



Number 4 of 2004

**INDUSTRIAL RELATIONS (MISCELLANEOUS
PROVISIONS) ACT 2004**

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**INDUSTRIAL RELATIONS (MISCELLANEOUS
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AN ACT TO MAKE FURTHER AND BETTER PROVISION
FOR PROMOTING HARMONIOUS RELATIONS
BETWEEN WORKERS AND EMPLOYERS, TO AMEND
AND EXTEND THE INDUSTRIAL RELATIONS ACTS
1946 TO 2001, TO AMEND THE PROTECTION OF
EMPLOYEES (EMPLOYERS' INSOLVENCY) ACT 1984,
AND TO PROVIDE FOR RELATED MATTERS.

[9th March 2004]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act—

Interpretation.

“Act of 2001” means the Industrial Relations (Amendment) Act 2001;

“Court” means the Labour Court;

“employee” has the same meaning as “worker” has in section 23 of the Industrial Relations Act 1990;

“excepted body” means an excepted body within the meaning of section 6 of the Trade Union Act 1941 (as amended by the Trade Union Act 1942).

(2) In this Act—

- (a) a reference to a section is to a section of this Act unless it is indicated that a reference to some other enactment is intended,
- (b) a reference to a subsection is to a subsection of the provision in which the reference occurs unless it is indicated that a reference to some other provision is intended, and

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S.1 (c) a reference to another enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

Amendment of section 2 of Act of 2001. **2.**—Section 2 of the Act of 2001 is amended by substituting the following for paragraphs (a) and (b) of subsection (1):

“(a) it is not the practice of the employer to engage in collective bargaining negotiations in respect of the grade, group or category of workers who are party to the trade dispute and the internal dispute resolution procedures (if any) normally used by the parties concerned have failed to resolve the dispute,

(b) either—

(i) the employer has failed to observe—

(I) a provision of the Code of Practice on Voluntary Dispute Resolution under section 42 of the Industrial Relations Act 1990 specifying the period of time for the doing of any thing (or such a provision of any code of practice amending or replacing that code), or

(II) any agreement by the parties extending that period of time,

or

(ii) the dispute having been referred to the Commission for resolution in accordance with the provisions of such code, no further efforts on the part of the Commission will, in the opinion of the Commission, advance the resolution of the dispute and the Court has received a report from the Commission to that effect.”.

Amendment of section 3 of Act of 2001. **3.**—The Act of 2001 is amended by substituting the following for section 3:

“Hearing as to whether requirements of section 2 have been met.

3.—Any question as to whether the requirements specified in section 2 have been met may, as the Court considers appropriate, be determined by the Court either by way of a hearing preliminary to the Court’s investigation under that section or as part of that investigation.”.

Amendment of section 10 of Act of 2001. **4.**—The Act of 2001 is amended by substituting the following for section 10:

“Enforcement of determination by civil proceedings.

10.—(1) Where an employer fails to comply with the terms of a determination under section 6 within the period specified in the determination for those terms to be complied with (or, if no such period is so specified, as soon as may be after the determination is communicated to the parties) a trade union or excepted body may make an application under this section to the Circuit Court for an order under subsection (2).

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(2) On application being made to it in that behalf, the Circuit Court shall, without hearing the employer or any evidence (other than in relation to the matters referred to in subsection (1)) make an order directing the employer to carry out the determination in accordance with its terms.” S.4

5.—(1) This section applies to a request for an investigation under section 2 of the Act of 2001 made before the commencement of section 2. Transitional provision.

(2) A request to which this section applies shall, as regards its substance, be dealt with under section 2 of the Act of 2001 as if that section 2 had not been amended by this Act but in all other respects in accordance with that section 2 as it stands amended by this Act.

6.—(1) If a trade dispute was, by reason of circumstances prevailing on or before 26 March 2003, not capable, by virtue of paragraph (d) of subsection (1) of the relevant section, of being investigated by the Court under the relevant section, that dispute shall, on and from the commencement of this section, be capable of being so investigated, notwithstanding that paragraph (d), but subject to the other requirements of that subsection (1) being met. Limitation of application of section 2(1)(d) of Act of 2001.

(2) In subsection (1)—

“circumstances prevailing on or before 26 March 2003” includes circumstances that continued to prevail after that date but which have ceased when this provision comes into operation;

“relevant section” means section 2 of the Act of 2001;

the reference to subsection (1) of the relevant section, where it secondly occurs, is a reference to that subsection (1) as if it had not been amended by this Act.

7.—The following section is inserted after section 7 of the Act of 2001: Priority for matters dealt with under Act of 2001.

“Priority to be given to business under Act.

7A.—An investigation under section 2 and the dealing with a request under section 6 shall be given such priority over the other business of the Court as the Court considers reasonable (but having regard to the priority which, by virtue of any other enactment, it is required to give to any other class of business).”.

8.—(1) This section applies where it is not the practice of the employer to engage in collective bargaining negotiations and the internal dispute resolution procedures (if any) normally used by the parties concerned have failed to resolve the dispute and— Prohibition on victimisation.

(a) a trade union or an excepted body takes steps to invoke the procedures under the Code of Practice on Voluntary Dispute Resolution under section 42 of the Industrial Relations Act 1990 (or any code of practice amending or replacing that code) in relation to a trade dispute, or

(b) such procedures have been invoked by a trade union or excepted body in relation to a trade dispute, or

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- (c) an employee intends to request the trade union or excepted body of which the employee is a member to make a request under section 2 of the Act of 2001 in relation to a trade dispute, or a trade union or an excepted body intends to make such a request, or
- (d) such a request by a trade union or an excepted body has been made but the Court determines that the requirements specified in that section for the carrying out of an investigation of the trade dispute have not been met, or
- (e) the Court determines that those requirements have been met and either—
 - (i) that investigation is being or has been carried out, or
 - (ii) any other procedure under the Act of 2001 consequent on or subsequent to that investigation is being or has been carried out.

(2) Where this section applies, none of the following—

- (a) the employer,
- (b) an employee, or
- (c) a trade union or an excepted body of which an employee is a member,

shall victimise an employee or (as the case may be) another employee in the employment concerned on account of—

- (i) the employee's being or not being a member of a trade union or an excepted body, or
- (ii) the employee's engaging or not engaging in any activities on behalf of a trade union or an excepted body.

(3) In this section “victimise”, in relation to an employee, means to do any act (whether of commission or omission) that, on objective grounds, adversely affects the interests of the employee or his or her well being and includes any act specified in a code of practice, prepared under section 42 of the Industrial Relations Act 1990 in relation to conduct prohibited by this section, to be an act falling within the foregoing expression but does not include any act constituting a dismissal of the employee within the meaning of the Unfair Dismissals Acts 1977 to 2001.

(4) For the avoidance of doubt, “employee” in this section includes any person in the employment concerned the duties of whom consist of or include managing the business or activity to which the employment relates.

Complaints of victimisation.

9.—(1) An employee, a trade union, an excepted body or an employer on behalf and with the consent of the employee, may present a complaint to a rights commissioner that a person has contravened *section 8* in relation to the employee.

(2) A complaint under *subsection (1)* shall be presented by giving notice of it in writing to a rights commissioner.

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(3) A copy of a notice under *subsection (2)* shall be given to the other party or parties concerned by the rights commissioner concerned. S.9

(4) Where a complaint is presented to a rights commissioner under *subsection (1)* the rights commissioner shall—

- (a) give the parties an opportunity to be heard and to present any evidence relevant to the complaint;
- (b) give a decision in writing in relation to the complaint;
- (c) communicate the decision to the parties, and
- (d) furnish the Court with a copy of the decision.

(5) A decision of a rights commissioner under *subsection (4)* shall do one or more of the following:

- (a) declare that the complaint is or, as the case may be, is not well founded;
- (b) direct that the conduct the subject of the complaint cease;
- (c) require the respondent to pay to the complainant compensation of such amount (if any) as, in the opinion of the rights commissioner, is just and equitable in the circumstances, but not exceeding 2 years remuneration in respect of the employee's employment.

(6) A complaint under this section may not be presented to a rights commissioner after the end of the period of 6 months from the occurrence or, as the case may require, the most recent occurrence of the conduct to which the complaint relates.

(7) Notwithstanding *subsection (6)*, a rights commissioner may entertain a complaint under this section presented to him or her after the expiration of the period referred to in *subsection (6)* but not later than 6 months after such expiration, if he or she is satisfied that the failure to present the complaint within that period was due to reasonable cause.

(8) Proceedings under this section before a rights commissioner shall be conducted otherwise than in public.

(9) A rights commissioner shall maintain a register of all decisions made by him or her under this section and shall make the register available for inspection by members of the public during normal office hours.

(10) In this section “employee” shall be construed in accordance with *section 8(4)*.

10.—(1) A party concerned may appeal to the Court from a decision of a rights commissioner under *section 9* and if the party does so, the Court shall— Appeals to Court.

- (a) give the parties an opportunity to be heard by it and to present to it any evidence relevant to the appeal,
- (b) make a determination in writing in relation to the appeal affirming, varying or setting aside the decision, and

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(c) communicate the determination to the parties.

(2) An appeal under this section shall be initiated by the party concerned giving a notice in writing to the Court containing such particulars as are determined by the Court under *subsection (4)* and stating the intention of the party concerned to appeal against the decision. Such a notice in writing shall be given within 6 weeks of the date on which the decision to which it relates was communicated to the party or such greater period as the Court may determine in the particular circumstances.

(3) A copy of a notice under *subsection (2)* shall be given by the Court to the other party or parties concerned as soon as may be after the receipt of the notice by the Court.

(4) The following matters, or the procedures to be followed in relation to them, shall be determined by the Court, namely—

- (a) the procedure in relation to all matters concerning the initiation and the hearing by the Court of appeals under this section,
- (b) the times and places of hearings of such appeals,
- (c) the representation of the parties to such appeals,
- (d) the publication and notification of determinations of the Court,
- (e) the particulars to be contained in a notice under *subsection (2)*,
- (f) any matters consequential on, or incidental to, the foregoing matters.

Power of Court to administer oaths and compel witnesses.

11.—(1) The Court shall, on the hearing of an appeal made to it under *section 10*, have power to take evidence on oath and for that purpose may cause to be administered oaths to persons attending as witnesses at such hearing.

(2) Any person who, upon examination on oath authorised by this section, wilfully makes any statement which is material for that purpose and which he or she knows to be false or does not believe to be true is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both.

(3) The Court may, by giving notice in that behalf in writing to any person, require such person to attend at such time and place as is specified in the notice to give evidence in relation to an appeal made to the Court under *section 10* or to produce any documents in his or her possession, custody or control which relate to any such matter.

(4) A notice under *subsection (3)* may be given either by delivering it to the person to whom it relates or by sending it by post in a prepaid registered letter addressed to such person at the address at which he or she ordinarily resides.

(5) A person to whom a notice under *subsection (3)* has been given and who refuses or wilfully neglects to attend in accordance with the notice or who, having so attended, refuses to give evidence

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or refuses or wilfully fails to produce any document to which the notice relates is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000. S.11

(6) A witness in a hearing of an appeal before the Court has the same privileges and immunities as a witness before the High Court.

12.—(1) The Court may refer a question of law arising in proceedings before it under *section 10* to the High Court for determination and the determination of the High Court shall be final and conclusive. Referral to High Court.

(2) A party to proceedings before the Court under *section 10* may appeal to the High Court from a determination of the Court on a point of law and the determination of the High Court shall be final and conclusive.

13.—(1) If any party to a complaint fails to carry out in accordance with its terms a decision of a rights commissioner or a determination of the Court under *section 9* or *10* within 6 weeks from the date on which the decision or determination is communicated to the parties, the Circuit Court shall, on application to it in that behalf by— Enforcement by Circuit Court.

(a) the employee concerned, or

(b) with the consent of the employee, any trade union or excepted body of which the employee is a member,

without hearing the respondent or any evidence (other than in relation to the matters aforesaid) make an order directing the respondent to carry out the decision or the determination in accordance with its terms.

(2) The reference in *subsection (1)* to a decision of a rights commissioner or to a determination of the Court is a reference to such a decision or determination in relation to which, at the expiration of the time for bringing an appeal against it, no such appeal has been brought, or if such an appeal has been brought it has been abandoned and the reference to the date on which the decision or the determination is communicated to the parties shall, in a case where such an appeal is abandoned, be construed as a reference to the date of such abandonment.

(3) An application under this section to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the respondent ordinarily resides or carries on any profession, trade or business, or in which the principal office of the respondent is situate.

14.—The First Schedule to the Industrial Relations Act 1990 is amended by substituting in column (3), at reference number 7, “€3,000” for “£1,000” and “€1,000” for “£200”. Amendment of Industrial Relations Act 1990.

15.—The Protection of Employees (Employers’ Insolvency) Act 1984 is amended in section 10 by inserting after subsection (2) the following subsection: Amendment of Protection of Employees (Employers’ Insolvency) Act 1984.

“(2A) Where the Minister makes a payment to an employee under section 6(2)(a)(iii)(II) (inserted by section 15 of the Redundancy Payments Act 2003) of this Act, that payment shall be recoverable by the Minister as a debt to be paid in priority to all other debts under—

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(a) section 81 of the Bankruptcy Act 1988, or

(b) section 285 (as amended by section 10 of the Companies (Amendment) Act 1982 and section 134 of the Companies Act 1990) of the Companies Act 1963,

and any amount of that payment which would, but for the limit set by section 6(4)(a) (as may be varied by regulations under section 11(5)), be payable to an employee, shall be treated for all purposes as if it were a payment required to be paid by virtue of an award under section 12(1) of the Act of 1973.”

Repeal.

16.—Section 9 of the Act of 2001 is repealed.

Short title,
collective citation,
construction and
commencement.

17.—(1) This Act may be cited as the Industrial Relations (Miscellaneous Provisions) Act 2004.

(2) In so far as it relates to the Industrial Relations Acts 1946 to 2001, this Act and those Acts shall be construed together as one and may be cited together as the Industrial Relations Acts 1946 to 2004.

(3) In so far as it relates to the Protection of Employees (Employers’ Insolvency) Acts 1984 to 2001, *section 15*, this subsection and those Acts shall be construed together as one and may be cited together as the Protection of Employees (Employers’ Insolvency) Acts 1984 to 2004.

(4) 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.