An Bille Caidrimh Thionscail (Leasú), 2015
Industrial Relations (Amendment) Bill 2015

Meabhrán Mínitheach
Explanatory Memorandum

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INDUSTRIAL RELATIONS (AMENDMENT) BILL 2015

EXPLANATORY AND FINANCIAL MEMORANDUM

Introduction

The main purpose of the Bill is twofold:

Firstly to provide (1) for the reintroduction of a mechanism for the registration of employment agreements between an employer or employers and trade unions governing remuneration and conditions of employment in individual enterprises, and (2) to provide for a new statutory framework for establishing minimum rates of remuneration terms and conditions of employment for a specified type, class or group of workers, particularly in the context of transnational provision of services and promoting harmonious relations between workers — in effect a framework to replace the former sectoral Registered Employment Agreements. The relevant provisions are contained in Part 2 of the Bill.

Secondly, to put in place the legislative amendments to the Industrial Relations Acts 2001 and 2004 required to give effect to the Programme for Government commitment to reform the current law on employees' right to engage in collective bargaining (the Industrial Relations (Amendment) Act 2001), so as to ensure compliance by the State with recent judgments of the European Court of Human Rights (ECHR). Furthermore, the Statement of Government Priorities 2014-2016 prioritised the enactment of the Collective Bargaining legislation as approved by Government. The relevant provisions are contained in Part 3 of the Bill.

Provisions of Bill

PART 1

Preliminary and General

Section 1 includes provisions on short title, citation, constructive provisions and commencement for the Bill.

Section 2 provides for a definition of ''Minister'' in the Bill.

Section 3 provides for standard provision in relation to expenses incurred in the administration of the Act.

PART 2

Registered Employment Agreements (REAs) and Sectoral Employment Orders

Part 2 provides for

1. the reintroduction of a legislative framework governing the registration of employment agreements between individual enterprises or a number of such enterprises and trade unions that will be binding only on the parties to the agreement, and

2. a revised legislative framework (Sectoral Employment Orders) to address the issues arising as a result of the absence of any sectoral wage setting mechanism following the 2013 Supreme Court ruling in the *McGowan* case.

Chapter 1 Definitions

Section 4 provides for definitions of key terms to be used throughout Part 2.

Chapter 2 Registered employment agreements

Section 5 provides for definitions of key terms to be used throughout Chapter 2 of Part 2 of the Bill.

Section 6 provides for the Register of Employment Agreements to be maintained by the Labour Court, including the provision that the details of registration, cancellation and variation of REAs will be published on the internet.

Section 7 provides that where an application is made to the Court to register an employment agreement, the Court shall register the agreement in the register only where it is satisfied that there is all party agreement that it should be registered, and it is satisfied that it is desirable or expedient to have a separate agreement for the class, type or group of workers covered by the agreement. Similarly, the Court shall only register the agreement where it is satisfied that the trade union of workers is, or trade unions of workers are substantially representative of such workers, and that the agreement provides that, if a trade dispute occurs between workers to whom the agreement relates and their employer, industrial action or lock-out shall not take place until the dispute has been submitted for settlement by negotiation in the manner specified in the agreement.

In addition, the Court shall not register any such agreement unless it is satisfied that registration of the agreement is likely to promote harmonious relations between workers and their employer, and the avoidance of industrial unrest.

An REA will 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.

Section 8 provides for the variation of registered employment agreements in certain circumstances where all parties to the agreement so agree, or, where one party wishes to vary the agreement but the other does not, the Labour Court, after the exhaustion of the dispute provisions (local discussions, Labour Relations Commission conciliation, Labour Court recommendation), may refuse or grant such a variation as the Court deems appropriate.

In addition, provision is made for a party to withdraw from an agreement following any such variation where the agreement provides for a party to do so in such circumstances.

Section 9 provides that the Court may cancel the registration of an employment agreement where all parties so request or where the registration of an employment agreement has continued after the finishing date of the agreement on the application of any party, made after three months' notice to the Court, and consented to by all parties (i.e. to ensure all parties are aware that a termination date is imminent). It may also cancel the registration where it is satisfied that the trade union of workers, or trade unions of workers, who were party to the agreement are no longer substantially representative of the workers concerned.

Section 10 provides for the incorporation of the terms of any REA in respect of remuneration or conditions of employment to be incorporated in a worker's contract of employment.

Section 11 provides that the Labour Court may, where asked, give its decision on any question as to the interpretation of a registered employment agreement or its application. In addition a court of law, in determining any question arising in proceedings before it as to the interpretation of a registered employment agreement or its application, shall have regard to any decision of the Court on the agreement, or it may, if it thinks proper, refer the question to the Labour Court for its decision.

Chapter 3 Sectoral Employment Orders

Section 12 provides for definitions of key terms to be used in Chapter 3 (Sectoral Employment Orders) of Part 2 of the Bill, including the definition of ''remuneration''.

Section 13 provides that a trade union of workers or a trade union or organisation of employers which the Labour Court is satisfied is substantially representative of workers or employers of a particular class, type or group of workers in a particular economic sector may, separately or jointly, request the Labour Court to examine the terms and conditions relating to the remuneration and the sick pay or pension of workers of that particular class, type or group and request the Court to make a recommendation to the Minister on the matter. The Labour Court may not consider a request where the Minister has made an employment order for that sector in the previous 12 months, unless there are exceptional and compelling reasons.

Section 14 provides that the Labour Court shall not undertake an examination unless it is satisfied that the trade union of workers or trade union or organisation of employers are substantially representative of workers in the economic sector and in satisfying itself in this regard, the Court will take into account the number of workers represented by the trade union and the number of workers employed in the sector by employers represented by the trade union or organisation of employers concerned.

Section 14 also provides that the Court will have to be satisfied that it is normal and desirable practice to have separate rates of remuneration and sick pay/pension provisions in the sector concerned and any recommendation is likely to promote harmonious relations in the sector.

Section 15 provides the necessary guidance to the Labour Court in terms of the principles and policies that it will be required to take into account before making a recommendation to the Minister, including the requirement to ensure that the recommendation would promote harmonious relations, promote and preserve high standards of training and qualifications and ensure fair and sustainable rates of remuneration in the sector.

Section 15 also provides that the recommendation by the Court may provide for:—

- a minimum hourly rate of pay in excess of the National Minimum Wage;
- not more than 2 higher hourly rates of basic pay based on length of service in the sector or enterprise concerned, or the attainment of recognised standards or skills in the sector concerned; and
- minimum rates of pay in respect of young workers lower than that of an experienced adult worker, as provided for and in accordance with, the relevant percentages set out in the National Minimum Wage Act.

The recommendation may include a minimum rate of remuneration for apprentices, any pay in excess of basic pay in respect of shift work, piece work, overtime, unsocial hours worked or travelling time and minimum rates of contributions by employers and workers to a pension scheme.

A recommendation will include procedures to apply in case of a dispute concerning terms of a sectoral employment order.

Section 16 provides for the submission by the Labour Court to, and consideration by the Minister, of the Labour Court recommendation. The Minister shall refuse to make such an Order if not satisfied that the process has been complied with, otherwise the Minister shall make the Order. The standard provisions dealing with the laying of orders before the Oireachtas are proposed.

Section 17 provides that if an order has not been amended or revoked within 3 years, the Minister may request the Labour Court to undertake a review of the terms and conditions of the previous order.

Section 18 provides that a sectoral employment order shall apply to all workers in the relevant sector, irrespective of whether the worker and his or her employer were party to the request to the Labour Court and for the incorporation of the terms of any sectoral employment order in a worker's contract of employment.

Section 19 provides for anti-penalisation measures to protect a worker who invokes any right conferred on him or her by the Act or takes other specified actions under the Act.

Section 20 provides for a mechanism to allow an employer, experiencing financial difficulties, apply to the Labour Court for a temporary derogation from the requirement to pay the remuneration provided for by order.

PART 3

To Amend and Extend the Industrial Relations (Amendment) Act 2001 and the Industrial Relations (Miscellaneous Provisions) Act 2004 and to provide interim relief for certain persons

Section 21: Interpretation

Section 21 defines the Principal Act as meaning the Industrial Relations (Amendment) Act 2001 and the ''Act of 2004'' as meaning the Industrial Relations (Miscellaneous Provisions) Act 2004.

Section 22: Amendment of section 1 of Principal Act

Section 22 amends the Principal Act to provide for the insertion of a number of relevant definitions in relation to ''collective bargaining'' and ''excepted body''.

Section 23: Insertion of New Provisions into section 1 of the Principal Act

Section 3 amends the Principal Act by the insertion of definitions of ''Collective Bargaining'' and ''Excepted Body''. These definitions apply only to the Principal Act and have no meaning in terms of other legislation.

Section 24: Amendment of Section 2 of the Principal Act

Section 24 amends the Principal Act to remove the right of access of an excepted body under section 2(1) of the 2001 Act. The provision that an excepted body may bring a claim before the Labour Court is somewhat incongruous. Since the decision of the Supreme Court in Iarnród Éireann v Holbrooke & Ors [2001] E.L.R. 65 it is clear that a body can only be an excepted body within the meaning of the Trade Union Act 1941, as amended, if it actually conducts consensual negotiations with an employer. Hence, there are no conceivable circumstances in which an excepted body could satisfy the requirement of s.2(1)(a) of the Act (that it is not the practice of the employer to engage in collective bargaining negotiations).

A consequential amendment to section 2(1)(*a*), removing the word ''negotiations'' from the term ''collective bargaining negotiations'', is required in light of the revised definition of collective bargaining under section 3 of this Bill.

Section 24 also amends the Principal Act to provide additional issues that the Labour Court must consider in determining the question as to whether an employer engages in collective bargaining with his/her workers before embarking on a full investigation.

In this regard, it is recognised that the processes under this legislation are not appropriate to disputes involving an insignificant number of workers. Section 24 inserts new subsections (3), (4), (5) and (6) into Section 2 of the Principal Act which balance the need to avoid the possibility of the creation of artificial grades, groups or categories designed to subvert the intention of the Act while at the same time ensuring a barrier to access for all reasonable cases does not result.

In this regard, the Principal Act is amended to provide that the Court shall decline to conduct an investigation of a trade dispute where it is satisfied that the number of workers party to the trade dispute is such as to be insignificant both in relation to the grade, group or category of workers concerned or where the grade, group or category of worker to which the trade disputes refers is itself part of a larger related grade, group or category of workers unless there are exceptional and compelling reasons that justify the conducting of an investigation of the trade dispute concerned.

Section 24 also amends the Principal Act by inserting new subsections (7), (8) and (9) into Section 2 of the Principal Act to ensure that the same or a different trade union cannot process claims for the same workers on an ongoing basis. Specifically, it provides that, other than in exceptional circumstances, (where the employer has resiled from a previously implemented Labour Court recommendation or determination complied with, or where there has been materially adverse changes to terms and conditions), the

Labour Court shall not admit a request by a grade, group, or category of worker to which the trade disputes refers where the Court has made a recommendation or determination in relation to the same grade, group, or category of worker in respect of the same employer in the previous 18 months.

Section 24 amends the Principal Act by inserting a new subsection (10) into Section 2 to give practical effect to the principle of independence of an ''excepted body'' as established in Section 3. Specifically, it provides guidance to the Labour Court as to the criteria it should take into account in determining whether an excepted body is engaged in collective bargaining for the purposes of the Act and is genuinely independent of the employer in the sense that one is not controlled by the other.

Section 24 also amends the Principal Act by inserting a new subsection (11) into Section 2 to provide that where an employer asserts to the Labour Court that it is the practice of the employer to engage in collective bargaining with an excepted body in respect of the grade, group or category of workers concerned, it will be a matter for the employer to satisfy the Labour Court that this is the case.

Section 25: Insertion of New Section 2A into Principal Act

Section 25 inserts a new section 2A after Section 2 of the Principal Act to provide for supplemental matters relating to members of the trade union concerned employed by the employer concerned.

In this regard, it has been accepted by Government as a matter of policy that it would be preferable for the workers involved in a dispute under the 2001 Act not to be required to make themselves known to the employer early in the process if possible, to avoid any potential for victimisation. For this reason, the section provides that a statutory declaration made by the chief officer of the trade unions concerned, setting out the number of its members and period of membership in the grade, group, or category to which the trade dispute refers and who are party to the trade dispute, shall be admissible in evidence without further proof unless the contrary is shown.

Where the employer requests that the matters specified in the declaration be examined, the Labour Court shall satisfy itself that the matters specified are correct.

Section 26: Amendment of section 5 of the Principal Act

Section 26 amends section 5(1) of the Principal Act to substitute the term ''terms and conditions of employment'' with ''the totality of remuneration and conditions of employment''. This is required to ensure that pay and conditions in their totality are examined by the Labour Court.

Section 26 makes provision for a new section 5(3) of the Principal Act that states that the Labour Court shall not make a recommendation providing for an improvement in the remuneration and conditions of employment of a grade, group or category of workers 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.

This provision is required as the Principal Act, as it stands, provides no guidance to the Labour Court on the factors that should

be taken into account in formulating a recommendation or determination under the Act.

Section 26 inserts sections 5(4)-(8) to provide guidance to the Labour Court, in the context of considering whether to make a recommendation on the dispute, as to the procedures to follow in assessing whether 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.

Specifically, these state that 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,

and, in this regard, the Court may have regard to those of similar employments of an associated employer outside the State.

In addition, the amendment provides that 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. 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 by other means.

Finally, the amendment provides that 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 sustainability of the business of the employer in the long-term.

Section 27: Amendment of section 6 of the Principal Act

Section 27 amends section 6(1) of the Principal Act by the deletion of ''or excepted body'' in line with the amendment in section 24.

Section 27 amends section 6(2) of the Principal Act by the substitution of ''shall'' for ''may'' to provide clear guidance to the Labour Court under that section and is consistent with the wording of the amendment in section 26.

Section 27 amends section 6(2) of the Principal Act by the substitution of ''terms and conditions of employment'' with ''the totality of remuneration and conditions of employment'' in line with the amendment in section 26.

Section 27 also amends section 6 of the Principal Act by the insertion of subsections (4)-(9) after subsection (3) of the Principal Act to provide guidance to the Labour Court when considering the issuing of a determination where a recommendation has not been accepted or where the employer has resiled from the implementation of a previously accepted recommendation. It mirrors the relevant provisions in section 26.

Section 28: Amendment of section 8 of the Principal Act

Section 28 amends the Principal Act by the deletion of ''or excepted body'' in line with the amendment in section 24.

Section 29: Amendment of section 10 of the Principal Act

Section 29 amends the Principal Act by the deletion of ''or excepted body'' in line with the amendment in section 24.

Section 30: Insertion of new section 11A into Principal Act

Section 30 amends the Principal Act by the insertion of a new section 11A to provide interim relief pending determination of any claim for unfair dismissal arising from a member of the trade union involved and having provided evidence or information or assistance for the purposes of the examination or investigation made by the Labour Court under section 2(1) of the Principal Act. This section should be read with section 15 which makes the appropriate amendment to section 6 of the Unfair Dismissals Act, 1977.

This provision is required to give effect to the Government decision to provide enhanced protection by way of allowing interim relief to be applied for in the Circuit Court in circumstances where a dismissal is being challenged on the grounds of unfairness arising from an individual believing that he/she is being victimised as a result of being directly involved in the investigation of the trade dispute by the Labour Court under section 2(1) of the Principal Act.

The terms ''worker'' and ''employee'' are given the same meaning to ensure consistency between the two Acts.

Section 31: Amendment of section 1 of Act of 2004

Section 31 amends the Act of 2004 by the deletion of the definition of ''excepted body'' in line with the amendment in section 24.

Section 32: Amendment of section 8 of Act of 2004

Section 32 amends section 8 of the Act of 2004 Act by the deletion of ''or excepted body'' or ''or an excepted body'' where these terms occur in line with the amendment in section 24, by the deletion of ''negotiations'' in subsection (1) in line with the amendment in section 24 and by the insertion after subsection (4) of a new subsection (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.'' . The latter is required to ensure consistency between the Principal Act and the Act of 2004.

Section 33: Amendment of section 9 of Act of 2004

Section 33 amends the Act of 2004 by the deletion of ''or excepted body'' in line with the amendment in section 24.

Section 34: Amendment of section 13 of Act of 2004

Section 34 amends the Act of 2004 by the substitution of paragraph (b) of subsection (1) of ''or any trade union'' for '', any trade union or excepted body'' in line with the amendment in section 24.

Section 35: Amendment of Unfair Dismissals Act 1977

Section 35 amends section 6(2) of the Unfair Dismissals Act 1977 to provide protection from victimisation through dismissal by their employer for both workers who are members of trade union involved in the dispute and for workers who are not members of the trade union involved in the trade dispute with the employer concerned.

This protection applies where the person is victimised through dismissal for being a member of the trade union involved and having provided evidence or information or assistance for the purposes of the examination or investigation made by the Labour Court under section 2(1) of the Principal Act. It also provides such protection for non-members of trade unions where the person is victimised through dismissal for having provided evidence or information or assistance for the purposes of the examination or investigation made by the Labour Court under section 2(1) of the Principal Act.

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