on which the exemption is due to expire, apply to the Court to extend the period of the exemption for an additional period.

(c) Where an application is made under *paragraph (b)* the Court shall not extend the period of the exemption for more than 24 months from the date on which the exemption was granted.

(d) Where the period of the exemption has been extended by the Court under *paragraph (b)*, the Court shall not further extend the period.

(4) An employer or employer's representative with the employer's consent may, in the manner and form approved by the Court, apply to the Court for an exemption under *subsection (1)*.

(5) An application under *subsection (4)* shall be accompanied by—

(a) a current tax clearance certificate under section 1095 (inserted by section 127 of the Finance Act 2002) of the Taxes Consolidation Act 1997 in respect of the employer concerned, and

(b) such information, particulars and documentation as the Court may reasonably require for the purpose of determining whether an exemption under *subsection (1)* should be granted, in particular such information in relation to the employer, his or her business and the potential impact of an exemption, as the Court may direct.

(6) On receiving an application under *subsection (4)*, the Court shall convene a hearing of parties to the application and the workers or their representatives and shall give its decision on the application in writing to the parties.

(7) Subject to *subsection (8)*, the Court shall not grant an exemption under *subsection (1)* unless it is satisfied that—

(a) where the employer makes an application he or she has entered into an agreement with—

(i) the majority of the workers,

(ii) the representative of the majority of the workers, or

(iii) a trade union representing the majority of the workers,

in respect of whom the exemption is sought, whereby the workers, the representative of the workers or the trade union, consents to the employer making the application, and to abide by any decision on the application that the Court may make, and

(b) the employer's business is experiencing severe financial difficulties.

(8) Notwithstanding *subsection (7)*, where the Court is not satisfied that the majority of the workers or their representative consents to an application under *paragraph (a)* of that subsection, the Court may grant an exemption under *subsection (1)*, provided the Court is satisfied that—

- (a) the employer has informed the workers concerned of the financial difficulties of the business and has attempted to come to an agreement with the workers, their representative or trade union in relation to a reduction of the remuneration provided by the sectoral employment order,
- (b) the employer is unable to maintain the terms of the sectoral employment order, and
- (c) were the employer compelled to comply with the terms of the sectoral employment order concerned there would be a substantial risk that—
 - (i) a significant number of the workers concerned would be laid off or made redundant, or
 - (ii) the sustainability of the employer's business would be significantly adversely affected.

(9) In considering whether to grant an exemption under *subsection (1)*, the Court shall have regard to the following:

- (a) whether, if an exemption was granted, it would have an adverse effect on employment levels and distort competition in the economic sector concerned to the detriment of employers not party to the application, who are also subject to the sectoral employment order concerned;
- (b) the long term sustainability of the employer's business, were such an exemption to be granted; and
- (c) any other matters the Court considers relevant.

(10) An exemption under *subsection (1)* shall specify:

- (a) the names and employment positions occupied by the workers to whom the exemption applies;
- (b) the duration of the exemption; and
- (c) the remuneration to be paid to the worker or workers during the period of the exemption and the worker or workers shall be entitled to be paid not less than that remuneration for the duration of the exemption.

(11) Notwithstanding anything in this section, an exemption under *subsection (1)* shall not specify an hourly rate of pay which is less than that declared by order for the time being in force under the Act of 2000.

(12) Where during the period of an exemption under this section a new worker replaces a worker to whom the exemption relates, the employer may pay the new worker the remuneration specified by the Court in respect of the former worker and shall, as soon as practicable, notify the Court in writing of the employment of the new worker.

(13) Where a contract between an employer and a worker specified in an exemption under *subsection (1)*, provides for the payment of remuneration at a rate higher than that provided by such exemption, the contract shall, in respect of any period during which the exemption is in force, have effect as if the remuneration provided for by such exemption and applicable to such worker were substituted for the remuneration provided for by the contract.

(14) The Court shall establish its own procedures for the hearing of applications, and in relation to incidental matters to be dealt with, under this section.

(15) The Court shall establish and maintain a register of all exemptions under this section and shall publish the register on the internet.

(16) No appeal shall lie from a decision of the Court under this section except to the High Court on a point of law.

CHAPTER 4

Miscellaneous

Records

22. (1) An employer, to whom a registered employment agreement or sectoral employment order applies, shall keep, at the premises or place where his or her worker works or, if the worker works at 2 or more premises or places, the premises or place from which the activities that the worker is employed to carry on are principally directed or controlled, such records as are necessary to show whether this Part is being complied with in relation to the worker and those records shall be retained by the employer for at least 3 years from the date of their making.

(2) An employer who, without reasonable cause, fails to comply with *subsection (1)* shall be guilty of an offence and shall be liable on summary conviction to a class C fine.

(3) Without prejudice to *subsection (2)*, where an employer fails to keep records under *subsection (1)* in respect of his or her compliance with a particular provision of this Part in relation to a worker, the onus of proving, in proceedings before the Workplace Relations Commission or the Labour Court, that the provision was complied with lies on the employer.

Decision of adjudication officer under section 41 of Act of 2015

23. (1) This section applies to a decision of an adjudication officer under section 41 of the Act of 2015 in relation to a complaint of a contravention of—

- (a) *subsection (1) of section 20*,
- (b) a registered employment agreement (within the meaning of *Chapter 2*), or
- (c) a sectoral employment order (within the meaning of *Chapter 3*).

(2) A decision of an adjudication officer to which this section applies shall do one or more of the following, namely—

- (a) declare that the complaint was or, as the case may be, was not well founded,
- (b) require the employer to comply with the provision in respect of which the complaint concerned relates and, for that purpose, require the employer to take a specified course of action, or
- (c) require the employer to pay to the worker compensation of such amount (if any) as the adjudication officer considers just and equitable having regard to all the circumstances, but not exceeding 104 weeks' remuneration in respect of the worker's employment calculated in accordance with regulations under section 17 of the Unfair Dismissals Act 1977,

and the references in the foregoing paragraphs to an employer shall be construed, in a case where ownership of the business of the employer changes after the contravention to which the complaint relates occurs, as references to the person who, by virtue of the change, becomes entitled to such ownership.

(3) A decision of the Court under section 44 of the Act of 2015, on appeal from a decision of an adjudication officer to which this section applies, shall affirm, vary or set aside the decision of the adjudication officer.

Annotations**Modifications (not altering text):**

- C2** References to “employee” and “employer” construed (27.07.2016) by *European Union (Posting of Workers) Regulations 2016* (S.I. No. 412 of 2016), reg. 9(3).

Presentation of complaint under Act of 2015

9. — ...

(3) References to employee and employer in— ...

(c) section 23(2) of the Industrial Relations (Amendment) Act 2015, and

...

shall, in so far as they relate to a complaint by a posted worker against a contractor under this Regulation, be construed as references to the posted worker and contractor, respectively.

...

Amendment of Act of 2015

24. The Act of 2015 is amended—

(a) in section 3 by the insertion of the following subsection after subsection (5):

“(5A) For the purpose of the operation of this Act, and to the extent only that this Act applies, in relation to *Part 2* of the *Industrial Relations (Amendment) Act 2015*, references in this Act to employee shall be construed as references to worker within the meaning of that Part.”,

(b) in section 41—

(i) by the insertion of the following subsection after subsection (3):

“(3A) An employer or a trade union representative of an employer affected by an agreement specified in paragraph 29 of Part 1 of Schedule 5 may present a complaint to the Director General that an employer affected by the agreement has contravened the agreement and, where a complaint is so presented, the Director General shall, subject to section 39, refer the complaint for adjudication by an adjudication officer.”,

and

(ii) by the insertion of the following subsection after subsection (18):

“(19) In this section, references to specified person for the purposes of a complaint in relation to a provision specified in—

(a) paragraph 29 or 30 of Part 1 of Schedule 5, or

(b) paragraph 11 of Part 2 of Schedule 5,

shall be construed as references to a trade union representative of the person entitled to present the complaint.”,

(c) in Part 2 of Schedule 1, by the insertion of the following paragraph after paragraph 18:

“19. *Part 2* of the *Industrial Relations (Amendment) Act 2015*”,

(d) in Schedule 5—

(i) in Part 1, by the insertion of the following paragraphs after paragraph 28:

“29. A registered employment agreement within the meaning of *Chapter 2 of Part 2 of the Industrial Relations (Amendment) Act 2015*

30. *Section 20(1) of the Industrial Relations (Amendment) Act 2015*”,

and

(ii) in Part 2, by the insertion of the following paragraph after paragraph 10:

“11. A sectoral employment order within the meaning of *Chapter 3 of Part 2 of the Industrial Relations (Amendment) Act 2015*”,

and

(e) in Schedule 6—

(i) in Part 1 (Acts of Oireachtas), by the insertion of the following paragraph after paragraph 34:

“35. *Section 23(2) of the Industrial Relations (Amendment) Act 2015*”,

and

(ii) in Part 2 (Acts of Oireachtas), by the insertion of the following paragraph after paragraph 34:

“35. *Section 23(3) of the Industrial Relations (Amendment) Act 2015*”.

PART 3

COLLECTIVE BARGAINING

Definitions (Part 3)

25. In this Part—

“Act of 2004” means the Industrial Relations (Miscellaneous Provisions) Act 2004;

“Principal Act” means the Industrial Relations (Amendment) Act 2001.

Amendment of section 1 of Principal Act

26. Section 1 of the Principal Act is amended, in subsection (1) —

(a) by the insertion of the following definition:

“‘collective bargaining’ shall be construed in accordance with section 1A;”,

and

(b) by the substitution of the following definition for the definition of “excepted body”:

“‘excepted body to which this Act applies’ shall be construed in accordance with section 1B;”.

Amendment of Principal Act

27. The Principal Act is amended by the insertion of the following sections after section 1:

“Collective bargaining

1A. For the purposes of this Act, ‘collective bargaining’ comprises voluntary engagements or negotiations between any employer or employers’ organisation on the one hand and a trade union of workers or excepted body to which

this Act applies on the other, with the object of reaching agreement regarding working conditions or terms of employment, or non-employment, of workers.

Excepted body to which this Act applies

1B. For the purposes of this Act, ‘excepted body to which this Act applies’ means a body that is independent and not under the domination and control of an employer or trade union of employers, all the members of which body are employed by the same employer and which carries on engagements or negotiations with the object of reaching agreement regarding the wages or other conditions of employment of its own members (but of no other employees).”.

Amendment of section 2 of Principal Act

28. Section 2 of the Principal Act is amended—

(a) in subsection (1) —

- (i) by the deletion of “or excepted body”,
 - (ii) by the insertion of “, subject to this Act,” after “the Court may”,
 - (iii) in paragraph (a), by the deletion of “negotiations”,
 - (iv) in paragraph (c), by the deletion of “or the excepted body”, and
 - (v) in paragraph (d), by the deletion of “or the excepted body”,
- and

(b) by the insertion of the following subsections after subsection (2):

“(3) The Court shall decline to conduct an investigation of a trade dispute under subsection (1) where it is satisfied that the number of workers who are party to the trade dispute concerned is such as to be insignificant having regard to the total number of workers employed by the employer concerned in the grade, group or category to which the trade dispute concerned refers.

(4) Where the Court has determined, for the purpose of subsection (3), that the number of workers who are party to the trade dispute concerned is such as not to be insignificant having regard to the total number of workers employed by the employer concerned in the grade, group or category to which the trade dispute concerned refers, the Court shall determine whether the number of the workers who are party to the trade dispute is such as to be insignificant having regard to the total number of workers in the larger related group referred to in subsection (5)(c).

(5) For the purposes of subsection (4) —

- (a) the Court shall consider whether the grade, group or category of worker to which the trade dispute refers is related to another grade, group or category of worker employed by the employer concerned,
- (b) where the Court is satisfied that the grade, group or category of worker to which the trade dispute refers is related to another grade, group or category of worker also employed by the employer concerned, the Court shall determine the total number of workers employed by the employer concerned in both—
 - (i) the grade, group or category to which the trade dispute concerned refers, and
 - (ii) such related grade, group or category of worker,

and

(c) the Court shall, having regard to the total number of workers established pursuant to paragraph (b) (in this section referred to as the 'larger related group'), determine, for the purposes of the determination under subsection (4), whether the number of workers who are party to the trade dispute is such as to be insignificant having regard to such total number of workers in the larger related group.

(6) Where, pursuant to subsection (4), the Court determines that the number of workers who are party to the trade dispute concerned is such as to be insignificant having regard to the total number of workers in the larger related group referred to in that subsection, the Court shall decline to conduct an investigation of the trade dispute concerned under subsection (1) unless it is satisfied that exceptional and compelling circumstances exist which justify the conducting of an investigation of the trade dispute concerned.

(7) Subject to subsections (8) and (9), the Court shall not consider a request referred to in subsection (1) in respect of a grade, group or category of worker to which the trade dispute concerned applies, where the Court has made a recommendation under section 5, or a determination under section 6, in respect of the same grade, group or category of worker and the same employer in the 18 months preceding the making of that request.

(8) Where—

(a) the Court made a recommendation under section 5 pursuant to a request under subsection (1),

(b) the recommendation referred to in paragraph (a) was implemented by the employer following its making, and

(c) at any time during a period of 18 months from the day on which the recommendation referred to in paragraph (a) was made, another request is made under subsection (1) by the same grade, group or category of worker,

notwithstanding subsection (7), the Court may investigate the trade dispute concerned if it is satisfied that following the implementation of such recommendation—

(i) the employer concerned has resiled from that implemented recommendation referred to in paragraph (b), or

(ii) there have been material and adverse changes to the totality of remuneration and conditions of employment of the grade, group or category of worker referred to in paragraph (c).

(9) Where—

(a) the Court made a determination under section 6 pursuant to a request under subsection (1),

(b) the determination referred to in paragraph (a) was complied with by the employer following its making,

(c) at any time during a period of 18 months from the day on which the determination referred to in paragraph (a) was made, another request is made under subsection (1) by the same grade, group or category of worker, and

(d) no application was made under section 10 in respect of such determination,

notwithstanding subsection (7), the Court may investigate the trade dispute concerned if it is satisfied that following compliance with such determination—

(i) the employer concerned has resiled from the determination referred to in paragraph (b), or

(ii) there have been material and adverse changes to the totality of remuneration and conditions of employment of the grade, group or category of worker referred to in paragraph (c).

(10) For the purposes of subsection (1) (a), where an employer asserts that it is the practice of the employer to engage in collective bargaining with an excepted body to which this Act applies, when determining if the excepted body concerned is an excepted body to which this Act applies in respect of the grade, group or category of worker concerned, the Court shall have regard to the establishment, functioning and administration of that excepted body and shall, for such purposes, take into account—

(a) the manner of the election of employees to the excepted body concerned,

(b) the frequency of elections of employees referred to in paragraph (a),

(c) any financing or resourcing of the excepted body concerned that exceeds minimum logistical support provided to it by or on behalf of the employer, and

(d) the length of time the excepted body concerned has been in existence and any prior collective bargaining between the employer and that excepted body.

(11) Where an employer asserts to the Court that it is the practice of the employer to engage in collective bargaining with an excepted body to which this Act applies in respect of the grade, group or category of worker concerned, the employer shall satisfy the Court that it is the practice of that employer to engage in collective bargaining with the excepted body concerned in respect of the grade, group or category of worker concerned.”.

**New section 2A
inserted into
Principal Act**

29. The Principal Act is amended by the insertion of the following section after section 2:

“Section 2: supplemental matters relating to number of members of trade union employed by employer

2A. (1) For the purposes of subsection (3) of section 2 in respect of establishing the number of workers who are party to the trade dispute, a statutory declaration made by the chief officer of the trade union which made the request under subsection (1) of section 2, specifying—

(a) the number of the members of that trade union who are in the employment of the employer concerned in the grade, group or category to which the trade dispute refers and who are party to the trade dispute, and

(b) the period of membership of such members in that trade union,

shall be admissible in evidence without further proof, unless the contrary is shown, of such numbers and such period.

(2) Where an employer seeks to have the matters specified in a statutory declaration made pursuant to subsection (1) examined—

(a) the employer may request the Court to satisfy itself that the matters specified in the statutory declaration are correct, and

- (b) the Court may, for the purposes of paragraph (a), examine the number of members of the trade union, specified in the statutory declaration as being in the employment of the employer concerned—
 - (i) in the grade, group or category to which the trade dispute refers, and
 - (ii) who are party to the trade dispute.
- (3) When performing its functions under subsection (2) the Court shall ensure that the identities of the members of the trade union referred to in paragraph (a) of subsection (1) remain confidential for the purposes of subsection (3) of section 2.
- (4) The Court shall, following the examination under subsection (2), inform the parties that it is satisfied, or as the case may be, is not satisfied, of the matters specified in paragraphs (a) and (b) of that subsection.
- (5) In this section ‘chief officer of the trade union’ includes the general secretary of the trade union, the general president of the trade union and any person charged with a general executive authority in respect of the trade union.”.

Amendment of section 5 of Principal Act

30. (1) Section 5 of the Principal Act is amended in subsection (1) by the substitution of “the totality of remuneration and conditions of employment” for “terms and conditions of employment”.

(2) Section 5 of the Principal Act is amended by the insertion of the following subsections after subsection (2):

“(3) The Court shall not make a recommendation providing for an improvement in the remuneration and conditions of employment of a grade, group or category of worker unless it is satisfied that the totality of the remuneration and conditions of employment of the workers concerned provides a lesser benefit to the workers concerned having regard to the totality of remuneration and conditions of employment of comparable workers employed in similar employments.

(4) When considering if the totality of remuneration and conditions of employment of a grade, group or category of worker provides a lesser benefit to the workers concerned having regard to the totality of remuneration and conditions of employment of comparable workers employed in similar employments, the Court shall have regard to—

- (a) the totality of the remuneration and conditions of employment of comparable workers employed in similar employments (whether such comparable workers are represented by a trade union of workers or are not represented by a trade union of workers), and
- (b) the comparability of skills, responsibilities, physical and mental effort required to perform the work in which the workers are engaged.

(5) For the purposes of paragraph (a) of subsection (4), the Court may have regard to those in similar employments of an associated employer outside the State.

(6) Where collective agreements concerning the grade, group or category of worker are commonplace in similar employments to the employment which is the subject of the trade dispute, the Court shall, in addition to other evidence presented by the parties, have due regard to the terms of such agreements for the time being in force.

(7) Where collective agreements concerning the grade, group or category of worker are not commonplace in similar employments to the employment which is the subject of the trade dispute, the Court shall have due regard to

all evidence presented by the parties whether by way of collective agreements or established, to the satisfaction of the Court, by other means.

- (8) The Court shall, for the purpose of making a recommendation, have regard to the effect such recommendation may have on the maintenance of employment and the long term sustainability of the business of the employer.”.

Amendment of section 6 of Principal Act

31. Section 6 of the Principal Act is amended—

- (a) in subsection (1) by the deletion of “or excepted body”,

- (b) in subsection (2) —

(i) by the substitution of “shall” for “may”, and

(ii) by the substitution of “the totality of remuneration and conditions of employment and may have regard to” for “terms and conditions of employment and to”,

and

- (c) by the insertion of the following subsections after subsection (3):

“(4) Where, pursuant to paragraph (b) of subsection (3), the Court has decided that the recommendation concerned, or a part of that recommendation, was grounded on unsound or incomplete information, the determination shall be made in accordance with subsections (5) to (9).

(5) The Court shall not make a determination providing for an improvement in the remuneration, terms and conditions of employment of a grade, group or category of worker unless it is satisfied that the totality of remuneration and conditions of employment of the workers concerned provides a lesser benefit to the workers concerned having regard to the totality of remuneration and conditions of employment of comparable workers employed in similar employments.

(6) For the purposes of subsection (5) and the consideration of whether the totality of remuneration and conditions of employment of a grade, group or category of worker provides a lesser benefit to the workers concerned having regard to the totality of remuneration and conditions of employment of comparable workers employed in similar employments, subsections (4) and (5) of section 5 shall apply.

(7) Where collective agreements concerning the grade, group or category of worker are commonplace in similar employments to the employment which is the subject of the dispute, the Court shall, in addition to other evidence presented by the parties, have due regard to the terms of such agreements for the time being in force.

(8) Where collective agreements concerning the grade, group or category of worker are not commonplace in similar employments to the employment which is the subject of the trade dispute, the Court shall have due regard to all evidence presented by the parties whether by way of collective agreements or established, to the satisfaction of the Court, by other means.

(9) The Court shall, for the purpose of making a determination, have regard to the effect such determination may have on the maintenance of employment and the long term sustainability of the business of the employer.”.

- Amendment of section 8 of Principal Act** 32. Section 8 of the Principal Act is amended in subsection (2), by the deletion of “or excepted body”.
- Amendment of section 10 of Principal Act** 33. Section 10 of the Principal Act is amended in subsection (1), by the deletion of “or excepted body”.
- New section 11A inserted into Principal Act** 34. The Principal Act is amended by the insertion of the following section after section 11:
- “Interim relief pending determination of claim for unfair dismissal**
- 11A.** (1) Where a worker has made a claim under paragraph (aa) of section 6(2) of the Unfair Dismissals Act 1977, he or she may apply to the Circuit Court for interim relief pending determination of that claim.
- (2) Schedule 1 (other than paragraph 1(1)) to the Protected Disclosures Act 2014 shall apply to an application under subsection (1) with the following modifications:
- (a) the references to ‘employee’ shall be construed as references to ‘worker or employee’;
- (b) in paragraph 2(1) the reference to ‘the employee having made a protected disclosure’ shall be construed as a reference to ‘the grounds specified in paragraph (aa) of section 6(2) of the Unfair Dismissals Act 1977’.
- (3) An application to the Circuit Court under this section shall be made to the Circuit Court sitting in the circuit in which the employer concerned carries on his or her business.”.
- Amendment of section 1 of Act of 2004** 35. Section 1 of the Act of 2004 is amended by the deletion of the definition of “excepted body”.
- Amendment of section 8 of Act of 2004** 36. Section 8 of the Act of 2004 is amended—
- (a) in subsection (1), by the deletion of “negotiations”,
- (b) in paragraph (a) of subsection (1), by the deletion of “or an excepted body”,
- (c) in paragraph (b) of subsection (1), by the deletion of “or excepted body”,
- (d) in paragraph (c) of subsection (1), by the deletion of—
- (i) “or excepted body”, and
- (ii) “or an excepted body”,
- (e) in paragraph (d) of subsection (1), by the deletion of “or an excepted body”,
- (f) in paragraph (c) of subsection (2), by the deletion of “or an excepted body”,
- (g) in paragraph (i) of subsection (2), by the deletion of “or an excepted body”,
- (h) in paragraph (ii) of subsection (2), by the deletion of “or an excepted body”, and
- (i) by the insertion of the following subsection after subsection (4):

“(5) In this section, ‘collective bargaining’ has the meaning assigned to it by section 1A of the Act of 2001 and that section shall apply to this section in the same manner as it applies to that Act.”.

Amendment of section 9 of Act of 2004 37. Section 9 of the Act of 2004 is amended in subsection (1) by the deletion of “, an excepted body”.

Amendment of section 13 of Act of 2004 38. Section 13 of the Act of 2004 is amended in paragraph (b) of subsection (1) by the substitution of “or any trade union” for “, any trade union or excepted body”.

Amendment of section 6 of Unfair Dismissals Act 1977 39. Section 6 of the Unfair Dismissals Act 1977 is amended in subsection (2) by the insertion of the following paragraph after paragraph (a) :

“(aa) without prejudice to paragraph (a), the employee—

(i) being a member of a trade union which made a request referred to in section 2(1) of the Industrial Relations (Amendment) Act 2001,

(ii) being in the employment of the employer concerned in the grade, group or category to which the trade dispute, referred to in that section, relates, and

(iii) having provided evidence or other information or assistance to any person, for the purposes of the examination of that request by the Labour Court or in respect of an investigation made by it under that Act pursuant to that request,”.

PART 4

MISCELLANEOUS AMENDMENTS

Amendment of section 3 of Act of 1946 40. Section 3 of the Act of 1946 is amended in the definition of “trade dispute” by the insertion of “and includes any such dispute or difference between employers and workers where the employment has ceased,” after “of any person”.

Making of establishment orders 41. The Act of 1946 is amended by the substitution of the following section for section 39:

“39. (1) Where the Court has held, in pursuance of section 38 of this Act, an inquiry into an application for an establishment order, the Court may, subject to section 37 of this Act, if it is satisfied that to do so would promote harmonious industrial relations between workers and employers and assist in the avoidance of industrial unrest, make a recommendation to the Minister in either the terms of the draft establishment order prepared in accordance with section 38 or with such modifications of those terms as it considers necessary.

(2) Where the Court makes a recommendation under subsection (1), it shall forward a copy of the recommendation to the Minister.

(3) As soon as practicable after receipt of a copy of a recommendation under subsection (2), the Minister shall, where he or she is satisfied that subsection (1) has been complied with, and where he or she considers it appropriate to do so, make an order in the terms of the recommendation.

(4) Where the Minister is not satisfied that subsection (1) has been complied with, or where he or she considers that it is not appropriate to make an order in the terms of the recommendation, he or she shall—

- (a) refuse to make an order in the terms of the recommendation, and
 - (b) notify the Court in writing of his or her decision and the reasons for the decision.
- (5) An order under subsection (3) may contain such incidental, supplementary and consequential provisions as the Minister considers necessary or expedient for the purposes of the order including, where the order abolishes a joint labour committee pursuant to a recommendation of the Court, the revocation of an employment regulation order made pursuant to proposals made by the joint labour committee concerned.
- (6) Every order under subsection (3) 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 is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.”.

Amendment of section 40 of Act of 1946

42. Section 40 of the Act of 1946 is amended by the substitution of “may make a recommendation to the Minister to abolish the joint labour committee established by such establishment order or amend such establishment order, and the provisions of section 38 and section 39 (amended by *section 41* of the *Industrial Relations (Amendment) Act 2015*) of this Act shall apply in relation to such application as if the application were an application under section 36.” for “may by order abolish the joint labour committee established by such establishment order or amend such establishment order, and the provisions of section 38 and section 39 of this Act shall apply in relation to such application and to the order (if any) made under this section as if the application were an application under section 38 and the order were an establishment order.”.

Amendment of section 1 of Industrial Relations Act 1976

43. Section 1 of the Industrial Relations Act 1976 is amended by the substitution of the following definition for the definition of “agriculture”:

“ ‘agriculture’ means—

- (a) (i) the production of animals, including the production of meat and other animal produce intended for human consumption,
 - (ii) the sorting and packing of meat and other animal produce, and
 - (iii) the production, sorting, and packing of crops, including fruit and vegetables, intended for human or animal consumption,
- on farm land (within the meaning of section 664 of the Taxes Consolidation Act 1997), and
- (b) horticulture, including market gardening, garden nurseries and nursery grounds;”.

Amendment of section 23 of Act of 1990

44. The Act of 1990 is amended in subsection (1) of section 23—

- (a) by the insertion of “(or, where the employment has ceased, worked under)” after “has entered into or works under”, and
- (b) by the insertion of the following paragraph after paragraph (c):
 - “(ca) a teacher employed by an education and training board.”.

Time limit in relation to trade dispute where retired worker is party to dispute

45. The Act of 1990 is amended by the insertion of the following section after section 26:

“26A. (1) Notwithstanding any other provision of this or any other enactment, but subject to subsection (2), an adjudication officer or the Court shall not investigate a trade dispute to which a worker who has ceased to be employed by reason of his or her retirement is a party unless—

(a) the dispute was referred to the Commission for conciliation within a period of 6 months from the date on which the worker’s employment ceased, or the date on which the event to which the dispute relates occurred, whichever is the earlier, or

(b) the dispute was referred to an adjudication officer or, as the case may be, the Court within the period referred to in paragraph (a).

(2) Notwithstanding subsection (1), an adjudication officer or, as the case may be, the Court may extend the period referred to in that subsection by a further period not exceeding 6 months where the adjudication officer or the Court is satisfied that the failure to refer the dispute within the period referred to in subsection (1) was due to reasonable cause.

(3) The Commission or the Court shall not investigate a trade dispute to which a worker referred to in subsection (1) is a party where the dispute is subject to investigation by the Pensions Ombudsman.”.

Amendment of Agricultural Workers Joint Labour Committee Establishment Order 1976

46. The Agricultural Workers Joint Labour Committee Establishment Order 1976 (S.I. No. 198 of 1976) is amended by the substitution of—

“AND WHEREAS by the said section 1 (amended by *section 43* of the *Industrial Relations (Amendment) Act 2015*) of the Act of 1976, ‘agriculture’ means—

(a) (i) the production of animals, including the production of meat and other animal produce intended for human consumption,

(ii) the sorting and packing of meat and other animal produce, and

(iii) the production, sorting, and packing of crops, including fruit and vegetables, intended for human or animal consumption,

on farm land (within the meaning of section 664 of the Taxes Consolidation Act 1997), and

(b) horticulture, including market gardening, garden nurseries and nursery grounds;”

for “AND WHEREAS by the said section 1 of the Act of 1976 agriculture is defined as including horticulture, the production of any consumable produce which is grown for sale or for consumption or other use, dairy farming, poultry farming, the use of land as grazing, meadow or pasture land or orchard or osier land or woodland, or for market gardens, private gardens, nursery grounds or sports grounds, the caring for or the rearing or training of animals and any other incidental activities connected with agriculture;”.