

ÉIRE / IRELAND

SEVENTH REPORT

ON THE IMPLEMENTATION

OF THE

REVISED EUROPEAN SOCIAL CHARTER

OF THE

COUNCIL OF EUROPE

SUBMITTED BY

THE GOVERNMENT OF IRELAND

IN RESPECT OF

THE ACCEPTED PROVISIONS OF

**ARTICLES 2, 4, 5, 6, 21, 22,
26, 28 and 29.**

FOR THE PERIOD

FROM 1st JANUARY 2005

TO 31st DECEMBER 2008.

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CONFIRMATION OF COMMUNICATION OF COPIES

1. **Copies of this report have been communicated to the:**

Irish Congress of Trade Unions (ICTU)

And

Irish Business and Employers' Confederation (IBEC)

It is not yet known whether they will make any comments on the report or request that such are relayed to the Secretary-General.

Seventh Report of the Government of Ireland to the Council of Europe under the Revised European Social Charter :-

ARTICLE 2: THE RIGHT TO JUST CONDITIONS OF WORK

ARTICLE 2 PARAS. 1 to 7- (General Introduction)

Article 2 – All Workers have the Right to Just Conditions of Work

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

- 1 to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;
- 2 to provide for public holidays with pay;
- 3 to provide for a minimum of four weeks' annual holiday with pay;
- 4 to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;
- 5 to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest;
- 6 to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;
- 7 to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

Appendix to Article 2§6

Parties may provide that this provision shall not apply:

- a. to workers having a contract or employment relationship with a total duration not exceeding one month and/or with a working week not exceeding eight hours;
- b. where the contract or employment relationship is of a casual and/or specific nature, provided, in these cases, that its non-application is justified by objective considerations

Questions asked of all Parties (member states of the Council of Europe, which have signed and ratified the Revised European Social Charter):-

Please indicate, for Article 2 as a whole, the rules applying to workers in atypical employment relationships (fixed-term contracts, part-time, replacements, temporaries, etc.)

The material is the same as that submitted by us in respect to the introduction to Article 2 in our Second Report under the Revised Charter in September 2006, with the exception of the deletion of some out of date websites.

General Introduction to Article 2 :-

The Protection of Employees (Part-Time Work) Act 2001 provides that in general an employer cannot treat a part-time employee less favourably than a comparable full-time employee in relation to conditions of employment including pay and pensions.

Under the 2001 Act an employee is a comparable full time employee in relation to a part-time employee if-

- (a) the full-time employee and the part-time employee are employed by the same or associated employer and one of the conditions referred to in (i),(ii) or (iii) below is met,
- (b) where (a) above does not apply(including a case where the part-time employee is the sole employee of the employer) the full-time employee is specified in a collective agreement, being an agreement that for the time being has effect in relation to the relevant part-time employee, to be a comparable employee in relation to the part-time employee, or
- (c) where neither (a) nor (b) above apply, the employee is employed in the same industry or sector of employment as the part-time employee(and one of the conditions referred to in (i), (ii) and (iii) below is met).

The following are the conditions (i), (ii) and (iii) referred to above-

- (i) both employees perform the same work under the same or similar conditions or each is interchangeable with the other in relation to the work,
- (ii) the work performed by one of the employees concerned is of the same or similar nature to that performed by the other and any differences between the work performed or the conditions under which it is performed by each, either are of small importance in relation to the work as a whole or occur with such irregularity as not to be significant, and
- (iii) the work performed by the relevant part-time employee is equal or greater in value to the work performed by the other employee concerned, having regard to such matters as skill, physical or mental requirements, responsibility and working conditions.

Under the 2001 Act an employer can treat a part-time employee less favourably than a full-time employee if he or she has objective grounds for so doing. Under the Act, a ground would be considered as an objective ground for treatment in a less favourable manner, if it is based on considerations other than the status of the employee as a part-time employee and the less favourable treatment is for the purpose of achieving a legitimate objective of the employer and such treatment is necessary for that purpose.

The Protection of Employees (Fixed-Term Work) Act 2003 provides that in general an employer cannot treat a fixed-term employee less favourably than a permanent employee in relation to conditions of employment including pay and pensions.

Under the 2003 Act an employee is a comparable permanent employee in relation to a fixed-term employee if-

- (d) the permanent employee and the fixed-term employee are employed by the same or associated employer and one of the conditions referred to in (i),(ii) or (iii) below is met,
- (e) where (a) above does not apply(including a case where the fixed-term employee is the sole employee of the employer) the permanent employee is specified in a collective agreement, being an agreement that for the time being has effect in relation to the relevant fixed-term employee, to be a comparable employee in relation to the fixed-term employee, or
- (f) where neither (a) nor (b) above apply, the employee is employed in the same industry or sector of employment as the fixed-term employee(and one of the conditions referred to in (i), (ii) and (iii) below is met).

The following are the conditions (i), (ii) and (iii) referred to above-

- (iv) both employees perform the same work under the same or similar conditions or each is interchangeable with the other in relation to the work,
- (v) the work performed by one of the employees concerned is of the same or similar nature to that performed by the other and any differences between the work performed or the conditions under which it is performed by each, either are of small importance in relation to the work as a whole or occur with such irregularity as not to be significant, and
- (vi) the work performed by the relevant fixed-term employee is equal or greater in value to the work performed by the other employee concerned, having regard to such matters as skill, physical or mental requirements, responsibility and working conditions.

Under the 2003 Act, an employer can treat a fixed-term employee less favourably than a permanent employee if he or she has “objective grounds” for so doing. Under the Act a ground would be considered as an objective for treatment in a less favourable manner (including the renewal of a fixed-term employee’s contract for a further fixed term), if it is based on considerations other than the status of the employee as a part-time employee and the less favourable treatment is for the purpose of achieving a legitimate objective of the employer and such treatment is necessary for that purpose

The 2003 Act also provides a remedy for the abuse of successive fixed-term contracts.

The Act provides that in the case of an employee who commences a fixed-term contract prior to the commencement of the Act on 14 July 2003 that he or she can be employed for three continuous years on such a contract and that after that period, his or her contract can be renewed again for up to one year. If the contract is renewed again after that it is deemed to be one of “indefinite duration”. However, if the employer has “objective grounds” as described above for renewing the contract on a fixed-term basis after the three continuous years and the renewal for up to one year the employer may renew the contract in such a manner.

The Act also provides in the case of an employee who commences a fixed-term contract after the commencement of the Act on 14 July 2003 that they can be employed on two or more such contracts for a continuous period of 4 years and that if the contract is renewed again after that period, it is deemed to be one of “indefinite duration”. However, if the employer has objective grounds as described above for renewing the contract on a fixed-term basis after the 4 continuous years he or she may do so.

In addition, the 2003 Act provides that a fixed-term employee shall be informed in writing by his or her employer as soon as practicable of the “objective condition” determining the contract i.e. whether it is

- (a) arriving at a specific date,
- (b) completing a specific task, or
- (c) the occurrence of a specific event.

Furthermore, the 2003 Act provides that where an employer proposes to renew a fixed-term contract the employee shall be informed in writing, not later than the date of renewal, of the “objective grounds” as described above justifying the renewal of the fixed-term contract and the failure to offer a contract of indefinite duration.

A copy of the Protection of Employees (Part-Time Work) Act 2001 and an Information Booklet on the Act can be downloaded from the following website links:

<http://www.entemp.ie/publications/employment/2001/protectionparttimeworkers.pdf>

<http://www.employmentrights.ie/en/media/Part%20Time%20Work%20Act.pdf>

A copy of the Protection of Employees (Fixed-Term Work) Act 2003 and an Information Booklet on the Act can be downloaded from the following website links:

<http://www.irishstatutebook.ie/2003/en/act/pub/0029/index.html>

http://www.employmentrights.ie/en/media/protectionofemployees_booklet.pdf

Start of our Seventh Report in respect of Article 2, Paragraph 1

Article 2 – The Right to Just Conditions of Work :-

ARTICLE 2 PARA. 1

"With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake: to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;"

Questions asked of all Parties (member states of the Council of Europe, which have signed and ratified the Revised European Social Charter):

Article 2§1

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics and factual information, in particular: average working hours in practice for each major professional category; any measures permitting derogations from legislation regarding working time.

Scope of the provisions as interpreted by the ECSR

Paragraph 1: Establishment of reasonable limits on daily and weekly working hours through legislation, regulations, collective agreements or any other binding means; weekly working hours should be progressively reduced to the extent permitted by productivity increases; flexibility measures regarding working time must operate within a precise legal framework and a reasonable reference period for averaging working hours must be provided.

Text of Ireland's Seventh Report under the Revised European Social Charter in relation to Article 2, Paragraph 1 -For convenience, the new material is shown in red print.

Reply to Question 1 of the New Form for the Reports above :-

2.1.1 Please see Article 2, sub-paragraphs 2.1.30 to 2.1.46 of the Second Report of the Government of Ireland to the Council of Europe under the Revised European Social Charter.

Reply to Question 2 above :-

2.1.2 Please see our reply under sub-paragraph 2.1.1 above.

Reply to Question 3 above :-

2.1.3 Please see our reply under sub-paragraph 2.1.1 above.

2.1.4 *A derogation from the maximum average working week provided for in the Organisation of Working Time Act 1997 and the rest periods provided for in this Act is provided for in Section 3(3)(b) of this Act. This derogation was effected by Regulations made under the Act entitled Organisation of Working Time(Exemption of Civil Protection Services) Regulations 1998- S.I. No.52 of 1998 described at paragraph 2.1.38, page 20 of the last report from Ireland on Article 2, paragraph 1 of the Revised European Social Charter.*

2.1.5 *Sections 4(1), 4(2), 4(3),4(5),4(6) and 5 of the 1997 Act provide for derogations from, inter alia, maximum average weekly working hours and daily rest periods. The derogation provided for in Section 4(3) of the 1997 Act was effected by Regulations made under the Act entitled Organisation of Working Time (General Exemptions) Regulations 1998- S.I. No. 21 of 1998 described at paragraph 2.1.38, page 19 of the last report from Ireland on Article 2, paragraph 1 of the Revised European Social Charter.*

2.1.6 *All of the derogations referred to above are still extant.*

2.1.7 Trade unions are consulted in relation to any derogations introduced under Sections 4(3), 4(5) and 4(6).

2.1.8 Article 2, sub-paragraphs 2.1.1 to 2.1.29 of our Second Report under the Revised Charter refer. There has been no substantive change. The following are the updates in respect of official websites and of Tables 1 and 2, sub-paragraph 2.1.29 (of our Second Report) refer.

The National Employment Rights Authority(NERA) website is www.employmentrights.ie (Sub-paragraph 2.1.2 of the Second Report refers.)

Table 1

Protection of Young Persons (Employment) Act, 1996 Day-time V Night-time Inspections V Total Inspections V Overall Inspections for all Legislation

Year	P.Y.P. Act Night-time Inspections and % of Total P.Y.P. Inspections	P.Y.P. Act Day-time Inspections and % of Total P.Y.P. Inspections	P.Y.P. Act Total Inspections and % of Total Inspections	Total Inspections Excluding P.Y.P. Act and % of Total Inspections	Total Inspections Including P.Y.P. Act
2001	768 (1.38%)	294 ((3.61%))	1062 (6.09%)	5412 (1.19%)	6474
2002	865 (1.69%)	599 (2.44%)	1464 (5.68%)	6859 (1.21%)	8323
2003	594 (2.68%)	999 (1.59%)	1593 (4.49%)	5575 (1.28%)	7168
2004	1259 (1.45%)	577 ((3.18%))	1836 (2.81%)	3324 (1.55%)	5160
2005	1443 (1.39%)	564 (3.55%)	2007 (2.84%)	3712 (1.54%)	5719
2006	1766 1.90%	1581 2.12%	3347 4.73%	12508 1.27%	15855
2007	1695 1.55%	930 2.82%	2625 5.49%	11800 1.22%	14425
2008	4160 1.94%	3915 2.06%	8075 2.95%	15719 1.51%	23794
2009	4218 1.95%	4014 2.05%	8232 3.13%	17565 1.47%	25797
2010 to 31/7/2010	1210 2.29%	1557 1.78%	2767 3.56%	7090 1.39%	9857

Note 1 (Inspection activity outside of normal working hours i.e. after 5.30pm Monday to Friday and week-end commenced in Autumn 1999).

Table 2

Protection of Young Persons (Employment) Act, 1996 Overall Activity 2001 - 2010

Year	Inspections	Referred For Prosecutions
2001	1062	9
2002	1464	12
2003	1593	19
2004	1836	14
2005	2007	24
2006	3347	2
2007	2625	11
2008	8075	23
2009	8232	3
2010 to 31/7/2010	2767	1

Note : The Number of prosecutions reduced since 2008 due to change in prosecution policy. Previously it was the policy to initiate prosecutions where breaches were detected under this legislation. In line with the policy for prosecutions under other legislation, employers are afforded an opportunity to rectify breaches and prosecutions are initiated where the employer fails to comply.

Resource Level of the NERA (National Employment Rights Authority) Inspectorate

The assignment of previously announced additional Labour Inspectors was completed in November 2005. That brought the complement of serving Inspectors to 31 Officers.

The social partnership agreement “Towards 2016” provided for the establishment of NERA with a compliment of 90 inspectors. Currently the number of Inspectors is 68. Twenty-three inspectors have left NERA since it was established in February 2007, as a result of promotion or internal and external Departmental transfers and re-assignments, which has brought the number of Inspectors to its current level of sixty-eight. The moratorium on recruitment

and promotions in the Public Service, introduced by the Minister for Finance on 27th March 2009, has had an impact on NERA staffing in common with all other public bodies.

Sub-paragraph 2.1.30 of the Second Report refers. It should be updated in respect of this (7th) Report to read – “ Responsibility for the administration of the Organisation of Working Time Act, 1997 (No 20 of 1997) rests with the Department of Enterprise, Trade and Employment, (**now called the Department of Enterprise, Trade and Innovation**) while National Employment Rights Authority and agencies such as the Labour Relations Commission, the Labour Court and the Employment Appeals Tribunal have a function in the enforcement of the legislation....”

Sub-paragraph 2.1.31 of the Second Report refers. It should be updated in respect of this (7th) Report to read – “...The rest and maximum working time provisions of the Act do not apply to the Defence Forces, Garda Síochána (Police Force), a junior hospital doctor, a person employed in the civil protection services, a person who is engaged in sea fishing or otherwise employed at sea, a family employee working on a farm or in a private house and a person who controls his/her own working hours...”

Sub-paragraph 2.1.39 of the Second Report refers. It should be updated in respect of this (7th) Report to read – “When the 1997 Act became law on 7th May 1997, the Employment Rights Unit of the Department of Enterprise, Trade and Employment prepared an explanatory leaflet on the Act in general. The Unit also prepared explanatory material on Sunday Premium, the Provision of Information, Zero Hours Contracts and on the Holidays and Public Holiday provisions in the Act. Explanatory information on the Act is also included in the Department’s information booklet “Guide to Labour Law” which is available from NERA and on its website (www.employmentrights.ie). NERA ensured - and continues to ensure - the dissemination of this explanatory material to as wide an audience as possible.”

Sub-paragraph 2.1.41 of the Second Report refers. It should be updated in respect of this (7th) Report to read – “The Department had in place an Employment Rights Information Unit where varying queries about employment rights generally, including the Organisation of Working Time Act, 1997 were dealt with on a daily basis. In addition, staff of the Employment Rights Information Unit, visited Citizens Information Centres and other business functions to disseminate information on general labour law, including the Organisation of Working Time Act, 1997. The Employment Rights Information Unit, in November 2001, commenced a pro-active awareness campaign whereby over a six-month period all secondary schools will be circulated with information on all aspects of employment law, including details of the Organisation of Working Time Act, 1997. The functions of the Employment Rights Information Unit has been subsumed into NERA.”

Inspectors of NERA, in the course of their inspection activity, provide information and guidance as a matter of routine to employers on all aspects of labour law, including the Organisation of Working Time Act, 1997. For data on activity see Table 3 and 4 below”

Sub-paragraph 2.1.42 of the Second Report refers. It should be updated in respect of this (7th) Report to read – “As already stated, responsibility for the administration and enforcement of the Organisation of Working Time Act, 1997 rests with the Department of Enterprise, Trade and Employment (**now called Enterprise, Trade and Innovation**) while the Inspectorate of NERA and agencies such as the Labour Relations Commission, the Labour Court and the Employment Appeals Tribunal, have a function in the enforcement of the legislation....”

Sub-paragraph 2.1.45 of the Second Report refers. It should be updated in respect of this (7th) Report to read – “The Inspectorate of NERA carry out investigations under the Act to ensure compliance with the working hours and rest breaks and with the record keeping requirements as provided for under the Act and under the Regulations made in 2001. Investigations take place following on from a complaint by an individual employee or other concerned person or from sectoral or targeted inspections. Targeted inspections take place throughout various employment sectors, including fast food outlets, restaurants, licensed premises, hotels, agriculture/horticulture and healthcare. Where it appears that an employer has failed to comply with the records requirement aspect of the legislation, **NERA considers initiating legal proceedings, where the employer fails to rectify the breaches identified.**”

Sub-paragraph 2.1.46 of the Second Report refers. It should be updated in respect of this (7th) Report to read – “The data used to assess effectiveness includes, the number of complaints investigated by the Rights Commissioner Service of the Labour Relations Commission, the number of determinations issued by the Labour Court, the number of determinations issued by the Employment Appeals Tribunal, the number of determinations that the Minister is requested to enforce, the number successfully enforced by the Minister and the number of collective agreements approved by the Labour Court (Table 3). Data also includes activity of the former Information Unit of the Department of Enterprise, Trade and Employment and its successor the Information Unit of NERA and NERA Inspectorate inspection activity (Table 4), together with details of **NERA** Inspectorate resource levels.”

Table 3 See also www.lrc.ie or www.labourcourt.ie

<http://www.lrc.ie/documents/annualreports/2005/AnnualReport2005English.pdf>

<http://www.labourcourt.ie/labour/labour.nsf/lookuppagelink/HomeSearch>

Organisation of Working Time Act, 1997 (O.W.T. Act) Activity – Labour Relations Commission / Labour Court / Employment Appeals Tribunal / Legal Services Unit

Table 3

Year	O.W.T. Act Complaints Investigated By the Rights Commissioner Service	O.W.T. Act Determinations Issued By Labour Court	O.W.T. Act Determinations Issues By Employment Appeals Tribunal	O.W.T. Act Minister Requested to Enforce Determinations in Circuit Court	Determinations Successfully Enforced By Minister	O.W.T. Act Collective Agreements Approved By Labour Court
1997	-	-	-	-	-	-
1998	130	6	1	2	2	112
1999	148	18	69	10	4	41
2000	288	18	145	18	3	31
2001	*	18	204	32	9	2
2002				28	11	
2003				4	1	
2004				1	0	
2005				8	2	
2006				3	2	
2007				8	0	
2008				22	10	

2009				20	17
2010 to 31/7/2010				2	4**

** includes cases referred prior to 2010 also

- *Statistics not yet available(for 2001 onwards)*

Table 4

Organisation of Working Time Act, 1997 Activity in Information Unit, Inspectorate and Legal Services Unit

Year	Information Unit Queries*	Inspections	Referred For Prosecutions
2001	<u>N/A</u>	1163	7
2002	28241	1005	3
2003	28867	1193	nil
2004	26691	658	1
2005	17223	753	nil
2006	14179	2714	3
2007	14545	2645	1
2008	11490	4620	5 (+ 9 combined with other Acts)
2009	9981	4229	6 (+38 combined with other Acts)
2010 to 31/7/2010	3910	1560	1 (+16 combined with other Acts)

Note 1

As transitional arrangements were in place for the introduction of the legislation, inspection activity for the records' aspect of the Act only commenced in 1999.

Note 2

The number of convictions may appear low in relation to the number of referrals for prosecution. This is explained by the fact that up until now, charges under the O.W.T. Act tend to be dropped if an employer pleads guilty to more serious breaches under other employment rights legislation.

Note 3

Many of the irregularities/breaches identified relate to start and finishing times not being recorded. As the Regulations prescribing the type of records to be maintained only took effect in November 2001, irregularities of the nature identified were not referred for prosecution. Activity is now focusing on the record keeping requirements of the Act, as prescribed by Regulations in 2001.

Sub-paragraph 2.1.47 of the Second Report refers. It should be updated in respect of this (7th) Report to read – “The authorised number of Inspectors up to the year 2000 was 10 when the authorised number increased to 17. **The social partnership agreement “Towards 2016” provided for the establishment of NERA with a compliment of 90 inspectors. Currently the number of Inspectors is 68. Twenty-three inspectors have left NERA since it was established as a result of promotion or internal and external Departmental transfers and re-assignments, which has brought the number of Inspectors to its current level of sixty-eight. The moratorium on recruitment and promotions in the Public Service, introduced by the Minister for Finance on 27th March 2009, has had an impact on NERA in common with all other public bodies.**

Sub-paragraph 2.1.48 of the Second Report refers. It should be updated in respect of this (7th) Report to read – “Copies of the Employment Regulation Orders and Registered Employment Agreements currently in force are available on the NERA website www.employmentrights.ie and on the Irish Labour Court website www.labourcourt.ie.”

The Conclusions of the Council of Europe’s European Committee of Social Rights (ECSR):- ECSR Comments / Questions directed specifically at Ireland and Our Responses:-

Article 2, Paragraph 1 continued :-

2.1.9 (7th Report) ECSR Question No. 1

The Committee takes note of the information contained in the Irish report. In its previous conclusion the Committee asked whether the 12-month reference period for averaging working hours was frequently used in collective agreements or only in exceptional cases. The Committee notes from the report that some 180 collective agreements providing for a 12 month reference period have been approved by the Labour Court. These agreements cover approximately 110,000 workers. **The Committee recalls that in the meaning of Article 2§1 of the Revised Charter longer reference periods (up to one year) are only permitted in exceptional circumstances. Therefore the Committee asks what are the circumstances when the reference period is extended to 12 months. In the meantime it reserves its position on this point.**

2.1.10 **Our Response : The relevant circumstances are set out in Section 15(5) of the Organisation of Working Time Act 1997.**

2.1.11 ECSR Question Nos. 2 and 3

The Committee also asked for more details on the circumstances in which exemptions from the obligatory 11 hours rest period were possible under Section 6 of the Organisation of Working Time Act. In this connection the Committee notes that these exemptions are provided for in Regulations 1998 – S.I. No. 21 and Regulations 1998 – S.I. No 52 of 1998. The consequences, according to the report, for maximum daily working hours are that in activities and sectors covered by these S.I's days in excess of the statutory maximum working hours can be worked. However, the Committee observes that this response does not provide a clear answer to its question as to what the maximum daily and weekly working hours are permitted for workers covered by these regulations. The Committee has noted in the previous report that working time provisions of the Organisation of Working Time Act did not apply to certain categories of workers. Therefore it also asked what were the maximum permitted daily and weekly working hours for these employees, such as junior hospital doctors, transport employees, persons employed in the civil protection services, persons who are engaged in sea fishing or otherwise employed at sea, family employees working on a farm or in a private house and persons who control their own working hours.

2.1.12 **Our Response : As stated above S.I. No. 21 of 1998 and S.I. No. 52 of 1998 provide for a derogation from the obligatory daily rest**

period of 11 consecutive hours. However, these S.I.s were made under Sections 4(3) and 3(3)(b) respectively of the Organisation of Working Time Act 1997 and not under Section 6 of the 1997 Act as stated above.

2.1.13 ECSR Question No. 4

The Committee notes from the report that according to European Communities Regulations 2003 – S.I. No.709 of 2003 the average weekly working time of junior hospital doctors is limited to 58 hours during the period of 1 August 2004 to July 2007. The Committee also takes note of regulations concerning the organisation of working time in civil protection services, offshore workers, transport employees, workers engaged in sea fishing and merchant shipping as well as persons performing mobile road transport activities. The Committee notes that these regulations do not establish maximum limits to individual weekly and daily working hours. **Therefore the Committee repeats its question as to what are the maximum permissible daily and weekly limits to working hours for these workers.**

2.1.14 Our Response: As regards the maximum permissible daily working hours of workers covered by S.I. No 21 of 1998, they are exempted from the minimum daily rest period of 11 consecutive hours which means that they could be required to work more than the maximum permissible working day of 13 hours for other workers, However, while there is no express limit on the number of daily hours workers covered by S.I. No. 21 of 1998 could be required to work, every working day is not limitless as they are entitled to equivalent compensatory rest in an adjacent time-frame when they are not afforded the stipulated daily rest period. As regards the maximum weekly permissible working hours of workers covered by S.I. No. 21 of 1998 whilst there is no express maximum, in practice the number of hours they could be required to work per week is limited by their entitlement to equivalent compensatory rest in an adjacent time-frame when they are not afforded the stipulated daily and weekly rest periods.

There is no limit on the daily or weekly working hours of workers covered by S.I. No. 52 of 1998.

The working time of doctors in training is not regulated by S. I. No. 709 of 2003 as stated above but by S.I. No. 494 of 2004- European Communities (Organisation of Working Time)(Activities of Doctors in Training) Regulations 2004. These

Regulations provide that from 1st August 2009 doctors in training cannot be required to work more than an average of 48 hours a week. While there is no express maximum daily and weekly working hours for doctors in training the number of hours they are required to work every day is not limitless because of their right to equivalent compensatory rest in an adjacent time period in situations where they do not receive the stipulated daily rest period. Similarly although there is no express maximum working week for doctors in training the number of hours they could be required to work in a week is limited by their right to equivalent compensatory rest in situations in which they do not receive the stipulated daily and weekly rest periods.

The maximum weekly working hours of persons performing mobile transport activities is 60 hours-see S.I. No.2 of 2005

There is a maximum weekly working week of 72 hours for sea fishermen (see S.I. No. 709 of 2003) but not for merchant seafarers as stated below. Under S.I. No. 532 of 2003 the latter workers are entitled to a minimum weekly rest period of 72 hours.

Transport workers and offshore workers are subject to a maximum average working week of 48 hours. While there is no express maximum daily and working week for these workers the number of hours they would be required to work every day and in any week is limited by their entitlement to equivalent compensatory rest in an adjacent time frame in situations where they are not afforded the stipulated daily and weekly rest periods.

There is no limit on the maximum daily and weekly working hours of family employees working on a farm or in a private house and of persons who control their own working hours.

2.1.15 ECSR Question No. 5

The Committee notes from S.I. No 532/2003 – European Communities (Merchant Shipping) (Organisation of Working Time) Regulations 2003 that the limits on hours of work or rest are as follows: (a) maximum hours of work shall not exceed: (i) 14 hours in any 24-hour period; and (ii) 72 hours in any seven-day period, or (b) minimum hours of rest shall not be less than: (i) 10 hours in any 24-hour period, and (ii) 77 hours in any seven-day period. In this connection the Committee recalls that working hours of more than 60 hours in one week are unreasonable and therefore not

in conformity with the Revised Charter. Therefore it considers that that 72 hours are excessive and not in conformity with Article 2§1 of the Revised Charter.

The Report does not provide information about an estimate of the number of workers concerned and their proportion of workforce.

2.1.16 **Our Response :- Ireland implements the requirements of International Conventions of the IMO (International Maritime Organisation) and ILO (International Labour Organisation).**

2.1.17 ECSR Question No. 6

The Committee concludes that the situation in Ireland is not in conformity with Article 2§1 of the Revised Charter as **working hours in the merchant shipping sector are allowed to reach 72 hours per week.**

2.1.18 **Our Response : Please see our response under sub-paragraph 2.1.16 above.**

2.1.19 In accordance with Article 21 - 1§3 of the Committee's Rules of Procedure, a dissenting opinion of Mr. S. EVJU, member of the Committee, is appended to this conclusion.

Dissenting View of Mr. Stein Evju, Member of the European Committee of Social Rights (ECSR) in relation to Article 2, Paragraph 1 :-

2.1.20 The Committee's finding of non-conformity here rests on the same ground as did its decision on the merits with regard to Article 2§1 of the revised Charter in the case of Collective complaint No. 9/2000, the Committee's negative conclusion for France on Article 2§1 in Conclusions 2003 (pp. 102-105), and subsequently in Collective complaint No. 16/2003 (2004). In this it failed, in my view, to take due account of Article I of the revised Charter, which in my view is patently misconstrued. Insofar, I refer to my dissenting opinion on this point in the case of Collective complaint No. 9/2000. *Mutatis mutandis*, this applies here as well. Moreover, the Committee's employing this construction of Article I to Article 2§1 in the instant case not only vividly contrasts the absence of querying the situation under Article 2§1 for Ireland, it also demonstrates the random and inconsistent use of the standard which has no foothold in past supervisory practice. Hence, I dissent from the Committee's finding of non-conformity in this case.

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Article 2 – The Right to Just Conditions of Work :-

Text of ARTICLE 2 PARA. 2 of the Revised European Social Charter

ARTICLE 2 PARA. 2

"With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake: to provide for public holidays with pay;"

Questions asked of all Parties (member states of the Council of Europe, which have signed and ratified the Revised European Social Charter):- -For convenience, new material is shown in red print.

Article 2§2

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Scope of the provisions as interpreted by the ECSR

Paragraph 2: The right to public holidays with pay should be guaranteed; work on public holidays should only be allowed in special cases; work performed on a public holiday should be paid at least at double the usual rate.

Text of Ireland's Seventh Report under the Revised European Social Charter in relation to Article 2, Paragraph 2: -For convenience, new material is shown in red print.

Article 2, - The Right to Just Conditions of Work:- Paragraph 2 - Provision of Public Holidays with Pay.

Our Response to Questions 1 and 2 –

2.2.1 There are nine statutory public holidays as follows

New Year's Day - 1 January
St. Patrick's Day- 17 March
Easter Monday
The first Monday in May
The first Monday in June
The first Monday in August
The last Monday in October
Christmas Day - 25 December
St. Stephen's Day - 26 December.

2.2.2 The Organisation of Working Time Act 1997, which implements EU Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time, sets out statutory rights for employees in respect of rest, maximum working time and holidays. It repeals the Holidays (Employees) Act, 1973 and Section 4 of the Worker Protection (Regular Part-Time Employees) Act, 1991. The Organisation of Working Time Act now provides enhanced minimum legally enforceable entitlements for all employees to holidays and public holidays. Please see our Report under Article 2 Paragraph 1 above.

Derogations from legislation in Ireland governing daily and weekly working hours could have an impact on the calculation of pay for public holidays as set out in Regulations 5(1)(b) and 5(2)(b) of the Organisation of Working Time (Determination of Pay for Holidays) Regulations 1997-S.I. No. 475 of 1997. These Regulations are available at the following link: <http://www.irishstatutebook.ie/1997/en/si/0475.html>

Our Response to Question 3 :-

2.2.3 Please see our Report under Article 2, Paragraph 1.

The legislative provisions regarding public holidays do not apply to the Garda Síochána (Police Force) and the Defence Forces. There are currently 14,729 members of the Garda Síochána and 10,081 members of the Defence Forces.

The current strength of the labour force is 1,938,500.

The Conclusions of the Council of Europe's European Committee of Social Rights (ECSR):- ECSR Comments / Questions directed specifically at Ireland and Our Responses:-

Paragraph 2 – Public holidays with pay

2.2.4 ECSR Questions Nos. 1 and 2.

The Committee notes the information in Ireland's report. It recalls that there are nine statutory public holidays and that following enactment of the Organisation of Working Time Act, 1997, in respect of each public holiday, an employee is entitled to either:

- (a) a paid day off on the holiday or
- (b) a paid day off within a month or
- (c) an extra day's annual leave or
- (d) an extra day's pay

as the employer may decide.

If the public holiday falls on a day on which the employee normally works, the employee is entitled to a paid day off for the day. If the public holiday falls on a day on which the employee does not normally work, the employee is entitled to one fifth of his/her normal weekly wage for the day or to either (b) or (c) above as the employer may decide. If the employee is asked to work on the public holiday, the employee is entitled to (b) (c) or (d) above as the employer may decide.

The Committee recalls that under Article 2§2 the compensatory rest period may be replaced by monetary compensation. **The Committee considers that work performed on a public holiday requires a constraint on the part of the worker, who should be compensated with a remuneration at a higher than normal average wage.** In this regard an employee who works on a public holiday should be entitled to the pay for the holiday, pay for the work actually performed and an additional compensation.

The Committee asks for further information on the remuneration paid to an employee who is asked to work on public holiday.

2.2.5 Our Response :-

If an employee, who is not a piece worker, works on a public holiday he or she is entitled to receive his or her normal daily pay for that day. However, such an employee is also entitled to one of (b), (c) or (d) above. The pay he or she is entitled to receive for (b) or (d) above is the sum equal to the sum (including any regular bonus or allowance the amount of which does not vary in relation to the work done by the employee but excluding any pay for overtime) paid to the employee in respect of the normal daily hours last worked by him or her before that public holiday. The pay he or she is entitled to receive for (c) is the relevant portion of the sum(including any regular bonus or allowance the amount of which does not vary in relation to the work done by the employee but excluding any pay for overtime) that is paid in respect of the normal weekly working hours last worked by the employee before the annual leave(or the portion thereof concerned) commences.

If an employee ,who is a piece worker, works on a public holiday he or she is entitled to receive his or her normal daily pay for that day. However, such an employee is also entitled to receive one of (b), (c) or (d) above. The pay he or she is entitled to receive for (b) or (d) above is the sum equal to the average daily pay(excluding pay for overtime) of the employee calculated over-

- (i) the period of 13 weeks ending immediately before that public holiday, or
- (ii) if no time was worked by the employee during that period, the period of 13 weeks ending on the day on which time was last worked by the employee before that public holiday.

The pay he or she is entitled to receive for (c) is the sum that is equal to the relevant portion of the average weekly pay(excluding any pay for overtime) of the employee calculated over-

- (a) the period of 13 weeks ending immediately before the annual leave(or the portion thereof concerned) commences or,
- (b) if no time was worked by the employee during that period, over the period of 13 weeks ending on the day on which time was last worked by the employee before the annual leave(or the portion thereof concerned) commences.

2.2.6 Pending receipt of the information requested the Committee concluded that the situation in Ireland is in conformity with Article 2§2 of the Revised Charter.



Article 2 – The Right to Just Conditions of Work :-

Text of ARTICLE 2 PARA. 3 of the Revised European Social Charter

ARTICLE 2 PARA. 3

"With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake: to provide for a minimum of four weeks' annual holiday with pay;"

Questions asked of all Parties (member states of the Council of Europe, which have signed and ratified the Revised European Social Charter): - For convenience, new material is shown in red print.

Article 2§3

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Scope of the provisions as interpreted by the ECSR

Paragraph 3: The right to a minimum of four weeks of annual holiday with pay should be guaranteed; annual leave may not be replaced by financial compensation; days lost to illness or injury during annual leave should be allowed to be taken at another time.

Text of Ireland's Seventh Report under the Revised European Social Charter in relation to Article 2, Paragraph 3: -For convenience, new material is shown in red print.

Questions 1,2 and 3 refer:

2.3.1 The Organisation of Working Time Act 1997, which implements EU Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the

organisation of working time, sets out statutory rights for employees in respect of rest, maximum working time and holidays. It repeals the Holidays (Employees) Act, 1973 and Section 4 of the Worker Protection (Regular Part-Time Employees) Act, 1991. The Organisation of Working Time Act now provides enhanced minimum legally enforceable entitlements for all employees to holidays and public holidays. Please see our Report under Article 2 paragraph 1 above.

2.3.2 Derogation from statutory rules regarding daily and weekly working hours could have an impact on the calculation of pay for public holidays as set out in Regulation 3(a) and 3(b) of the Organisation of Working Time(Determination of Pay for Holidays) Regulations 1997-S.I. No. 475 of 1997. These Regulations are available on the following link: <http://www.irishstatutebook.ie/1997/en/si/0475.html>

2.3.3 The annual leave provisions in the Organisation of Working Time Act 1997 do not apply to the Garda Síochána(Police) and the Defence Forces. There are currently 14,729 members of the Garda Síochána sand 10,081 members of the Permanent Defence Forces.

The Conclusions of the Council of Europe's European Committee of Social Rights (ECSR):- ECSR Comments / Questions directed specifically at Ireland :-

2.3.4 ECSR Question No. 1

Paragraph 3 – Annual holiday with pay

The Committee notes the information provided in Ireland's report. The Committee recalls that the Working Time Organisation Act 1997 provides that all time worked qualifies for paid holiday time (with no qualifying period). And as from the leave year 1999/2000, depending on time worked, the minimum holiday entitlement is calculated by one of the following methods:

- a) four working weeks in a leave year in which the employee works at least 1 365 hours (unless it is a leave year in which he or she changes employment);
- b) 1/3 of a working week per calendar month that the employee works at least 117 hours;
- c) 8 % of the hours an employee works in a leave year (but subject to a maximum of four working weeks).

The Committee previously found that the situation was in conformity with Article 2§3 of the 1961 Charter but requested information on the situation of part time workers. The Committee notes that that part-time workers – as other workers – earn holiday entitlements from the time work is commenced (see above). According to the report part time workers can choose the most favourable method of calculation of annual leave from the three methods at (a), (b), and (c) above.

2.3.5 Our Response :-

Section 19(6) of the Organisation of Working Time Act 1997 provides that a “working week” shall be construed as references to the number of days that an employee usually works in a week. Therefore, under Section 19(1), if a part-time employee works at least 1,365 hours in a year and works, for example, 4 days per week, then the employee will be entitled to a minimum entitlement of 16 days annual leave (i.e. 4 working weeks). If a part-time employee works less than 1,365 hours in a leave year, then the annual leave entitlement is calculated by either of the following two methods (whichever is the more favourable):

(1) 1/3 of a working week per calendar month that the part-time employee works at least 117 hours

(2) 8% of the hours worked in a leave year by a part-time employee, subject to a maximum of 4 working weeks.

2.3.6 ECSR Question No. 2

As regards postponement of annual leave under Irish legislation the holidays must be given to the employee within the leave year or, with the employee's consent, within six months of the following leave year. It is the responsibility of the employer to ensure that the employee takes his/her full statutory leave allocation within the appropriate period. Employees may, with the consent of the employer, carry over holidays in excess of statutory minimum leave to a

following leave year. The Committee refers to its statement on postponement in the general introduction to these conclusions.

2.3.7 Our Response :-

Section 19(3) of the Organisation of Working Time Act 1997 provides that the annual leave of an employee who works 8 or more months in a leave year shall, subject to the provisions of any employment regulation order, registered employment agreement, collective agreement or any agreement between the employee and his or her employer, include an unbroken period of 2 weeks. Under Section 20(1)(c) of the Act, annual leave can be postponed until the first six months of the following leave year but this requires the consent of the employee. Also Section 20(1)(a) of the Act provides that, while the times at which annual leave is granted to an employee is determined by the employer, having regard to work requirements, the employer must take into account the employee's need to reconcile work and any family responsibilities, and must also take into account the opportunities for rest and recreation available to the employee.

2.3.8 ECSR Special Comment

“European Committee of Social Rights

General Introduction – Conclusions 2007

Statements of interpretation

7. The Committee makes the following statements:

8. Statement on Article 2§3

An employee must take at least two weeks uninterrupted annual holidays during the year the holidays were due.

Annual holidays exceeding two weeks may be postponed in particular circumstances defined by domestic law, the nature of which should justify the postponement.”

2.3.9 Our Response :- See our response at sub-paragraph 2.3.7 above.

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2.3.10 ECSR Concluding Comment

The Committee concludes that the situation in Ireland is in conformity with Article 2§3 of the Revised Charter.



Article 2 – The Right to Just Conditions of Work :-

Text of ARTICLE 2 PARA. 4 of the Revised European Social Charter

ARTICLE 2 PARA. 4

"With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake: to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;"

Questions asked of all Parties (member states of the Council of Europe, which have signed and ratified the Revised European Social Charter): - For convenience, new material is shown in red print

Article 2§4

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Scope of the provisions as interpreted by the ECSR

Paragraph 4: Application of preventive measures to eliminate the risks in inherently dangerous or unhealthy occupations; where it has not yet been possible to eliminate or sufficiently reduce these risks some form of compensation should be ensured to those workers exposed to such risks, namely reduced working hours or additional paid holidays

Text of Ireland's Seventh Report under the Revised European Social Charter in relation to Article 2, Paragraph 4: -For convenience, new material is shown in red print.

Our Response to Question 1 (Sub-Paragraphs 2.4.1- 2.4.18 refer.)

- 2.4.1 Further to our detailed response in 2006, Ireland has enacted significant primary and secondary legislation in addition to the Safety, Health and Welfare at Work Act 2005 (which is the principal legislation governing occupational health and safety in Ireland) since we last reported.
- 2.4.2 Ireland's position remains that it is best to tackle occupational safety and health problems by a process of hazard identification, risk assessment and consequently risk management rather than compensate workers either financially or with extra leave for undertaking dangerous work. This is based on the General Principles of Prevention, in EU Directive 89/391/EC on the introduction of measures to encourage improvements in the safety and health of workers at work and in Schedule 3 of the [Safety, Health and Welfare at Work Act 2005](#).
- 2.4.3 Detailed Regulations have also been made to complement the Safety, Health and Welfare at Work Act 2005, including, inter alia, the Safety, Health and Welfare at Work (General Application) Regulations 2007. These new Regulations, which are designed to be user friendly, contribute towards the Irish Government's "Better Regulation" agenda in that they include in one text virtually all of the specific safety and health laws which apply generally to all employments. The General Application Regulations 2007 are available to download at the following link – [Health and Safety Policy Section Publications](#)
- 2.4.4 The 2007 General Application Regulations replace a range of earlier regulations as well as re-transposing a number of EU Directives on occupational safety.
- 2.4.5 Ireland has also introduced individual sets of regulations for the construction and quarrying sectors and Codes of Practice for agriculture and construction. These sectors have been identified by the Health and Safety Authority as high-risk in relation to occupational health and safety. Similar sector specific legislation is planned for other high-risk areas. The introduction of sector specific legislation has helped focus both employers and employees on their responsibilities in respect to occupational health and safety with a view to reducing the levels of fatalities and accidents. The relevant construction and quarrying legislation is available to download at the following link - [Health and Safety Policy Section Publications](#).
- 2.4.6 The 2006 Agriculture Code of Practice and the 2008 Construction Code of Practice are available to download at the following links - [Agriculture Code of Practice](#), [Construction Code of Practice](#) . Please click here to access the [Safe Quarry Guidelines](#).
- 2.4.7 Ireland has also introduced the Safety, Health and Welfare at Work (Exposure to Asbestos)(Regulations) 2006 which transposed for the first time Directive 2003/18/EC of the European Parliament and of the Council of 27th March 2003 amending Council Directive 83/477/EEC on the protection of workers from the risks related to exposure to asbestos at work.

2.4.8 The Regulations apply to all work activities which expose persons to risks arising from the inhalation of dust from asbestos or materials containing asbestos. The Regulations aim to protect employees by introducing a single exposure limit value for all work activities where exposure to asbestos dust in the air at a place of work may arise. The Regulations emphasise the need for adequate training. Those involved in demolition and asbestos removal activities must provide evidence of their ability to do this work in a safe way to ensure the protection of their employees. The 2006 Asbestos Regulations are available to download at the following link- [Chemicals Policy Unit Legislation](#)

2.4.9 The Chemicals Act 2008, which is the legislative basis for enforcement of a number of EU Chemicals Regulations including REACH, came into operation in mid 2008. While it is not workplace health and safety legislation, its effects should be positive in improving workplace health and safety. The Chemicals Act 2008 is available to download by clicking on the following link - [Chemicals Policy Unit Legislation](#).

2010 Developments

2.4.10 A Code of Practice for Working in Confined Spaces under the Safety, Health and Welfare at Work Act 2005, has recently been introduced.

2.4.11 The Code of Practice is designed to provide practical guidance as to the observance of the provisions of the Safety, Health and Welfare at Work (Confined Spaces) Regulations 2001 and replaces the August 2001 Code of the same name.

2.4.12 The 2010 Working on Roads Code of Practice for Contractors with Three or Less Employees under the Safety, Health and Welfare at Work Act 2005 complements the 2008 Construction Code of Practice. Both the Working on Roads Code and the 2008 Construction Code are based on the Health and Safety Authority's award winning Safe System of Work Plans (SSWP). The SSWP relies heavily on pictograms to explain and clarify hazards and controls, thus creating a wordless document where safety can be communicated to all workers regardless of literacy or language skills.

2.4.13 The primary objective of the SSWP is to identify the major hazards associated with work activities and to ensure that appropriate controls are in place before work commences.

2.4.14 The SSWP for Working on Roads will bring to five the number of SSWP's available to employers to use; each one covers typical construction activities: The other activities covered are Ground Works; House Building; Demolition; New Commercial Buildings and Civil Engineering.

2.4.15 The 2010 Code of Practice on Preventing Accidents to Children and Young Persons in Agriculture, is aimed at farmers, contractors or anyone who may be in control of work activity on the farm. It replaces the 2001 code of the same name and complements the 2006 Agriculture Code.

2.4.16 The 2010 Code of Practice for the Safety, Health and Welfare at Work (Chemical Agents) Regulations 2001 also made under the Safety, Health and Welfare at Work Act 2005, which replaces an earlier Code, provides practical guidance as to the observance of 2001 Chemicals Agents Regulations, in relation to occupational exposure limit values for a number of chemical agents.

2.4.17 All of these 2010 Codes will be made available on the Health and Safety Authority's website – www.hsa.ie

2.4.18 In its 2010 Programme of Work, the Health and Safety Authority proposes Codes of Practice in a number of areas, including: Electrical safety in quarries; Fishing vessels. It also proposes Guidance on, inter alia, asbestos.

Our response to Question 2 (Sub-Paragraphs 2.4.19- 2.4.22 refer.)

2.4.19 Ireland does not publish a list of occupations regarded as dangerous or unhealthy. Irish legislation does not define occupations regarded as dangerous or unhealthy. As indicated above, the emphasis is on hazard identification, risk assessment and the putting in place of appropriate prevention and control measures.

2.4.20 As stated in our previous report, there are no workers in Ireland covered by provisions of this nature whether contained in legislation, collective agreements or other measures.

2.4.21 As stated previously, the Organisation of Working Time Act, 1997, which transposes Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time, sets out the maximum working hours of employees in addition to the minimum breaks and rest periods and annual leave entitlements. There is no statutory entitlement or provision in that Act as regards additional paid holidays for workers engaged in dangerous or unhealthy occupations. The Act provides that the maximum working week for night workers is an average of 48 hours averaged over two months. However, the Act also provides that for night workers whose work involves special hazards or a heavy physical or mental strain the maximum weekly working hours which apply to them is an absolute 48 hours.

2.4.22 Council Directive 93/104/ EC was amended by Directive 2000/34/EC of the European Parliament and of the Council and these two Directives were consolidated in Directive 2003/88/EC concerning certain aspects of the organisation of working time. The amending Directive and the consolidated Directive did not necessitate any changes to the provisions in the 1997 Act referred to above.

Our response to Question 3 (Sub-Paragraphs 2.4.23 refers.)

2.4.23 Please see the annual reports of the Health and Safety Authority at [http://www.hsa.ie/eng/Publications and Forms/Publications/Corporate/](http://www.hsa.ie/eng/Publications_and_Forms/Publications/Corporate/)

Conclusions of the Council of Europe's European Committee of Social Rights (ECSR):- ECSR Comments / Questions directed specifically at Ireland :-

Article 2 – The Right to Just Conditions of Work :-

Paragraph 4 – Elimination of risks for workers in dangerous or unhealthy occupations

2.4.24 The Committee notes the information provided in Ireland's report.

ECSR Question No. 1 :-

2.4.25 The Committee previously concluded that the situation in Ireland was not in conformity with Article 2§4 of the 1961 Charter as there is no provision in legislation for reduced working hours or additional holidays for workers in dangerous or unhealthy occupations coupled with the fact that no evidence was given demonstrating that such measures were provided by collective agreement or by other means.

Our Response :-

2.4.26 Please see our response in sub-paragraph 2.4.2 above.

2.4.27 The Safety, Health and Welfare at Work Act, 2005 is now the principal Act governing occupational safety and health matters in Ireland. The primary focus of the 2005 Act is on the prevention of workplace accidents, illnesses and dangerous occurrences and it also provides for significantly increased fines and penalties aimed at deterring the minority who continue to flout safety and health laws.

2.4.28 As with the its precursor, the basic principles underlying the 2005 Safety, Health and Welfare at Work Act are the employers' duty of care to provide all their employees with a safe place of work; a safe system of work; safe plant and machinery and effective and appropriate occupational safety and health training. These principles incorporate the responsibility of an employer to identify the hazards and assess the risks associated with each job and put in place measures that minimise these risks in accordance with the Act.

- 2.4.29 As stated in a previous Irish report, the Irish approach is to tackle occupational safety and health problems at root rather than compensate workers either financially or with extra leave for undertaking dangerous work.
- 2.4.30 The Committee recalls that the text of Article 2§4 in the 1961 Charter was amended in the Revised Charter. The first part of Article 2§4 under the Revised Charter requires states to eliminate risks in inherently dangerous or unhealthy occupations. This part is closely linked to Article 3 of the Charter (right to safe and healthy working conditions, see infra). Article 3 requires states to introduce policies and measures aimed at improving health and safety at work and preventing accidents and threats to health, particularly by reducing to a minimum risk factors in the working environment.
- 2.4.31 The second part of Article 2§4 requires states to ensure that some form of compensation is received by workers exposed to risks where it has not yet been possible to eliminate or sufficiently reduce these risks despite the application of the aforementioned preventive measures or in the absence of their application.
- 2.4.32 The aim of the compensation must be to offer those concerned sufficient and regular time to recover from the associated stress and fatigue, and thus maintain their vigilance (Conclusions III, Ireland, p. 15).
- 2.4.33 Article 2§4 mentions two forms of compensation: reduced working hours and additional paid holidays. In view of the emphasis in this provision on health and safety objectives, the Committee considers that other approaches to reducing exposure to risks may also be in conformity with the Charter (Conclusions 2005, Statement of Interpretation on Article 2§4, as above).

ECSR Question No. 2 :-

2.4.34 The Committee therefore asks for information on specific measures taken to reduce exposure to risks in occupations or involving work processes where it has not been possible to eliminate all residual risks, in particular in those occupations typically considered as dangerous and unhealthy.

Our Response :-

- 2.4.35 **Please see our response in sub-paragraphs 2.4.1- 2.4.18 above.**
- 2.4.36 Pending receipt of the information requested the Committee defers its conclusion.

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Article 2 – The Right to Just Conditions of Work :-

Text of ARTICLE 2 PARA. 5 of the Revised European Social Charter

ARTICLE 2 PARA. 5

"With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake: to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest."

Questions asked of all Parties (member states of the Council of Europe, which have signed and ratified the Revised European Social Charter):- For convenience, new material is shown in red print.

Article 2§5

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics and any other relevant information, in particular: circumstances under which the postponement of the weekly rest period is provided.

Scope of the provisions as interpreted by the ECSR

Paragraph 5: The right to a weekly rest period coinciding, as far as possible, with the day traditionally recognised as a day of rest should be guaranteed; weekly rest periods may not be replaced by compensation and cannot be given up.

Text of Ireland's Seventh Report under the Revised European Social Charter in relation to Article 2, Paragraph 5: -For convenience, new material is shown in red print.

Our Response to Questions 1 and 2 :-

2.5.1 The only derogation in Irish legislation from Maximum weekly working hours is in the Organisation of Working Time(Exemption of Civil Protection Services) Regulations 1998-S.I.No. 52 of 1998. Information on how this S.I has any impact on rules relating to the weekly rest period is not available.

Our Response to Question 3 :-

2.5.2 The Garda Síochána(Police Force) and the Defence Forces are not covered by the daily and weekly rest periods provided for in the Organisation of Working Time Act 1997. There are currently 14,729 members of the Garda Síochána and 10,081 members of the permanent Defence Forces. The current strength of the Labour Force is 1,938,500.

Conclusions of the Council of Europe's European Committee of Social Rights (ECSR):- ECSR Comments / Questions directed specifically at Ireland :-

Article 2 – The Right to Just Conditions of Work :-

Paragraph 5 – Weekly rest period

2.5.3 The Committee notes the information provided in Ireland's report. The Working Time Organisation Act, 1997 provides for a weekly rest period of 24 hours preceded by a daily rest period of 11 hours, i.e. 35 hours of continuous rest (Section 13). In lieu of granting this rest period in any period of 7 days, the employer may grant two rest periods of 24 hours each in the next following period of 7 days. If these two periods are granted consecutively they shall be preceded by the daily rest period of 11 hours. If they are not consecutive they shall each be preceded by an 11 hours rest period. The weekly rest period shall be a Sunday (if the rest period is postponed as above, at least one of the two periods shall fall on a Sunday).

ECSR Question No. 1 :-

2.5.4 The Committee previously found that the above described situation was in conformity with the 1961 Charter, but deferred its conclusion pending information on the postponement of the weekly rest period.

2.5.5 The Committee had noted that the Code of Practice on Compensatory Rest Periods and Related Matters provided that exemptions may be made to the rules on weekly rest period in a collective agreement approved of by the Labour

Court. Under such an exemption an employee may be permitted to work 14 consecutive 8 hour days. In those circumstances the employee, in respect of that period, had a minimum entitlement of 2 periods of 24 hours compensatory rest plus 2 periods of 11 consecutive hours daily rest.

ECSR Question No. 2 :-

2.5.6 The Committee considers that 12 consecutive days of work is a maximum before being granted at least two full rest days, and an arrangement as described above could only be acceptable in exceptional cases and subject to strict safeguards. It asked what are the exact circumstances under which the weekly rest period may be postponed beyond 12 consecutive days and are there any specific safeguards in addition to approval of the collective agreement by the Labour Court (e.g. prior authorisation from the Labour Inspection).

ECSR Question No. 3 :-

2.5.7 The current report states that Ireland agrees that the weekly rest period should not be postponed beyond 12 consecutive days and will amend the Code of Practice on Compensatory Rest accordingly. **The Committee asks to be kept of all developments in the situation.**

Our Response to ECSR Questions Nos. 1&2

2.5.8 **Decisions in relation to any statutory provisions on postponement of the weekly rest period and in relation to compensatory rest will be considered in the context of the overall outcome of the current consultation phases being undertaken by the European Commission in relation to a future review of the Working Time Directive.**

Our Response to ECSR Question No. 3

2.5.9 **See our response under sub-paragraph 2.5.8 above.**

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Article 2 – The Right to Just Conditions of Work :-

Text of Article 2, Para.6 of the Revised Charter and the Questions asked of all Parties (member states of the Council of Europe, which have signed and ratified the Revised European Social Charter):- For convenience, new material is shown in red print.

ARTICLE 2 PARA. 6

"With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake: to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;"

Article 2§6

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Scope of the provisions as interpreted by the ECSR

Paragraph 6: The right of workers to written information upon commencement of their employment should be guaranteed. This information should cover essential aspects of employment relationship.

Appendix to Article 2§6

Parties may provide that this provision shall not apply:

- a. to workers having a contract or employment relationship with a total duration not exceeding one month and/or with a working week not exceeding eight hours;
- b. where the contract or employment relationship is of a casual and/or specific nature, provided, in these cases, that its non-application is justified by objective considerations

Text of Ireland's Seventh Report under the Revised European Social Charter in relation to Article 2, Paragraph 6: -For convenience, new material is shown in red print.

Our Response to Questions 1,2 and 3 (New Material for our 7th Report)

Contract of Employment

2.6.1 Anyone who works for an employer for a regular wage or salary has automatically a contract of employment whether written or not. Section 23 of the Industrial Relations Act 1990, states that a contract of employment, for the purposes of the Industrial Relations Acts 1946 to 1990, may be expressed or implied, oral or in writing. Many of the terms of a contract of employment may emerge from the common law, statutes or collective agreements made through trade unions or may be derived from the custom or practice in a particular industry. The Terms of Employment (Information) Acts 1994 and 2001 provide that an employer must provide an employee with a written statement of certain particulars of the terms of employment.

2.6.2 The Protection of Employees (Fixed-Term Work) Act 2003 provides that where an employer proposes to renew a fixed-term contract, the fixed-term employee shall be informed in writing by the employer of the objective grounds justifying the renewal of the fixed-term contract and the failure to offer a contract of indefinite duration, at the latest by the date of the renewal. This Act is outlined further in Section 2 of the Guide to Labour Law, published by the Department of Enterprise, Trade and Employment.

2.6.3 Employers are required by section 14(1) of the Unfair Dismissals Acts 1977 to 2001 to give a notice in writing to each employee setting out the procedure which the employer will observe before, and for the purpose of, dismissing the employee. This must be given not later than 28 days after entering into a contract of employment. There is a separate section in the Guide to Labour Law on dismissals– see Section 4 –Dismissals.

2.6.4 The Payment of Wages Act 1991, gives every employee the right to a written statement every pay day with every deduction itemised.

2.6.5

Please also see the following Department of Enterprise, Trade and Employment websites :-

<http://www.entemp.ie/publications/employment/2007/guidetolabourlaw07.pdf>

[http://www.entemp.ie/employment/compliance/Redundancy Payments Act 1967 \(as amended\).pdf](http://www.entemp.ie/employment/compliance/Redundancy Payments Act 1967 (as amended).pdf)

[http://www.entemp.ie/employment/compliance/Unfair Dismissals Act 1977 \(as restated\).pdf](http://www.entemp.ie/employment/compliance/Unfair Dismissals Act 1977 (as restated).pdf)

<http://www.irishstatutebook.ie/1990/en/act/pub/0019/index.html>

<http://www.irishstatutebook.ie/1994/en/act/pub/0005/index.html>

<http://www.irishstatutebook.ie/home.html>

<http://www.irishstatutebook.ie/2001/en/act/pub/0045/index.html>

<http://www.irishstatutebook.ie/2003/en/act/pub/0029/index.html>

<http://www.irishstatutebook.ie/1977/en/act/pub/0010/index.html>

<http://www.irishstatutebook.ie/1991/en/act/pub/0025/index.html>

<http://www.entemp.ie/publications/employment/2004/guideredscheme.pdf>



Conclusions of the Council of Europe’s European Committee of Social Rights (ECSR):- ECSR Comments / Questions directed specifically at Ireland :-

Article 2 – The Right to Just Conditions of Work :-

Paragraph 6 – Information on employment contract

2.6.6 ECSR Comments :-

Article 2§6 guarantees the right of workers to written information upon commencement of their employment. This information must at least cover essential aspects of the employment relationship or contract, i.e. the following:

- the identities of the parties;*
- the place of work;*
- the date of commencement of the contract or employment relationship;*
- in the case of a temporary contract or employment relationship, the expected duration thereof;*
- the amount of paid leave;*
- the length of the periods of notice in case of termination of the contract or the employment relationship;*
- the remuneration;*
- the length of the employee's normal working day or week;*
- where appropriate, a reference to the collective agreements governing the employee's conditions of work. (Conclusions 2003, Bulgaria, pp. 28-29).*

The Committee notes the information provided in Ireland’s report.

The Committee notes that under the Terms of Employment (Information) Act 1994:

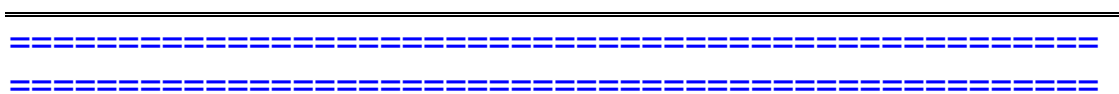
An employer shall, not later than 2 months after the commencement of an employee's employment with the employer, give or cause to be given to the employee a statement in writing containing the following particulars of the terms of the employee's employment,

- the full names of the employer and the employee,
- the address of the employer in the State or, where appropriate, the address of the principal place of the relevant business of the employer in the State or the registered office
- the place of work or, where there is no fixed or main place of work, a statement specifying that the employee is required or permitted to work at various places,
- the title of the job or nature of the work for which the employee is employed,
- the date of commencement of the employee's contract of employment,
- in the case of a temporary contract of employment, the expected duration thereof or, if the contract of employment is for a fixed term, the date on which the contract expires,
- the rate or method of calculation of the employee's remuneration,

- the length of the intervals between the times at which remuneration is paid, whether a week, a month or any other interval,
- any terms or conditions relating to hours of work (including overtime),
- any terms or conditions relating to paid leave (other than paid sick leave),
- any terms or conditions relating to—
incapacity for work due to sickness or injury and paid sick leave, and
pensions and pension schemes,
- the period of notice which the employee is required to give and entitled to receive
- a reference to any collective agreements which directly affect the terms and conditions of the employee's employment including, where the employer is not a party to such agreements, particulars of the bodies or institutions by whom they were made.

The Terms of Employment (Additional Information) Order 1998 SI No 49 of 1998 provides that the information provided to the employee must include details of the time and duration of (and any other terms and conditions) relating to the rest periods and breaks referred to in the Organisation of Working Time Act 1997.

The Committee concludes that the situation in Ireland is in conformity with Article 2§6 of the Revised Charter.



Article 2 – The Right to Just Conditions of Work :-

Text of Article 2, Para.7 of the Revised Charter and the Questions asked of all Parties (member states of the Council of Europe, which have signed and ratified the Revised European Social Charter):- For convenience, new material is shown in red print.

ARTICLE 2 PARA. 7

"With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake: to ensure that workers performing night work benefit from measures which take account of the special nature of the work".

Article 2§7

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics and any other relevant information, in particular: the hours to which the term 'night work' applies.

Scope of the provisions as interpreted by the ECSR

Paragraph 7: Compensatory measures should be guaranteed for persons performing night work.

Text of Ireland's Seventh Report under the Revised European Social Charter in relation to Article 2, Paragraph 7: (Repeat of 2006 material in sub-paragraphs 2.7.1-2.7.8, with one minor correction "an employer" in 2.7.5).

Our Response to Questions 1 and 2 above:- Sub-Paragraphs 2.7.1-2.7.7 refer:

- 2.7.1 Section 16(1) of the Organisation of Working Time Act 1997 provides that "night time" means the period between midnight and 7 a.m. on the following day.
- 2.7.2 Section 16(1) of the 1997 Act also provides that a night worker means an employee who normally works at least 3 hours of his or her daily working

time during night time and whose annual night time hours equal or exceed 50% of his or her total number of hours worked in a year.

- 2.7.3 Section 16(2)(b) of the 1997 Act provides that a night worker shall not work more than an average of 48 hours a week averaged over 2 months.
- 2.7.4 Section 16(2)(a) of the 1997 Act also provides that a night worker whose work involves special hazards or a heavy physical or mental strain shall not work more than 48 hours per week.
- 2.7.5 Regulation 6 of the Safety, Health and Welfare at Work (Night Work and Shift Work) Regulations 2000- S.I. No. 11 of 2000 provides that for the purposes of section 16(2)(a) of the 1971 Act, **an employer** must carry out an assessment of the risks associated with the work of a night worker to determine whether that work involves special hazards or a heavy physical or mental strain.
- 2.7.6 Regulation 7(1) of the Safety, Health and Welfare at Work (Night Work and Shift Work) regulations 2000 a provides that an employer shall before he or she employs a night worker and at regular intervals during their employment make available to that night worker, free of charge, an assessment of the effects, if any, on the health of that night worker by reason of him and her being employed as a night worker.
- 2.7.7 Regulation 7(5) of the Safety, Health and Welfare at Work (Night Work and Shift Work) Regulations 2000 provides that” If a night worker becomes ill or otherwise exhibits symptoms of ill health, and that illness or those symptoms is or are recognized as being connected with the fact that he or she performs night work, the employer shall, whenever possible, assign duties to the worker to perform that do not involve his or her performing any night work and to which he or she is suited.”

Our Response to Question 3 above:- Sub-Paragraph 2.7.8 refers:

2.7.8 These figures are not available.

Conclusions of the Council of Europe’s European Committee of Social Rights (ECSR):- ECSR Comments / Questions directed specifically at Ireland :-

Article 2 – The Right to Just Conditions of Work :-

2.7.9

Paragraph 7 – Night work

Article 2§7 guarantees compensatory measures for persons performing night work. National law or practice must define “night” within the context of this provision.

The measures which take account of the special nature of the work must at least include the following:

- periodical medical examinations, including a check prior to employment on night work;
- the provision of possibilities for transfer to daytime work;
- continuous consultation with workers’ representatives on the introduction of night work, on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work

The Committee notes the information provided in Ireland’s report.

Section 16(1) of the Organisation of Working Time Act 1997 provides that “night time” means the period between midnight and 7 a.m. on the following day. Section 16(1) of the 1997 Act also provides that a night worker means an employee who normally works at least 3 hours of his or her daily working time during night time and whose annual night time hours equal or exceed 50% of his or her total number of hours worked in a year.

Section 16(2)(b) of the 1997 Act provides that a night worker shall not work more than an average of 48 hours a week averaged over 2 months.

The 1997 Act also provides that a night worker whose work involves special hazards or a heavy physical or mental strain shall not work more than 48 hours per week.

Regulation 6 of the Safety, Health and Welfare at Work (Night Work and Shift Work) Regulations 2000- S.I. No. 11 of 2000 provides that for the purposes of section 16(2)(a) of the 1971 Act must carry out an assessment of the risks associated with the work of a night worker to determine whether that work involves special hazards or a heavy physical or mental strain.

Regulation 7(1) of the Safety, Health and Welfare at Work (Night Work and Shift Work) Regulations 2000 provides that an employer shall before he or she employs a night worker and at regular intervals during their employment make available to that night worker, free of charge, an assessment of the effects, if any, on the health of that night worker by reason of him and her being employed as a night worker.

The Regulations further provide that” If a night worker becomes ill or otherwise exhibits symptoms of ill health, and that illness or those symptoms is or are recognized as being connected with the fact that he or she performs night work, the employer shall, whenever possible, assign duties to the worker to perform that do not involve his or her performing any night work and to which he or she is suited.”

2.7.10 ECSR Question :-

The Committee asks for information on any provisions made for consultation with worker representatives prior to the introduction of night work on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work

2.7.11 Our Response :-

Section 20 of the Safety, Health and Welfare at Work Act 2005 provides that an employer shall prepare a Safety Statement for the workplace which will be brought to the attention of all employees. The Act provides that the Safety Statement should be based on the identification of the hazards in the workplace and on the risk assessment carried out under Section 19 of the Act, and should specify the manner in which the safety, health and welfare at work of the employees shall be secured and managed. Also, the Safety Statement should include the protective and preventive measures taken and the resources provided for protecting safety, health and welfare at the place of work to which the safety statement relates.

2.7.12 Pending receipt of the information requested the Committee concludes that the situation is in conformity with Article 2§7 of the Revised Charter.

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TEXT OF ARTICLE 4 OF THE REVISED EUROPEAN SOCIAL CHARTER

Article 4 – The Right to a Fair Remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake:

1. to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;
2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
3. to recognise the right of men and women workers to equal pay for work of equal value;
4. to recognise the right of all workers to a reasonable period of notice for termination of employment;
5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

The exercise of this right shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

Appendix to Article 4§4

This provision shall be so understood as not to prohibit immediate dismissal for any serious offence.

Appendix to Article 4§5

It is understood that a Contracting Party may give the undertaking required in this paragraph if the great majority of workers are not permitted to suffer deductions from wages either by law or through collective agreements or arbitration awards, the exception being those persons not so covered.]

ARTICLE 4: THE RIGHT TO A FAIR REMUNERATION

ARTICLE 4 PARA. 1

"With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake: to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;"

"...The exercise of this right shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions;"

Questions asked of all Parties (member states of the Council of Europe, which have signed and ratified the Revised European Social Charter):-

Information to be submitted

Article 4§1

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures on national net average wage¹ (for all sectors of economic activity and after deduction of social security contributions and taxes; this wage may be calculated on an annual, monthly, weekly, daily or hourly basis); national net minimum wage, if applicable, or the net lowest wages actually paid (after deduction of social security contributions and taxes); both net average and minimum net wages should be calculated for the standard case of a single worker; information is also requested on any additional benefits such as tax alleviation measures, or the so-called non-recurrent payments made available specifically to a single worker earning the minimum wage as well as on any other factors ensuring that the minimum wage is sufficient to give the worker a decent standard of living; the proportion of workers receiving the minimum wage or the lowest wage actually paid.
Where the above figures are not ordinarily available from statistics produced by the States party, Governments are invited to provide estimates based on *ad hoc* studies or sample surveys or other recognised methods.

Scope of the provisions as interpreted by the ECSR

Paragraph 1: Wages must guarantee a decent standard of living to all workers. The net minimum wage must amount to at least 60% of the net national average wage.

Text of Ireland's Seventh Report under the Revised European Social Charter in relation to Article 4, Paragraph 1 -For convenience, the new material is shown in red print.

¹ The concept of wage, for the purpose of this provision, relates to remuneration – either monetary or in kind – paid by an employer to a worker for time worked or work done. Remuneration should cover, where applicable, special bonuses and gratuities. The Committee's calculations are based on net amounts, i.e. after deduction of taxes and social security contributions. The national net average wage is that of a full-time wage earner, if possible calculated across all sectors for the whole economy, but otherwise for a representative sector such as manufacturing industry or for several sectors.

Reply to Questions 1, 2 and 3 above :-

4.1.1 Please see earlier Reports, in particular, our last report under Article 4, Paragraph 1 as part of the Government of Ireland's Second Report under the Revised European Social Charter, which was submitted to the Council of Europe in 2006.

Developments since Ireland's Last Report :-

Response:

4.1.2 Social partnership at national level in Ireland evolved from the National Wages Agreements of 1970s.

4.1.3 The process of social partnership in recent years has been expressed in seven National Programmes, negotiated between the Government and social partners. These Programmes embody a strategic approach to the development of the economy. The centralised approach to wage determination inherent in them has, in addition to producing competitive wage settlements, facilitated greater attention being given to issues such as corporate strategy, technical change, training and work practices and other important factors influencing international competitiveness.

Pay Terms of National Social Partnership Agreements

4.1.4 The table below details the more recent pay increases under the National Agreements. It should be noted that the commencement date and the end date for each agreement may vary from employment to employment. This is because the agreements are voluntary, and such detail is left to local negotiation.

4.1.5 The pay terms of all social partnership agreements are negotiated **voluntarily** and they come into force in individual employments through normal industrial relations processes. While the pay terms are not binding in the formal sense, it is expected that implementation would be effected through local agreement.

<u>Towards 2016 – 1st Module</u>	
The pay terms will run for 27 months from the expiration of part 2 of Sustaining Progress	
	Private Sector Pay
Phase 1	3% of basic pay for the first 6 months of the Agreement as it applies in each particular employment or industry.
Phase 2	2% of basic pay for the next 9 months of the Agreement as it applies in each particular employment or industry – except for those employees on

	an hourly basic rate of €10.25 per hour or less on commencement of the second phase where a 2.5% increase will apply.
Phase 3	2.5% of basic pay for the next 6 months of the Agreement as it applies in each particular employment or industry.
Phase 4	2.5% of basic pay for the next 6 months of the Agreement as it applies in each particular employment or industry.
Public Sector Pay	
Phase 1	3% from 1 December 2006.
Phase 2	2% from 1 June 2007; except for those earning up to and including €400 per week (€20,859 per annum), where a 2½% increase will apply.
Phase 3	2½ % from 1 March 2008.
Phase 4	2½ % from 1 September 2008.

4.1.6 It is important to note that the Construction Industry Federation (CIF) rejected the terms of the Transitional Agreement under Towards 2016 and the pay increases set out below do not therefore apply to workers in the construction sector.

<u>Towards 2016 – Transitional Agreement</u>	
The pay terms will come into force on the expiry of the first module of Towards 2016 and shall run for 21 months.	
<u>Private Sector Pay</u>	
Phase 1	A Pay Pause of 3 months form the expiry of the last phase of the first module of Towards 2016.
Phase 2	An increase of 3.5% for the next 6 months of the Agreement as is applies in each particular employment or industry.
Phase 3	An increase of 2.5% for the next 12 months of the Agreement – except for those employees on an hourly basic rate of €11 per hour or less on commencement of the phase 3 where a 3% increase will apply.
<u>Public Sector Pay</u>	
Phase 1	A Pay Pause of 11 months form the expiry of the last phase of the first module of Towards 2016.
Phase 2	An increase of 3.5% for the next 9 months of the Agreement.
Phase 3	An increase of 2.5% for the remainder to the Agreement – except for those earning up to and including €430.49 per week (€22,463 per annum) on commencement of the phase 3 where a 3% increase will apply.

4.1.7 On 4 February 2009, the Minister for Finance announced that the increases for public sector workers provided for under the Transitional Agreement with effect from 1 September 2009 and 1 June 2010 would not be paid on those dates and that further discussions in relation to these increases will be held in 2011 without further commitment.

4.1.8 On 25 November 2009, IBEC (the employer’s representative body) confirmed that it was withdrawing from participation in the pay terms of *Towards 2016 – Review and Transitional Agreement*.

National Minimum Wage

4.1.9 The National Minimum Wage Act 2000 became law on 1 April 2000. Under the terms of the Act, an experienced adult worker is entitled to a minimum hourly rate of pay, which is currently €8.65. An explanatory guide to the provisions of the Act is available at: <http://www.entemp.ie/erir/mnwg.pdf>.

4.1.10 The provisions of the National Minimum Wage Act apply to all employees except the following categories of employees who are excluded from its provisions:

- (i) close relatives of the employer such as a spouse, father, mother, son, daughter, brother and sister;
- (ii) apprentices within the meaning of the Industrial Training Act, 1967 and Labour Services Act, 1987 including an apprentice printer, bricklayer, mechanic, plumber, carpenter/joiner and electrician.
- (iii) in accordance with Section 37 (2) of the Prisons Act 2007, prisoners engaged in any non-commercial activity or work under the supervision of the governor or person in charge of the prison concerned are exempt from the provisions of the National Minimum Wage Act.

4.1.11 Under the terms of the Act an experienced adult worker must be paid an average hourly rate of pay that is not less than €8.65 per working hour. For the purposes of the Act an experienced adult worker is an employee who is not:

- (i) under age 18 or
- (ii) in the first two years after the date of first employment over age 18, or
- (iii) a trainee undergoing a course of training or study, in normal working hours (which satisfies the conditions set out in S.I. No. 99 of 2000).

4.1.12 The sub-minimum rates which apply to these categories of employees are as follows:

Employee	Minimum Hourly rate of pay
Under age 18	6.06
In the first year from date of first employment over age 18	6.92
In the second year from date of first employment over age 18	7.79
In a course of training or study over age 18, undertaken in normal working hours	
1st one third period*	6.49
2nd one third period*	6.92
3rd one third period*	7.79

*Each one third period must be at least one month and no longer than twelve months.

4.1.13 The Minimum Wage can be varied in two ways:

- i) by agreement between the social partners in the context of a national economic agreement, or
- ii) a recommendation from the Labour Court

4.1.14 When it is undertaking an examination of the minimum wage, the Labour Court will consult with the social partners and if general agreement is reached it will recommend the agreed rate to the Minister. If the parties cannot reach agreement the Labour Court can still make a recommendation to the Minister but in doing so, must have regard to certain matters, such as the likely impact on employment, unemployment, inflation and competitiveness.

4.1.15 When considering a proposed change to the National Minimum Wage, the Minister is required to take into account the impact the proposed rate may have on employment, the overall economic conditions in the State and national competitiveness.

4.1.16 In November 2008, the Irish Congress of Trade Unions (ICTU) requested the Labour Court to review the national minimum wage and to make a recommendation to me concerning its adjustment. The Labour Court subsequently invited submissions on the issue. Various submissions were received, including from IBEC (Irish Business and Employers Confederation), ICTU and the Department of Finance. The Labour Court also held discussions with these parties.

4.1.17 The Labour Court is still considering the matter, particularly in the light of the failure recently to reach agreement with the Social Partners on an integrated national response to the current economic crisis.

Enforcement of the National Minimum Wage National Employment Rights Authority Inspection Services

4.1.18 Ensuring employees are receiving the pay to which they are entitled is a key focus for National Employment Rights Authority (NERA) Inspection Services and a campaign in this respect is a regular feature of NERA's inspection activity.

4.1.19 A minimum wage campaign in 2008 saw 3,079 calls, interviews and inspections carried out by NERA inspectors.

4.1.20 Quarterly updates on the activities of NERA can be accessed at:
<http://www.employmentrights.ie/en/aboutnera/publicationsdownloads/>

Industrial Relations (Amendment) Bill 2009

4.1.21 In *Towards 2016* the Social Partners committed to measures aimed at modernising and streamlining the Joint Labour Committee system, including the rationalisation of the number of committees. The implementation of these measures is now well advanced. In the context of the Review and Transitional Agreement, the Government and the social partners agreed to the implementation of a series of further measures, including the introduction of legislation to strengthen the existing system for the making of both Employment Regulation Orders and Registered Employment Agreements and to provide for their continued effective operation.

Purpose of the Bill

4.1.22 Joint Labour Committees (JLC) and Registered Employment Agreements (REAs), which have been features of the Irish industrial relations system since 1946, have been the subject of a number of recent legal challenges in the courts. This Bill will provide for a number of amendments to the existing legislative framework surrounding the JLC and REA systems, including improved procedures, and clear principles and policies to be taken into account by JLCs when formulating proposals for EROs. Currently Employment Regulation Orders and Registered Employment Agreements are given statutory effect following confirmation by the Labour Court of the making of an order or the registration of an agreement. The Bill provides that EROs and REAs will in future be given legislative effect following the making of a Ministerial Order and it introduces arrangements for Oireachtas scrutiny of EROs and REAs. The Bill also provides for the amendment of the definition of “worker” under Section 23 of the Industrial Relations Act 1990 and will ensure that future changes in the categories of those covered by this definition and thereby afforded access to the Labour Relations Commission and the Labour Court will be made by primary legislation.

4.1.23 The Minister for Labour Affairs has indicated that he intends to bring forward proposals to include in the Bill a provision whereby EROs and REAs can include an "inability to pay" mechanism. This provision is intended to balance the demands of both Trade Unions and employers to strengthen the legal status of EROs and REAs while also alleviating financial pressures the employers are currently facing.

4.1.24 The following employees are excluded from the scope of the National Minimum Wage Act:

- close relatives of the employer such as spouse, father, mother, son daughter, brother and sister;
- apprentices within the meaning of the Industrial Training Act 1967 and the Labour Services Act 1987, and
- prisoners engaged in any non-commercial activity or work under the supervision of the governor or person in charge of the prison concerned.

4.1.25 The principle of excluding an employee who is a close relative of an employer

from certain employment rights legislation was established prior to the Minimum Wage Act. It was not considered desirable to brand arrangements, which could include evening, weekend and summer work, or assistance at critical times, that derive from the special relationship between the employee and employer, as constituting a criminal offence if the minimum wage was not paid for the hours worked by a close relative.

4.1.26 Apprentices serving statutory apprenticeships as defined in the above Acts are excluded from the provisions of the National Minimum Wage Act as their pay rates are determined in accordance with long established practice and procedure involving a direct relationship with current craft rates. The apprenticeships lead to craft worker status for the apprentices who complete their apprenticeship. There are currently 15,029 registered statutory apprentices who are in employment.

4.1.27 In accordance with Section 37 (2) of the Prisons Act 2007, prisoners engaged in any non-commercial activity or work under the supervision of the governor or person in charge of the prison concerned are exempt from the provisions of the National Minimum Wage Act.

4.1.28 In order to reduce potential job losses arising from the payment of the national minimum wage, an employer, who is unable to pay, may apply to the Labour Court for a once-off temporary exemption from the experienced adult national minimum hourly rate of pay in respect of an employee or a number of employees. An application cannot be made in respect of an employee under the age of 18, or others on sub-minimum rates.

4.1.29 **Mean hourly earnings 2007 - €20.08**

(Source: Central Statistics Office – National Employment Survey 2007).

Please note that the above figure is for gross earnings shown before deductions of taxes and social security contributions – the information is not available on a Net basis. However the OECD publication - Taxing Wages 2007/2008: 2008 Edition publishes tables that show annual income on a pre and post deduction basis (Page 280 of the Report refers).

4.1.30 **National Minimum Wage (from 1 July 2007) – before deductions made - the data is not available on a net basis**

€8.65 per hour

4.1.31 **Percentage of workers earning the National Minimum wage in 2007**

5% (Source: Central Statistics Office 2007 National Employment Survey).

4.1.32 **Trend in the level of the minimum wage and/or the lowest wage actually paid compared to national net average wage and any studies on this subject.**

The 2007 National Employment Survey is available at the following address:
http://www.cso.ie/releasespublications/documents/earnings/2007/nes_2007.pdf

4.1.33 The following is an outline in the trend in the Gross National Minimum wage:

July 2007

Experienced Adult Worker	€8.65
Under 18	€6.06 per hour
First year of employment since turning 18	€6.92 per hour
Second year of employment since turning 18	€7.79 per hour

January 2007

Experienced Adult Worker	€8.30
Under 18	€5.81 per hour
First year of employment since turning 18	€6.64 per hour
Second year of employment since turning 18	€6.89 per hour

May 2005

Experienced Adult Worker	€7.65
Under 18	€5.36 per hour
First year of employment since turning 18	€6.12 per hour
Second year of employment since turning 18	€6.89 per hour

February 2004

Experienced Adult Worker	€7.00
Under 18	€4.90 per hour
First year of employment since turning 18	€5.60 per hour
Second year of employment since turning 18	€6.30 per hour

October 2002

Experienced Adult Worker	€6.35 (Pound equivalent £5.00)
Under 18	€ 4.45 per hour
First year of employment since turning 18	€ 5.08 per hour
Second year of employment since turning 18	€ 5.72 per hour

July 2001

Experienced Adult Worker	£4.70 (€5.97 Euro equivalent from Jan 02)
Under 18	£3.29 (€4.18) per hour
First year of employment since turning 18	£3.76 (€4.77) per hour
Second year of employment since turning 18	£4.23 (€5.37) per hour

April 2000

Experienced Adult Worker	£4.40
Under 18	£3.08 per hour
First year of employment since turning 18	£3.52 per hour
Second year of employment since turning 18	£3.96 per hour



Conclusions of the Council of Europe's European Committee of Social Rights (ECSR):- ECSR Comments / Questions directed specifically at Ireland :-

Article 4 – Right to a fair remuneration

Paragraph 1 – Adequate remuneration

- 4.1.34 The Committee takes note of the information contained in the Irish report. The Committee notes that National Minimum Wage was introduced in Ireland in April 2000. The report states that in 2004 the minimum wage in Ireland was increased to € 7,65 per working hour. In its previous conclusion the Committee asked whether the amounts indicated for the minimum wage were gross or net. In this connection, the report states that those on the minimum wage in Ireland are removed from the tax net. Therefore the amounts indicated are net of taxes.
- 4.1.35 The report states that prior to the introduction of the minimum wage legislation the National minimum Wage Commission was appointed by the Government to advise on the introduction of a national minimum wage, which examined a number of issues including the social implications of a national minimum wage and its enforcement. The Commission recommended that sub-minimum rates should apply to employees under 18 years of age as well as in the first two years of employment over the age of 18. In this regard and while considering that the minimum wage paid to these employees was below 60% of the average national wage, **the Committee asked in its previous conclusion how a minimum wage paid to these employees could be considered as sufficient to guarantee a person a decent standard of living and asked whether the persons concerned were entitled to any supplementary benefits.** In response to this question the Committee notes that there are no supplementary benefits specifically provided for those on these sub-minimum rates.
- 4.1.36 The Committee notes from the report that minimum hourly rate of pay for employees under the age of 18 was fixed at € 5.36 and at € 6.12 for employees aged over 18 in the first year from the date of first employment , at € 6,89 for employees in the second year etc. The Committee notes from the report that the National Minimum Wage Commission recommended that employees under the age of 18 should be entitled to 70% of the national minimum wage in order to strike a balance between ensuring that young employees are not exploited and that the rate of pay does not encourage students to leave full-time education.
- 4.1.37 The Committee notes from Eurostat that the monthly minimum wage in 2004 equalled € 1183. Having noted from the report that the minimum wage is not taxable, the Committee considers that this is the net amount. As regards the national average wage, the Committee notes that the report does not contain this information.
- 4.1.38 The Committee notes from Statistical Yearbook of Ireland 2005 that the average hourly earnings in all industries constituted €14,04 in 2004. **The Committee assumes that this is a gross amount and it notes that this**

amount falls below the threshold established by this Article. The Committee reiterates that for the purposes of Article 4§1 of the Revised Charter the report should contain information on gross and net minimum and average wages, net of taxes and social security contributions for the case of a single worker.

4.1.39 The Committee concludes that the situation in Ireland is not in conformity with Article 4§1 of the Revised Charter on the grounds that the minimum wage falls below 60% of the average wage and information on net average wages is not provided.

Our Response :-

4.1.40 The ECSR query shown at sub-paragraph 4.1.35 above refers. Please see our response under sub-paragraphs 4.1.9 to 4.1.28 above.

4.1.41 The ECSR query shown at sub-paragraph 4.1.38 above refers. Please see our response under sub-paragraphs 4.1.29 to 4.1.33 above.

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Text of ARTICLE 4 PARA. 2 of the Revised European Social Charter

ARTICLE 4: THE RIGHT TO A FAIR REMUNERATION

ARTICLE 4 PARA. 2

"With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake: to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;"

"...The exercise of this right shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions;"

Questions asked of all Parties (member states of the Council of Europe, which have signed and ratified the Revised European Social Charter):

Information to be submitted

Article 4§2

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics (estimates, if necessary) or any other relevant information, in particular: methods used to calculate the increased rates of remuneration; impact of flexible working time arrangements on remuneration for overtime hours; special cases when exceptions to the rules on remuneration for overtime work are made.

Scope of the provisions as interpreted by the ECSR

Paragraph 2: The right to an increased remuneration rate for overtime work should be guaranteed to workers; where leave is granted to compensate for overtime, it should be longer than the overtime worked.

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Text of Ireland's Seventh Report under the Revised European Social Charter in relation to Article 4, Paragraph 2:-

Reply to Questions 1, 2 and 3 above :-

- 4.2.1 Please see earlier Reports, in particular, our last report under Article 4, Paragraph 2 as part of the Government of Ireland's Second Report under the Revised European Social Charter, which was submitted to the Council of Europe in 2006.
- 4.2.2 Sub-paragraphs 4.2.1 to 4.2.5 inclusive of our Second Report under the Revised European Charter refer. The situation remains unchanged.

Conclusions of the Council of Europe's European Committee of Social Rights (ECSR):- ECSR Comments / Questions directed specifically at Ireland :-

Article 4 – Right to a fair remuneration

Paragraph 2 – Increased rate of remuneration for overtime work

- 4.2.3 The Committee takes note of the information contained in the Irish report. The report states that premia paid for overtime work are not the subject of statutory regulation but are determined through negotiation and agreement between the parties at the level at which basic pay and conditions of employment are normally settled. Most collective agreements contain provisions in relation to remuneration for overtime work. **In its previous conclusion the Committee asked the Government to provide more detailed information on overtime remuneration as agreed in collective agreements to illustrate that the right to increased remuneration for overtime work is guaranteed to workers.**
- 4.2.4 The Committee notes that the report does not provide this information. Therefore, the Committee considers that there is no evidence to show that this right is effectively guaranteed. The Committee notes that if the necessary information is not provided in the next report, there will be nothing to show that the situation in Ireland is in compliance with Article 4§2 of the Revised Charter.
- 4.2.5 Pending receipt of the information requested, the Committee defers its conclusion.

Our Response :-

4.2.6 Sub-paragraphs 4.2.3 and 4.2.4 above refer. The situation remains unchanged.



ARTICLE 4 PARA. 3

Text of ARTICLE 4 PARA. 3 of the Revised European Social Charter

"With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake: to recognise the right of men and women workers to equal pay for work of equal value;"

"...The exercise of this right shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions;"

Questions asked of all Parties (member states of the Council of Europe, which have signed and ratified the Revised European Social Charter):

Information to be submitted

Article 4§3²

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please supply detailed statistics or any other relevant information on pay differentials between men and women not working for the same employer by sector of the economy, and according to level of qualification or any other relevant factor.

Scope of the provisions as interpreted by the ECSR

Paragraph 3: The right to equal pay without discrimination on grounds of sex should be expressly provided for in legislation. Appropriate and effective remedies should be provided in the national legislation in the event of alleged wage discrimination on grounds of sex.

Text of Ireland's Seventh Report under the Revised European Social Charter in relation to Article 4, Paragraph 3 :-

Reply to Questions 1, 2 and 3 above :-

4.3.1 Please see earlier Reports, in particular, our last report under Article 4,

² States party that have accepted Article 20 of the European Social Charter (revised) do not have to reply to questions on Article 4§3, but must take account of these questions in their answers on Article 20.

Paragraph 1 as part of the Government of Ireland's Second Report under the Revised European Social Charter, which was submitted to the Council of Europe in 2006.

4.3.2 Sub-paragraphs 4.3.1 to 4.3.7 inclusive of our Second Report under the Revised European Charter refer. The situation remains unchanged.



Conclusions of the Council of Europe's European Committee of Social Rights (ECSR):- ECSR Comments / Questions directed specifically at Ireland :-

Article 4 – Right to a fair remuneration

Paragraph 3 – Non-discrimination between men and women workers with respect to remuneration

4.3.3 In the General Introduction to Conclusions 2002 on the Revised Charter, the Committee indicated that "since the right to equality under Article 20 of the Revised Charter covers remuneration, the Committee will no longer examine the national situation in this respect under Article 4§3 (right to equal pay). Consequently, States which have accepted both provisions, are no longer required to submit a report on the application of Article 4§3".

4.3.4 Therefore, the Committee decides to adopt the same conclusion under both provisions in respect of equal pay. Consequently, as it did under Article 20 (Conclusions 2006, pp. 412-413), **it concludes that the situation in Ireland is in conformity with Article 4§3 of the Revised Charter.**

Our Response :-

4.3.5 Sub-paragraphs 4.3.3 and 4.3.4 above refer. Ireland has accepted and reported previously under Article 20 of the Revised Charter.



Text of ARTICLE 4 PARA. 4 of the Revised European Social Charter

ARTICLE 4 PARA. 4

"With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake: to recognise the right of all workers to a reasonable period of notice for termination of employment;"

"... The exercise of this right shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions."

[The Appendix to the revised Charter stipulates that this provision shall be so understood as not to prohibit immediate dismissal for any serious offence.]

Questions asked of all Parties (member states of the Council of Europe, which have signed and ratified the Revised European Social Charter):

Information to be submitted

Article 4§4

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Appendix to Article 4§4

This provision shall be so understood as not to prohibit immediate dismissal for any serious offence.

Scope of the provisions as interpreted by the ECSR

Paragraph 4: The right of all workers to a reasonable period of notice for termination of employment should be guaranteed.



Text of Ireland's Seventh Report under the Revised European Social Charter in relation to Article 4, Paragraph 4:-

Reply to Questions 1 and 2 above :-

4.4.1 Please see earlier Reports, in particular, our last report under Article 4, Paragraph 4 as part of the Government of Ireland's Second Report under the Revised European Social Charter, which was submitted to the Council of Europe in 2006.

4.4.2 Sub-paragraphs 4.4.1 to 4.4.7 inclusive of our Second Report under the Revised European Charter refer. The situation remains unchanged.

Conclusions of the Council of Europe's European Committee of Social Rights (ECSR):- ECSR Comments / Questions directed specifically at Ireland :-

Article 4 – Right to a fair remuneration

Paragraph 4 – Reasonable notice of termination of employment

- 4.4.3 The Committee takes note of the information in Ireland's report. Although it occurred outside the reference period (2001-2004), legislation enacted in 2005 changes the situation regarding civil servants, to whom the provisions of the 1973 Act on notice of dismissal now apply.
- 4.4.4 However, the Committee notes that it previously ruled that the situation in Ireland was not in conformity with the Charter because the periods of notice laid down in the 1973 Act were inadequate (Conclusions XIV-2, pp. 397-398). This situation is the subject of Recommendation R ChS (95) 6, adopted by the Committee of Ministers on 22 June 1995, which was renewed in Res ChS (2005) 3 of 4 May 2005. The Committee notes that Ireland's report contains no proposals to increase these notice periods or any political commitment to that effect. **It therefore asks the Irish authorities how this attitude can be reconciled with the Committee of Ministers' recommendation, which invited them to take account of this negative conclusion in an appropriate fashion.**
- 4.4.5 **The Committee therefore concludes that the situation in Ireland is not in conformity with Article 4§4 of the Revised Charter on the grounds that the periods of notice laid down in the 1973 Act are inadequate.**

Our Response :-

4.4.6 Sub-paragraphs 4.4.4 and 4.4.5 above refer. The situation remains unchanged.



Text of ARTICLE 4 PARA. 5 of the Revised European Social Charter

ARTICLE 4 PARA. 5

"With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake: to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards."

"...The exercise of this right shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions."

[The Appendix to the revised Charter stipulates that it is understood that a Contracting Party may give the undertaking required in this paragraph if the great majority of workers are not permitted to suffer deductions from wages either by law or through collective agreements or arbitration awards, the exception being those persons not so covered.]

Questions asked of all Parties (member states of the Council of Europe, which have signed and ratified the Revised European Social Charter):

Information to be submitted

Article 4§5

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Appendix to Article 4§5

It is understood that a Contracting Party may give the undertaking required in this paragraph if the great majority of workers are not permitted to suffer deductions from wages either by law or through collective agreements or arbitration awards, the exception being those persons not so covered.]

Scope of the provisions as interpreted by the ECSR

Paragraph 5: The right of all workers to their wage being subject to deductions only in circumstances which are well-defined in a legal instrument (law, regulation, collective agreement or arbitration award) should be guaranteed.



Text of Ireland's Seventh Report under the Revised European Social Charter in relation to Article 4, Paragraph 5:-

Reply to Questions 1 and 2 above :-

4.5.1 Please see earlier Reports, in particular, our last report under Article 4, Paragraph 5 as part of the Government of Ireland's Second Report under the Revised European Social Charter, which was submitted to the Council of Europe in 2006.

4.5.2 Sub-paragraphs 4.5.1 to 4.5.7 inclusive of our Second Report under the Revised European Charter refer. The situation remains unchanged.

Conclusions of the Council of Europe's European Committee of Social Rights (ECSR):- ECSR Comments / Questions directed specifically at Ireland :-

ARTICLE 4 – RIGHT TO A FAIR REMUNERATION

Paragraph 5 – Limitation of deduction from wages

4.5.3 The Committee notes the information in the Irish report. Section 5§1 of the Payment and Wages Act, 1991 authorises non-statutory deductions from wages that are permitted under the terms of the employment contract or are agreed in writing by the employee. Under Article 4§5 of the revised Charter, the determination of deductions from wages may not be left simply to the wishes of parties to an employment contract and if such provisions are not prohibited as such it must be subject to precise statutory provisions, case law, government regulations or collective agreements. The Committee recalls that a worker may not waive his rights to limitation of wage (Conclusions 2005, Norway, p.524-525). **Consequently, the Committee considers that the situation in Ireland is not in conformity with Article 4§5 of the revised Charter on the ground that workers may waive their rights to limitation of wage.**

4.5.4 The report states that employees are protected against unreasonable wage deductions not by collective agreements but only by the law. It acknowledges that the Payment of Wages Act does not require employees to be left with at least the minimum subsistence level after deductions. However, under section 5§2 the amount of any deduction must be fair and reasonable having regard to all the circumstances,

including the level of the wages. Moreover, under section 6, employees can complain to a rights commissioner about any employer violations of section 5, and the parties can appeal against the commissioner's decision to the Employment Appeals Tribunal. The latter's decisions are binding. **However, the report has nothing to say about how commissioners or the Tribunal determine what constitutes a "fair and reasonable" deduction.** The Committee recalls that the remaining wage after deductions should not deprive workers and their dependents of their very means of subsistence (Conclusions XI-1, Greece, p.76). The Committee considers that referring to the "fair and reasonable" nature of the amount of the wage deduction is not a sufficient protection of the worker. Consequently, it concludes that **the situation in Ireland is not in conformity with Article 4§5 of the revised Charter on the ground that deductions from wages may deprive workers of their very means of subsistence.**

- 4.5.5 The Committee concludes that the situation in Ireland is **not in conformity** with Article 4§5 of the revised Charter on the grounds that:
- workers may waive their right to limited deductions from wages;
 - deductions from wages may deprive workers of their very means of subsistence.

OUR RESPONSE :-

4.5.6 Sub-paragraphs 4.5.4 and 4.5.5 above refer. The situation remains unchanged.

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Article 5 – The Right to Organise

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this Article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

Questions asked of all Parties (member states of the Council of Europe, which have signed and ratified the Revised European Social Charter):-

Information to be submitted

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Scope of the provision as interpreted by the ECSR

Trade unions and employers' associations must be free to organise without prior authorisation, and initial formalities such as declaration and registration must be simple and easy to apply. These organisations must be independent where anything to do with their organisation or functioning is concerned. They must be free to form federations and join similar international organisations.

Workers must be free not only to join but also not to join a trade union. Domestic law must guarantee the right of workers to join a trade union and include effective punishments and remedies where this right is not respected. The same rules apply to employers' freedom to organise.

Trade unions and employers' organisations must have broad autonomy where anything to do with their internal structure or functioning is concerned. They are entitled to perform their activities effectively and devise a work programme. Any excessive interference by a State constitutes a violation of Article 5.

Domestic law may restrict participation in various consultation and collective bargaining procedures only to representative trade unions.

Article 5 applies to the public and private sectors. States party are entitled to restrict

or withdraw the right of the armed forces to organise. Restrictions may be placed on the right of the police to organise, but they may not be deprived of all their trade union prerogatives.

Text of Ireland's Seventh Report under the Revised European Social Charter in relation to Article 5 -For convenience, the new material is shown in red print.

Reply to Questions 1, 2 and 3 above :-

5.1 Please see earlier Reports setting out the legal framework, in particular, our last report under Article 5 as part of the Government of Ireland's Third Report under the Revised European Social Charter, which was submitted to the Council of Europe on 21 April 2006. Please also see our response under Article 6 as part of this (our Seventh) Report.

Developments since Ireland's last report

Representational Rights

Industrial Relations Act 2001

<http://www.irishstatutebook.ie/2001/en/act/pub/0011/index.html>

5.2 As previously reported, the Industrial Relations Act 2001, as amended, provides for procedures to deal with situations where it is not the practice of the employer to engage in collective bargaining negotiations in respect of the group of workers that are a party to the dispute and the internal dispute resolution procedures (if any) normally used by the parties concerned failed to resolve the dispute in the employment concerned.

5.3 In 2004, the trade union IMPACT applied to the Labour Court for an investigation, pursuant to section 2 of the Industrial Relations Act 2001, of an alleged dispute between the union and Ryanair concerning Dublin based pilots. Ryanair appealed the decision of the Labour Court to the High Court and, subsequently, to the Supreme Court. The Supreme Court, in a judgment issued in 2007, found in favour of Ryanair and ordered the Labour Court to rehear the case and apply the procedures and law as indicated in its judgement (attached below).

Supreme Court Judgement

5.4 In relation to whether there was a trade dispute, the Supreme Court took the view that the existence of a trade dispute is a vital condition precedent to the Labour Court's investigation. It held that in considering the matter the Labour Court should have investigated whether there was internal machinery for resolving the

perceived problem and whether this had been exhausted. In doing so it should have heard evidence from at least one of the employee pilots in dispute rather than relying on documentary evidence and statements made by the trade union.

5.5 As regards whether it was Ryanair's practice to engage in collective bargaining negotiations, the Supreme Court held that the Labour Court had not adequately investigated Ryanair's contention that its Employee Representative Councils (ERCs) represented a forum for collective bargaining negotiations. If this contention was disputed, the Labour Court should not have relied solely on statements made by the trade union and on Ryanair documentation in arriving at its conclusion but should have heard evidence in the matter from at least one employee.

5.6 Similarly, as regards whether internal dispute resolution procedures existed and failed to resolve the dispute, the Supreme Court held that the Labour Court did not have sufficient evidence before it to allow it to conclude that this was the case. It was not entitled to rely on the fact that because the pilot representatives had withdrawn from Ryanair's ERCs there were no *de facto* operative procedures in place.

5.7 A copy of the Supreme Court's judgement is attached below.

Proposals in Towards 2016: Review and Transitional Agreement 2008 – 2009

5.8 In the 2008 partnership negotiations, the issue of representational rights for trade unions was discussed. The following was agreed in Section 9 of Part 2 of Towards 2016: Review and Transitional Agreement 2008 – 2009

Extract from Section 9 of Part 2 of Towards 2016: Review and Transitional Agreement 2008 – 2009

9.1 The system of voluntary collective bargaining provides the context within which the Social Partnership process developed and operates. Consideration of how the industrial relations system could ensure that fair and reasonable terms and conditions of employment can be assured has featured in past agreements, notably in Partnership 2000 where it was agreed that this issue would be considered by a High Level Group; in the Programme for Prosperity and Fairness where it was agreed that the operation of the legislation arising from the report of that Group would be monitored by the Social Partners; and in Sustaining Progress, where agreement was reached on a number of amendments to these arrangements in order to enhance their effectiveness.

9.2 These arrangements were based on a shared commitment that, where negotiating arrangements are in place, the most effective means of resolving differences, which arise between employers and trade unions representing employees is by voluntary collective bargaining. In the absence of a practice of voluntary collective bargaining, subject to agreed qualifying criteria, these arrangements provided for a mechanism by which the fairness of the employment conditions of workers in their totality could be assessed.

9.3 The parties have reviewed recent developments in the operation of this framework, including in particular the consequences of the outcome of litigation on a number of these aspects. These have had the effect of substantially impairing the capacity of the arrangements, which have been agreed, to operate as intended. These have also clarified certain aspects of fair procedure and natural justice applicable in such cases. The parties, therefore, are agreed to the establishment of a review process which will consider the legal and other steps which are required to enable the mechanisms which were established under previous agreements to operate as they had been intended. This process will take account of issues of concern to both sides from their experience of the mechanisms to date, the necessity for fair procedures, and will take account of expert legal advice and international practice, where relevant. The review will be completed by the end of March 2009 with a view to the enactment of the necessary legislation in June 2009.

5.9 Although the Towards 2016: Review and Transitional Agreement 2008 – 2009, is no longer effectively in force (see below pp 6-10) the Irish Government nonetheless reaffirmed through the course of 2009 and 2010 its commitment to achieving progress in relation to the employment rights commitments agreed under the Towards 2016 – Review and Transitional Agreement, including in particular the review process on employee representation.

5.10 The review process proposed in paragraph 9.3 of Towards 2016 Review and Transitional Agreement 2008-2009 got underway in late 2009. Two informal meetings took place in furtherance of this proposal and position papers were prepared by the employer and trade union representatives on the issues which they saw as requiring to be addressed by any new legislation in this area. While the review process will continue within Government on proposals to address the issues involved, progress in bringing the work to a conclusion will have to take account of other priority legislative commitments to be delivered in the employment area, resource constraints within Departments, and the extent of agreement between the trade union and employer sides in this area.

Conclusions of the Council of Europe's European Committee of Social Rights (ECSR):- ECSR Comments / Questions directed specifically at Ireland :-

Article 5 – Right to Organise

5.11 The Committee takes note of the information in the Irish report.
The Committee previously examined the situation as regards the forming of trade unions, representativity and *personal scope* (Addendum to

Conclusions XV-1, pp 21-23). The Committee therefore considers only recent developments in this conclusion.

5.12 Right to join or not to join a trade union

The Committee considers that the situation is not in conformity with the Charter because there are pre-entry closed shops in Ireland (Conclusions XIII-1 (1990-1991)). Although Article 40 of the Constitution guarantees freedom of association, pre-entry closed shops exist in Ireland.

The report points out that the Irish courts have held that post-entry closed shops are unconstitutional when they apply to workers who were in their jobs before the closed shop was agreed on or introduced (Educational Company of Ireland v. Fitzpatrick (1961)). The courts have not, however, definitively ruled on the constitutionality of either pre-entry closed shops or post-entry closed shops when they apply to newly recruited employees, for they have not had occasion to settle the issue.

As the situation has not improved during the reference period, the Committee maintains its conclusion of nonconformity.

Similarly, the Committee observes that the situation is not in keeping with the European Convention on Human Rights, as interpreted in the Sørensen and Rasmussen v. Denmark judgment of 11 January 2006. Despite the discretion the respondent State enjoys with regard to the means of ensuring the right to organize and enabling trade unions to protect the occupational interests of their members, the Court found a violation of Article 11 of the European Convention on Human Rights on the grounds that, as the applicants had been forced to join a particular trade union, the very substance of the negative right of association guaranteed by Article 11 had been undermined.

5.13 Trade union activities

The Committee previously pointed out that, in order to bargain collectively, a trade union must hold a negotiation licence. The Committee refers in this connection to its negative conclusion concerning Article 6§2 of the Revised Charter.

With regard to protection against discrimination and reprisals on grounds of involvement in trade union activities, the Committee previously pointed out that Sub-section 6(2)(a) of the Unfair Dismissals Act 1977, as amended, provides that a dismissal shall be deemed to be unfair if it results wholly or mainly from the employee's membership of a trade union or intention of joining a trade union or involvement in activities on behalf of a trade union or excepted body. This provision takes the term "trade union" to mean only an authorised trade union, i.e. one that holds a negotiation licence. The fact that only members of a trade union with a negotiation licence are protected by the Unfair Dismissals Act 1977, as amended, is contrary to the Article 5 of the Revised Charter. The Committee therefore considered that the situation was not in conformity with the Revised Charter since Conclusions XV-1 Addendum (1997-1998).

The Committee notes that there was no change in the situation in law or in practice during the reference period. The report states that an Interdepartmental Committee was set up in 2005 to examine the issues raised in the conclusions concerning Articles 5 and 6 of the Revised Charter. The Interdepartmental Committee met for the first time on 5 May 2005 and is to submit a report in 2006. The Committee wishes to be informed of developments in this respect and considers that the situation is still not in conformity with the Revised Charter in this regard.

5.14 Conclusion

The Committee concludes that the situation in Ireland is not in conformity with Article 5 of the Revised Charter for the following reasons:

- certain closed shop practices are authorised by law;
- national legislation does not protect all the workers against dismissal on grounds of membership of a trade union or involvement in trade union activities

5.15 Our Response :-

Sub-paragraphs 5.11 to 5.14 above refer. The situation remains unchanged except in those areas outlined in our response contained in sub-paragraphs 5.1 to 5.10 above. Please see also our response under Article 6 as part of this (our Seventh) Report, in particular our response under Article 6, paragraph 2.

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Appendix to Our Report under Article 5 – see sub-paragraph 5.7 above.

THE SUPREME COURT

Appeal No. 377/2005

Murray C.J.
Denham J.
Hardiman J.
Geoghegan J.
Fennelly J.

BETWEEN:

RYANAIR LIMITED

Applicant/Appellant

and

THE LABOUR COURT

Respondent

and

**IRISH MUNICIPAL PUBLIC AND CIVIL
TRADE UNION (IMPACT)**

Notice Party/Respondent

JUDGMENT of Mr. Justice Geoghegan delivered the 1st day of February 2007

In this judgment, I will be referring to the above-named parties as “*Ryanair*”, “*The Labour Court*” and “*IMPACT*”. In a case such as this, where there have already been double proceedings in the sense of a hearing before the Labour Court and a hearing before the High Court words such as “*applicant*”, “*appellant*” and “*respondent*” can inevitably cause some confusion.

The factual background to this appeal is relatively simple though the necessary questions of statutory construction are anything but. The context of the appeal is that Ryanair, the well-known airline company, has a policy of not negotiating with trade unions, a fact of which all employees of Ryanair are obviously well aware. This does not mean that Ryanair will not permit its employees to be members of trade unions. Presumably, even if it wanted to achieve that, it knows it cannot do so as freedom of association is guaranteed by the Constitution.

So that there will not be oppression or exploitation or unfair dealings on the part of an employer with employees in a company that is not unionised, a legislative regime has been enacted which is contained in the Industrial Relations (Amendment) Act, 2001 and the Industrial Relations (Miscellaneous Provisions) Act, 2004. That legislation ensures that if there are not reasonable arrangements for resolving on a collective basis, problems arising between employees or particular categories of employees and the employer there is an ultimate recourse to the Labour Court.

In this particular case, what happened was that Ryanair decided to change its fleet of aeroplanes from being composed of Boeing 737-200s to the newer and larger models of Boeing 737-800. Such a change required special training of the pilots who are going to fly the new aircraft. Ryanair decided to offer eight senior Dublin based pilots such retraining on particular terms and conditions. The next intended batch to be retrained were to be a group of pilots who were based in Stansted Airport in London. For the purpose of the internal procedures and mechanisms for collective employer and employee relationships, the Dublin based pilots and the Stansted based pilots would be separate categories of employees. The Dublin based pilots who had received the offer for retraining were unhappy with some of the terms and conditions and entered into correspondence with management to which I will be referring in due course. In terms of Irish competition the rival airline, Aer Lingus, is unionised and has long dealt with IALPA. More or less in tandem with the correspondence relating to the eight pilots with management, IMPACT purported to invoke the 2001 and 2004 Acts already referred to and purported to bring before the Labour Court a “*trade dispute*” on behalf of unidentified pilots of Ryanair.

As I will be explaining in more detail the legislation provides for a procedure whereby the Labour Court can conduct a preliminary inquiry as to whether it has jurisdiction to deal with the matter i.e. whether the statutory factors are present which give the right of the union to invoke the Labour Court in circumstances where the employer company does not itself negotiate with trade unions. That procedure was adopted in this case and the Labour Court made a Decision in favour of IMPACT and against Ryanair in as much as Ryanair disputed the jurisdiction.

Ryanair claimed that there was in fact no “*trade dispute*” giving rise to a right to go to the Labour Court and that at any rate the Labour Court adopted unfair procedures and made an irrational decision. With leave, Ryanair brought a judicial review application seeking to quash the Decision of the Labour Court on these grounds. That relief was refused by the High Court (Hanna J.) and it is an appeal from that decision of the High Court which has now come before this court.

I think it important at this stage to set out the relevant provisions in the 2001 and 2004 Acts. These are not the only enactments which are relevant to the appeal but the other provisions can be referred to at a later stage. I intend to set out now section 2 of the Industrial Relations (Amendment) Act, 2001 as amended by section 2 of the Industrial Relations (Miscellaneous Provisions) Act, 2004. I will underline the amendments. The amended section, therefore, reads as follows:

“2. – (1) *Notwithstanding anything contained in the Industrial Relations Acts, 1946 to 1990, at the request of a trade union or excepted body, the Court may investigate a trade dispute where the Court is satisfied that –*

(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,

(c) the trade union or the excepted body or the employees, as the case may be, have not acted in a manner which, in the opinion of the Court, has frustrated the employer in observing a provision of such code of practice, and

(d) the trade union or the excepted body or the employees, as the case may be, have not had recourse to industrial action after the dispute in question was referred to the Commission in accordance with the provisions of such code of practice.

(2) (Not relevant).”

From the wording of the amended section, it is clear that the first requirement for the Labour Court’s jurisdiction is that there be an existing “*trade dispute*”. Ryanair

disputed that there was a “*trade dispute*”.

Secondly, Ryanair argued that it was the practice of Ryanair to engage in “*collective bargaining negotiations*”.

Thirdly, Ryanair argued that it had in place internal dispute resolution procedures and that there had not been a failure of those procedures to resolve the alleged dispute.

The Labour Court held against Ryanair on all of these issues but as I have already mentioned, Ryanair claims that not only was the Labour Court wrong and irrational in its decision on these issues but that it gave an unfair hearing to Ryanair.

The jurisdictional inquiry in the Labour Court arises under section 3 of the 2001 Act as amended by section 3 of the 2004 Act. The section in its amended form reads as follows:

“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.”

Under the amended section the Labour Court, if it decides to hold such an inquiry, must in my view do so in relation to all the requirements specified in section 2. It cannot limit the inquiry to some but not all of the requirements. This point is relevant to a view which the Labour Court seems to have taken that although it went on to express views as to whether there was or was not a trade dispute, it was not bound to do so.

I propose now to summarise the affidavits which were filed in the High Court for the purposes of the judicial review application.

The impugned Decision of the Labour Court was made on the 26th January, 2005. By order of the High Court (Macken J.) made the 21st February, 2005 leave was granted for judicial review of that Decision. The leave was in respect of most of the orders sought in the statement grounding the application for judicial review and on all but one of the grounds of relief. The only order of *certiorari* sought which was excluded by the leave read as follows:

“Order of certiorari by way of judicial review quashing the findings of the respondent in its decision entitled ‘Ryanair Limited v. Irish Municipal Public and Civil Trade Union/Irish Airlines Pilot Association’, Decision No. DECPO 51 made the 26th day of January 2005 that it was not the practice of the applicant to engage in collective bargaining.”

This is somewhat curious because it seems clear that both at the hearing before Hanna J. in the High Court and in the submissions before this court this issue played a significant part. I do not think that anything turns on this given that one of the grounds for relief in the way of *certiorari* permitted by the learned judge was that the Labour Court had erred in law and/or in fact in concluding that “*the unilateral withdrawal of the pilots from the established practice of collective bargaining meant that it was not*

the practice of the applicant to engage in collective bargaining” for the purposes of section 2 of the 2001 Act, as amended, and meant therefore that that requirement in section 2 was met. I suspect that the apparent inconsistency can be explained by an understandable assumption on the part of the learned judge giving leave that the finding that it was not the practice of Ryanair to engage in collective bargaining was a pure finding of fact not involving any legal issues. For the purposes of this judgment, I am regarding it as a live issue.

The first affidavit grounding the application for judicial review was sworn by Eddie Wilson, Director of Personnel and Inflight of Ryanair. Mr. Wilson explains in that affidavit that by an application dated the 22nd November, 2004 IMPACT of which the Irish Airlines Pilots Association (IALPA) is a part applied to the Labour Court for an investigation of an alleged trade dispute between that union and Ryanair concerning the Dublin based pilots pursuant to section 2(1) of the Act of 2001 as amended. In the next paragraph Mr. Wilson makes clear that Ryanair’s position “*was and remains*” that it did not accept that there was a trade dispute between it and the trade union or that the trade union was entitled to intermeddle in the affairs of Ryanair. It then went on to explain the position of Ryanair in relation to employees joining or not joining trade unions etc. and that is something which I have already explained. One of the problems about this affidavit and about a good deal of the evidence before the High Court is that it is not entirely clear whether everything in the affidavits was said or produced before the Labour Court. All the affidavits should have been drawn up with this in mind but they were not. However, I am satisfied that the substance of Mr. Wilson’s affidavit was in fact before the Labour Court. In paragraph 5 of his affidavit, he explains the position in relation to what he calls “*collective bargaining*” in Ryanair. He said that it was a “*continual process*” whereby Ryanair negotiates with representatives of its employees “*for the purpose of concluding collective agreements which fixes pay and other conditions of employment.*” He then goes on to describe the system whereby employees including pilots elect employee representatives to Employee Representative Committees (ERCs) and that the various ERCs negotiate directly with the company on an ongoing basis in relation to all terms and conditions of employment. He said that minutes of these meetings were circulated to all employees and approved by the employee representatives. Each category of employees elected their own representatives to the ERCs and in the case of Dublin pilots according to Mr. Wilson it was up to the pilots to elect or appoint representatives on to the pilots ERCs. However, he went on to explain that the pilot representatives, that is to say, the Dublin pilot representatives had withdrawn in August, 2004 and no new representatives had been appointed. At this point, I would comment that the reason for the withdrawal of pilots is not really explained but it may be a reasonable inference to draw that it was part of a strategy to enable recourse to the Labour Court. The withdrawal gave rise to the obvious problem as to what is meant by the sentence

“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.”

Does this mean that if a group of employees unilaterally withdraws from the internal negotiating procedures, it cannot thereafter be said that the employer has a practice of engaging in collective bargaining with them? That was the argument of IMPACT

before the Labour Court and it was accepted by the Labour Court in fact at least on the basis of a mistaken interpretation of the judgment of Fennelly J. in this court in **Iarnród Éireann v. Holbrooke** [2001] 1 IR 237. I will be returning to this case later. Alternatively, does the sentence mean that there is not in place any permanent machinery for collective bargaining negotiations? I think that this is the only sensible interpretation that can be given to the words and I will expand on my viewpoint later in the judgment.

There is a kind of anger expressed by Mr. Wilson in paragraph 5 of the affidavit in that with reference to the withdrawal of the pilots from the ERCs, he makes clear that Ryanair “*strenuously objected to the referral by IMPACT/IALPA which it saw merely as an attempt to compel it to negotiation with this union and to allow it to intermeddle in the affairs of the company.*”

As will emerge from correspondence to which I will be referring later, the resolution of the problems arising in this case has not been helped by these expressions of emotion on the part of Ryanair, however, understandable. There was an unfortunate reluctance on the part of Ryanair to engage in the real issues and in that sense the company was its own worst enemy before the Labour Court. Continual propaganda in correspondence as to how excellent the company is rather than taking up the issues point by point was not helpful to anybody not least to the Labour Court or the High Court or this court. Be that as it may, I believe that the Labour Court was not correct in its interpretation of the sentence to which I have referred above.

Mr. Wilson went on to exhibit the written submissions which Ryanair made to the Labour Court. He also exhibited the written submissions of IMPACT. These submissions would all have been treated as evidence by the Labour Court in that the hearing was entirely informal and there was no sworn evidence of any kind. In this connection paragraph 10 of the affidavit reads as follows:

“I say that at no stage during the hearing on this preliminary issue did any Ryanair pilot or other member of the applicant staff attend at the hearing, other than your deponent and Mr. David O’Brien. I say that IMPACT was represented by a number of trade union officials from IMPACT/IALPA none of whom were employed by the applicant or had involvement with the applicant.”

The affidavit goes on to explain that Mr. David O’Brien is Director of Flight and Ground Operations of Ryanair and that the evidence of Mr. Wilson and Mr. O’Brien was that Ryanair did engage in collective bargaining with its pilots and that this was the practice of Ryanair and also that the internal dispute resolution procedures had not failed. Mr. Wilson went on to point out that in contrast to this no pilot or other employee appeared or was present to support the assertions of IMPACT and that no testimony was adduced to controvert the evidence that Ryanair did engage in collective bargaining with pilots and had an internal dispute resolution procedure in place which had not failed to resolve the dispute. I will, in due course, be explaining how the Labour Court dealt with this matter. For all practical purposes, the Labour Court accepted a particular viewpoint put forward by the trade unions and as a consequence held that Ryanair did not engage in collective bargaining negotiations.

In paragraph 17 of Mr. Wilson’s affidavit he makes reference to having drawn the

attention of the Labour Court to what he calls the existing Pilot Group Agreement of 30th November, 2000 which was a collective bargaining agreement as he described it for the years 2000 to 2005. There had been a ballot of all the pilots in Ryanair approving of the agreement. Mr. Wilson then goes on to refer to certain of the correspondence which was opened to the Labour Court. This included a number of letters from Ryanair pilots who are members of IALPA. Ryanair argued that in that correspondence the pilots acknowledged that there was an internal dispute resolution mechanism and they sought to engage with Ryanair to find a solution to any difficulties which they had. In particular the following passage in a letter from the pilots is referred to:

“We also note that Ryanair continues to talk as if what is at issue here is union recognition, rather than fair and equitable treatment consistent with what we have heretofore experienced. You are well aware of industrial norms and indeed the norms within Ryanair previously with regard to training, and we do not see why you should depart from those. Nevertheless, we are willing to engage with you to try and find a solution.”

The fundamental unfairness of which Mr. Wilson complains in the affidavit is that on Ryanair’s behalf two significant officers of the company gave evidence whereas not a single employee represented by the trade union gave evidence nor were they ever identified.

Towards the end of the affidavit, Mr. Wilson takes issue with the finding of the Labour Court that the Pilots Employee Representative Committee was not an “*excepted body*” within the meaning of section 61(1) of the Trade Union Act, 1941 and was, therefore, a body with which it would not be lawful to engage in collective bargaining. This is heavily disputed by Ryanair and I will return to it later.

I do not propose to refer to the next two affidavits as they refer merely to questions of procedure. A statement of opposition, however, was filed dated the 29th April, 2005. The verifying affidavit in relation to that statement was sworn on the same date by Michael Landers, Assistant General Secretary of IMPACT. The description at the hearing is contained in paragraph 8 of the affidavit, the operative parts of which read as follows:

“On the 14 December, 2004 and the 20 December, 2004 the respondent conducted a preliminary hearing to determine whether or not the requirements specified in the Industrial Relations (Amendment) Act, 2001, section 2(1)(a) had been met. The hearing on the 14th December 2004 transpired as follows: Shay Cody, Deputy General Secretary of the Notice Party, Evan Cullen, President of IALPA, Jimmy McFarlane, Vice-President of IALPA, Neil Johnston, IALPA official and your deponent attended on behalf of the notice party. Mr. Wilson, Director of In-Flight and Personnel, and Mr. David O’Brien, Director of Flight and Ground Operations, and Sean Barrett, Economist, together with the applicant’s legal team attended on behalf of the applicant. The notice party and the applicant read out their written submissions ... and referred to the appendices to those written submissions containing extensive documentation relating to the issues in contention for the respondent. The notice party and the applicant were invited to comment on each other’s submissions and did so. The respondent directed questions to the parties. The parties answered these

questions. The respondent did not require any of the persons questioned to take the Oath before answering the questions posed. Neither the applicant nor the notice party requested that any person would be required to give evidence on Oath. At the conclusion of the hearing, the respondent requested further written submissions and adjourned the matter to 20 December 2004. At the hearing on that day, the parties read out their supplemental submissions.”

Both sets of supplemental submissions are exhibited. The IMPACT’s supplemental submissions for the most part consist of legal arguments which are reiterated and accepted in the decision of the Labour Court and I will, therefore, comment on them when I come to analyse that decision. The union does, however, suggest that certain documents attached to Ryanair’s submissions make “*clear*” that “*those who are elected as employee representatives do not engage in negotiation but at most a form of consultation.*”

While I am not entirely clear as to the precise identity of those documents among the documents which are before the court, I believe that this court has all the documentation which was in fact before the Labour Court. I am not at all satisfied that that documentation of itself negates the case being made by Ryanair. The key question would seem to me, was there in place a machinery which would have obliged the management of Ryanair to sit around the table with representatives of the Dublin pilots and discuss matters of pay and conditions. If there could not be such a discussion simply because the pilot representatives had withdrawn from the internal arrangements then the statutory requirements for jurisdiction would not be fulfilled. There is a fact finding exercise to be carried out here and I will be returning to the question of whether that was adequately done by the Labour Court or not.

The submission of IMPACT which was lodged with the Labour Court goes on to emphasise that in some further documents the word “*consultation*” is used. This is mainly a reference to what Ryanair told the USA authorities and I will return to it.

On my reading of the union’s submission, the key paragraph is the third last paragraph and it reads as follows:

*“Even if, which is denied, the ‘Employee Representative Committees’ engage in negotiations they do not do so with regard to pilots. It is common case between the parties that there are no employee representatives representing pilots since August 2003. Accordingly, as a matter of fact, the ‘Employee Representative Committee’ do not currently engage in negotiations with regard to pilots. Accordingly and applying **Holbrooke** the ‘Employee Representative Committee’ cannot be said to be an excepted body in respect of pilots.”*

That would appear to be the kernel of the case being made by the union. It was clearly accepted by the Labour Court. But as I have already indicated and as I will be elaborating upon, I am satisfied that the union cannot bring itself within the 2001 Act, as amended, on foot of a factual withdrawal from the committee system by the pilots. I am of opinion that the **Holbrooke** case does not support any such proposition.

Mr. Landers in paragraph 11 of his verifying affidavit refers to the issue of whether there was in fact a “*trade dispute*” at the time of the application to the Labour Court. I

must confess that I had the general impression that in the various affidavits and submissions of IMPACT this issue is somewhat skirted around rather than clearly confronted. Paragraph 11 is illustrative of what I mean. Mr. Landers refers to paragraph 5 of Mr. Wilson's affidavit in which he asserts that Ryanair's position is that there was no trade dispute but in response to this, Mr. Landers merely refers to the union's written submissions to the Labour Court and to paragraph 18 of the same affidavit. But if one moves to paragraph 18 all it says is that there was evidence before the Labour Court upon which it was entitled to determine that there was a trade dispute in being and the deponent refers in general to certain paragraphs of Mr. Wilson's affidavit and to the written submissions and documentation that were before the court. But the issue does not seem to me to have been dealt with in any precise way. To my mind, it is perfectly clear that the alleged dispute was a dispute about the terms and conditions in which the eight Dublin pilots would embark on training for the Boeing 737-800s and the employment consequences of their not agreeing to the company's terms. However, it can only be a "trade dispute" within the statutory meaning if the internal machinery for discussing issues was attempted to be invoked by the relevant employees and such an attempt was either rejected by the employer or if not rejected did not resolve the problems. Certain correspondence from the pilots to which I will be referring must throw some doubt on whether there was a trade dispute at the relevant time.

In relation to the issue as to whether there was evidence before the Labour Court upon which it was entitled to conclude that it was not Ryanair's practice to engage in collective bargaining negotiations "*in respect of the grade, group or category of employees who are party to the trade dispute*" Mr. Landers in his verifying affidavit says that the documents submitted by Ryanair to the Labour Court "*demonstrated that neither the 'town hall meetings' nor the 'Employee Representative Committees' operated as collective bargaining processes.*" The deponent refers also to a letter relating to the so-called "*town hall meetings*", the annual report for Ryanair for 2004 an undated circular from Ryanair to its staff announcing a pay increase, a memorandum from Mr. O'Brien dated 1st April, 2004 and Ryanair's 20 Filing to the Securities and Exchange Commission. The fact remains however that neither a single pilot nor any other employee of Ryanair was called by the union to give evidence to the Labour Court. Given the particular issues that were at stake in this case, whatever of any general rule relating to hearings, it was not open to the Labour Court in the circumstances of this case to reach the conclusion which it did reach in the absence of such oral evidence and on the basis of the documentation before it. Mr. Landers goes on to dispute the relevance from Ryanair's point of view of an agreement to which he admits had the characteristics of a collective bargaining agreement in respect of the period 2000 to 2005.

Paragraph 26 of Mr. Landers' affidavit is also clearly indicative of the core argument being made by the union. It reads as follows:

"I beg to refer to paragraphs 22 to 25 of Mr. Wilson's affidavit. I say that the notice party told the respondent on the 14th December 2004 that its members did not wish to engage in negotiations with the applicant other than with the professional assistance of the notice party. I say and believe and I am advised that as a matter of law, on that basis, the applicant cannot therefore be said to engage in collective bargaining with regard to the applicant's members, i.e. the

group of pilots who are party to the current dispute. In any event I say that it was common case between the parties that there were no pilots ERC since September 2004. Therefore it cannot be said that there were collective bargaining arrangements for pilots since that date.”

Again, the controversial view is clearly being put forward and indeed it was ultimately accepted by the Labour Court that a unilateral withdrawal by the pilots from internal machinery necessarily leads to a conclusion that thereafter there were no collective bargaining arrangements. I have already briefly disagreed with this proposition and indicated that I will be elaborating on it later.

I intend now to refer to some relevant correspondence with particular reference to its sequence. The first of such letters is that of 3rd November, 2004 written by a Captain Evan Cullen describing himself as President of IALPA – branch of IMPACT. Apparently, Captain Cullen was himself an employee of Aer Lingus. In that letter he writes personally to Mr. Michael O’Leary, Chief Executive of Ryanair and sets out three issues i.e. “*Terms and Conditions of Employment*”, “*Aircraft/type variant conversion*” and “*Redundancy*” which IMPACT would be anxious to enter into discussions with Mr. O’Leary. The last paragraph of this letter reads as follows:

“We are available to meet with you or your representatives to discuss these matters. We are also available to utilise any internal Ryanair dispute resolution procedures that may be in place. However we wish to give you notice that should you not reply to this letter within seven days from the date hereof, it is our intention to refer the matter to the Labour Relations Commission in accordance with the Industrial Relations (Amendment) Act, 2001, as amended, by the Industrial Relations (Miscellaneous Provisions) Act, 2004.”

Before even considering any reply that may have come to that letter the letter itself has all the hallmarks of a carefully framed letter paying lip service to “*any internal Ryanair dispute resolution procedures that may be in place*” (though thereby in a sense admitting that such procedures were in place) but with the real intention of invoking the procedures under the 2001 and 2004 Acts. The short seven day time limit for a reply is significant. The letter was in fact replied to by Mr. O’Leary in a letter of the 11th November, 2004. The general thrust of the letter in reply was that Ryanair recognised the right of its employees to join unions but that it was Ryanair’s policy to deal only directly with its own employees and not through outside agencies including unions. Mr. O’Leary goes on to state the following:

“Any issues in relation to terms and conditions of employment, conversion training and possible redundancy are regularly (and will continue to be) addressed directly with our pilots using the successful and effective internal communications mechanisms that already exist to facilitate these discussions. You may rest assured that IALPA, an Aer Lingus union, will be no more involved in our internal discussions with our pilots than you are in similar discussions within Aer Arann or Cityjet.”

Mr. O’Leary goes on to assert that the union is not entitled to invoke the 2001 Act and that if that course is pursued, constitutionality of the Act including the 2004 amendment will be challenged by Ryanair. The final two sentences read as follows:

“We will not allow IALPA or any other Aer Lingus union to misuse the 2001 Act by attempting to impose trade union recognition through the back door of the Labour Court upon a very high pay multinational company like Ryanair. Your attempt to do so will clearly have devastating implications for all non-union multinationals and their many thousands of employees in this country.”

I will skip over an exchange of letters that then ensued between the Advisory Services Division of the Labour Relations Commission and Mr. O’Leary. The net result of the exchanges was that Mr. O’Leary would have nothing to do with the Labour Relations Commission and again, warned that the union had no right to invoke the 2001 and the 2004 Acts. That replying letter by Mr. O’Leary was dated the 18th November, 2004.

On the 19th November, 2004, a letter was written to Mr. David O’Brien, director of operations in Ryanair and signed by the eight Dublin pilots to which I have already referred. They were in fact the eight most senior Ryanair pilots and are described as such in the heading to the letter. I think it worthwhile citing this letter in full. It reads as follows:

“Dear Sir

We refer to your letter of the 12th November 2004 containing the offer of a place on the Boeing 737-800 training course.

All of us who have signed below have noted that the letter when compared to the tax documentation given to us by you, has overstated our earnings.

It is vitally important both from a tax point of view and an earnings point of view that this be clarified immediately.

It seems that either we have been underpaid, in which case we would obviously like the matter clarified as soon as possible, and the appropriate salaries paid to us or alternatively that we will be overtaxed. We would be obliged if you could have the accounts department deal with this issue as soon as possible. Each of us confirms to you now that we are committed to dealing with this issue as soon as possible and that we will give you any information you require in order to try and clarify the position with Accounts and if necessary with Revenue.

We also wish to express concern that we are being asked to sign up to something which is entirely outside our control. The wording of your letter seems to mean that if Ryanair is compelled to engage in collective bargaining with any trade union within five years of our conversion training then we will be asked to meet the costs of the training. This seems to us to be unfair. We have no control over any Union, and it seems particularly unfair that if a small number of unionised members in SIPTU (for example) succeeded enforcing collective representation, that we should suffer.

Without in any way doubting your good faith, it is also the case that the company could arrange to enter such collective bargaining as a means of avoiding the costs of the training.

We would hope therefore that you could provide us with some further information in these matters. In the interest of speed, you might give us copies of all documentation which we are expected to sign prior to, or after the commencement of the training.

We hope that you take this letter in the spirit in which it is intended, namely one of cooperation with the company, but also protecting our own interests from actions over which we have no control.

Lastly, before we accept the training and conversion are there any other terms involved in relation to operating the 737-800 fleet. Is there any disadvantage to continuing to fly

the 200 fleet until such time as they are phased out?

Yours sincerely

Captain Roger Bourke, Captain John Goss, Captain Diarmuid Ryan, Captain Peter Serradas, Captain Jerome Lordan, Captain George O'Hara, Captain Pat Lordan and Captain Peter Gallagher."

That letter gave rise to what seems like an undated reply but which is stamped as having been received by "IALPA" on the 23rd November, 2004 refuting that the pilots were being asked to sign something that was outside of their control and stating that they were merely being given an offer. The letter agreed to a meeting in relation to additional information sought but went on to insist on certain deadlines in relation to the conversion. The letter made clear then that in the event that the pilots did not accept the offer they would continue to fly the 200 fleet until they were phased out. A meeting apparently then took place between the pilots and Mr. O'Brien and Mr. O'Leary. The pilots complained that their concerns had not been properly dealt with. In the letter which had been received by IALPA on the 23rd November, 2004 Ryanair had stated (*inter alia*) the following:

"As a significant group of Dublin based pilots, you have an important role to play in continuing to promote our policy of directing between our pilots and the airline. This policy has underpinned our philosophy that for so long as this particular collective bargaining process continues then your pay will be better, pay increases higher, job security enhanced and training costs will be met by the company."

In their letter of the 29th November, 2004 the eight pilots complain about this language by saying:

"We are not sure to which particular bargaining process you refer here as to the best of our knowledge there has been no bargaining process with pilots in Ryanair for some time. We certainly do not consider the arbitrary imposition of terms on groups of pilots to be any form of collective bargaining. In any event, we are well aware of your position that Ryanair will not countenance any form

of collective bargaining, but we are seeking to ensure that each of our individual positions are adequately protected. As we have each been presented with the same fait accompli it is only natural that each of us would have the same concern.”

The reference to an absence of bargaining process with pilots in Ryanair for some time would seem to be a reference to a situation which arose as a consequence of the two pilot representatives resigning from the Dublin pilots ERC.

All these dates have some significance because the application to the Labour Court was made on the 22nd November, 2004 by IMPACT not expressly on behalf of the eight pilots but on behalf of all pilots of Ryanair who were members of the union. These remain from beginning to end unidentified and that is another major complaint of Ryanair.

The formal application to the Labour Court for investigation of dispute described the dispute as follows:

“Various issues regarding contracts of employment, conversion to new aircraft type/variants and principles regarding redundancy as outlined in the attached letter from IMPACT to Ryanair.”

It is not in fact entirely clear from the exhibited documentation before this court what letter exactly was the so-called “*attached letter*” but it seems obvious that it was either the letter from Captain Cullen, dated the 3rd November, 2004 quoted above or a letter in similar terms as for instance a letter of the 12th November, 2004 sent by IMPACT to the Director of the Advisory Service of the Labour Relations Commission. That last letter in turn referred to the letter from Captain Cullen of the 3rd November, 2004 and the reply from Ryanair of the 11th November, 2004. The question must arise whether there could be said to be a “*trade dispute*” within the meaning of the 2001 Act at the time of the application given the withdrawal of the Dublin pilots from the internal procedures. Even if the answer to that question is in the affirmative, further serious questions remain to be considered as to whether there can be any jurisdiction on the part of the Labour Court given that, but for the withdrawal of the pilots from the internal procedures, there may have been appropriate internal procedures in place and, of course, whether in the light of that it can be said that the internal procedures failed to resolve the dispute.

These matters will all be further considered by me in the next section of this judgment which will be an analysis of the Decision of the Labour Court.

The Decision of the Labour Court was dated the 25th January, 2005, the hearing having taken place on the 14th December, 2004. Although I will be indicating points of disagreement with some of its findings the Decision is an impressive document both in terms of its structure and the manner in which the questions are identified. The document does, however, betray an understandable mindset in favour of the way particular expressions are used and particular activities are carried out by trade unions. This is not a correct approach in my view given that the relevant legislation is intended to deal with problems arising in a non-unionised company. It is not in dispute that as a matter of law Ryanair is perfectly entitled not to deal with trade unions nor can a law be passed compelling it to do so. There is an obvious danger

however in a non-unionised company that employees may be exploited and may have to submit to what most reasonable people would consider to be grossly unfair terms and conditions of employment. With a view to curing this possible mischief the Industrial Relations Acts, 2001 and 2004 were enacted. Given their purpose they must be given a proportionate and constitutional interpretation so as not unreasonably to encroach on Ryanair's right to operate a non-unionised company. With those preliminary comments, I will now address the three issues which Ryanair regarded as preliminary issues as to jurisdiction. These are:

1. That there was no trade dispute within the meaning of section 2 of the 2001 Act.
2. That it was the practice of Ryanair to engage in collective bargaining negotiations in respect of the pilots who are party to the trade dispute, if any.
3. That the internal dispute resolution procedures had not failed to resolve the dispute, if any.

With regard to the first issue, the Labour Court in its Decision has taken the view that what it calls the "validity" of the "dispute" referred for investigation should more properly be dealt with in the course of the substantive investigation under section 5. But as the matter had been fully argued, the court went on to give its decision on the point. In my view the existence of a trade dispute is a vital condition precedent to jurisdiction and I do not agree that that question should be left to a later substantive investigation.

The Labour Court went on to consider the definition of the term "*trade dispute*" in the 2001 Act. In a careful analysis of various relevant enactments it came to the conclusion that the definition of the term was to be found in section 3 of the Industrial Relations Act, 1946. I agree with that analysis but I part company with the Labour Court in its interpretation of the definition contained in section 3. Section 3 of the 1946 Act defines "*trade dispute*" as meaning:

"any dispute or difference between employers and workers or between workers and workers connected with the employment or non-employment, or the terms of the employment, or with the conditions of employment, of any person".

The court points out that this is a "*broader definition*" than that contained in the 1990 Act or that previously contained in the repealed Trade Disputes Act, 1906. It bases that conclusion on the addition of the word "*difference*" to the word "*dispute*". It takes the view that "*difference*" must mean something distinct from a "*dispute*". I do not think that this follows. It is common in statutes to include overlapping nouns or adjectives. For instance, if Ryanair and a particular group of its employees with which it was dealing were in disagreement over the dismissal of some employee, that would incontrovertibly be a "*dispute*". On the other hand if the disagreement related to interpretation of say a collective agreement, it might at least be argued that that was not a "*dispute*". The inclusion of the word "*difference*" is intended only to indicate the wider meaning of "*trade dispute*". In the definition itself both words come within the expression "*trade dispute*". The Labour Court in considering whether there was a "*trade dispute*" should have investigated whether there was internal machinery for resolving the perceived problem and whether that machinery had been exhausted. I am not satisfied that this issue was investigated in that way. Indeed, it is difficult to see how it could have been without some evidence from at least one of the employee

pilots in dispute.

I now move to the second issue which was whether it was the practice of Ryanair to engage in collective bargaining negotiations “*in respect of the grade, group or category of workers who are party to the trade dispute, if any.*” The Labour Court has given these words a literal interpretation the effect of which would be that if a category of employee such as for instance the Dublin pilots decide not to engage in “*collective bargaining negotiations*” with Ryanair then *ipso facto* it cannot be said to be “*the practice of*” Ryanair “*to engage in collective bargaining negotiations ...*” Given the purpose of the legislation which I have already outlined, I am of opinion that the words cannot be given that meaning. Otherwise a category of employees could invoke the Labour Court simply by deciding to boycott whatever collective bargaining machinery the company had put in place. That would be a serious infringement of the right to which the Oireachtas also attached importance in the Act of 2005, as amended, of an employer to maintain its own internal negotiating machinery. The Labour Court, in its decision, has stated (and I am quite sure correctly) that “*it is generally recognised that the Act was enacted to give effect to the report of the High Level Group on Trade Union Recognition and the Right to Bargain established under the Partnership 2000 Agreement.*” It is stated in the Decision that while the High Level Group endorsed “*the essentially voluntarist nature*” of the Irish Industrial Relations System they nevertheless recognised the need for new measures “*to afford additional support to employees where there are no arrangements for independent negotiation on pay and conditions of employment.*” The court then makes clear that the measures recommended by the group from which the Act is derived were intended to apply only “*where arrangements for collective bargaining negotiations, through which the issues in dispute could be processed, are not in place.*” Ryanair agreed with this in making the submission. Thus it was the intention of the Oireachtas that the Labour Court’s jurisdiction would only be invoked where collective bargaining arrangements were not in place and the parties are not engaged in talks. This is not the case in relation to Ryanair.

In my view, what “*practice*” means therefore in this context is that the machinery was in place and not *ad hoc*. It did not mean that the “*practice*” ceased to exist if the employees unilaterally abandoned it.

Of course, it is a different question altogether as to whether the machinery established by Ryanair did involve “*collective bargaining negotiations*” within the meaning of the Acts. The Labour Court’s approach to this question was also, in my view, incorrect. While the court pointed out that the expression is not defined by the Act or by any other Industrial Relations Acts which have to be read in conjunction with it the court referred to its own decision in a case relating to employees at the Ashford Castle Hotel. There is cited in the Decision what the court stated in that case and it reads as follows:

“A central question which arises for consideration is the meaning of the term ‘collective bargaining negotiations’ as it appears in the subsection. The expression is not defined in the legislation nor is it defined in any other Irish industrial relations statute of which the court is aware of. It is not a legal term of art but it is a commonly used term in the conduct of industrial relations. In the absence of any statutory definition of the term the court must assign to the

expressions the meaning which it would normally bear in an industrial relations context.

Collective bargaining comprehends more than mere negotiation or consultation on individual employment related issues including the processes of individual grievances in relation to pay or conditions of employment. In the industrial relations context in which the term is commonly used it connotes a process by which employers or their representatives negotiate with representatives of a group or body of workers for the purpose of concluding a collective agreement fixing the pay and other conditions of employment applicable to the group of workers on whose behalf the negotiations are conducted.

Normally the process is characterised by the involvement of a trade union representing workers but it may also be conducted by a staff association which is an excepted body within the meaning of the Trade Union Act, 1941, as amended. However an essential characteristic of collective bargaining, properly so called, is that it is conducted between parties of equal standing who are independent in the sense that one is not controlled by the other.”

The second paragraph in that quotation essentially contains the definition adopted by the Labour Court and which according to the Decision was accepted by the parties. If, however, the Labour Court takes the view which arguably is hinted at both in the Ashford Castle case and in this case that collective bargaining in a non-unionised company must take the same form and adopt the same procedures as would apply in collective bargaining with a trade union, I cannot see that that is necessarily the case. If there is a machinery in Ryanair whereby the pilots may have their own independent representatives who sit around the table with representatives of Ryanair with a view to reaching agreement if possible, that would seem to be “*collective bargaining*” within an ordinary dictionary meaning. It would seem strange if definitions peculiar to trade union negotiations were to be imposed on non-unionised companies.

The Labour Court Decision contains the following paragraph:

“It is Ryanair’s case that it does engage in collective bargaining with its own staff. It claims to do so through its Employee Representative Committees (ERCs) and through what it described as town hall meetings.

With regard to the town hall meetings, the court is satisfied that, as they were described to the court, they constitute a form of consultation or information meetings and have none of the essential characteristics of collective bargaining.”

The Labour Court was entitled to take the view that the town hall meetings could not be considered as contributing to collective bargaining. What is important to consider however is how the Labour Court viewed the ERCs. The court was clearly told by Ryanair that they were the vehicles by which it carried on collective bargaining with its staff. There was a system of election to these committees but as already mentioned, the Dublin pilots had withdrawn from their committees. Just because Ryanair may have from an administrative perspective organised the elections and may have had a rule against renewal of a term for a representative which was the case did not in any

way mean that the pilots acting through the committee were doing so anything other than independently.

As to whether the ERCs operated as a potential basis for collective bargaining negotiations or not was really the key issue to which the Labour Court had to determine. The procedure whereby the Labour Court made that determination by reference to a number of disparate features was not satisfactory and was fundamentally an unfair procedure. The officers of Ryanair who attended the hearing made clear Ryanair's case that ERCs perform this function. If that was going to be disputed, it should have been done by sworn or at the very least unsworn oral evidence before the Labour Court from pilots working in the company. Instead of that, the Labour Court based its decision that the ERCs did not provide a platform for collective bargaining on the basis of arguments made by the union and Ryanair documentation with a particular emphasis on omissions from that documentation. Points which seemed to have influenced the Labour Court include the following:

1. A contention by the union that *"at best Ryanair consults with its staff but that it does not engage in collective bargaining as that term is understood."*
2. An annual report for 2004 in which the ERCs are described as *"Forum which ensure that all department representatives can consult on current issues."*
3. An undated circular from Ryanair to its staff in relation to a pay increase in which it was stated *"in recent months we have consulted with all the employee groups through ERC and town hall meetings."*
4. A further memo from David O'Brien of Ryanair dated 1st April, 2004 in which it was stated in relation to loss licence insurance for pilots
"I plan to meet all the ERCs shortly, once we have completed the series of town hall meetings in the next week. Kevin Osborne will attend the ERC meetings to address any questions in relation to the terms of this new policy...."
5. A Ryanair 20 F filing to the Securities and Exchange Commission in the US which contained the following statement:

"Although Ryanair currently consults with groups of employees, including pilots, through 'Employee Representative Committees' regarding work practices and conditions of employment, it does not conduct formal binding negotiations with collective bargaining units, as is the case with many other airlines."

On this last point, Ryanair contended that what was meant in that context was that no collective bargaining with outside third parties took place. There were some other documents also which were parsed in that manner. Over all, it would seem to me that there was insufficient evidence on which the Labour Court would have been entitled to find that the ERCs did not perform the function contended for by Ryanair. It is difficult to see how the Labour Court can arrive at any conclusion on this point one way or the other without hearing evidence from at least one relevant employee of Ryanair.

The third issue to be considered was whether internal procedures had failed to resolve the dispute. On this question, the Labour Court first dealt with a point of interpretation as to whether *"parties"* in section 2(1)(a) referred to the parties before the Labour Court or to the parties to the trade dispute. The Labour Court was correctly satisfied, in my view that it must relate to the parties to the trade dispute.

The Labour Court was also correct in rejecting the relevance of an internal grievance procedure as set out in a document called "*the Rough Guide*".

In relation to the ERCs the court says the following:

"The ERCs may have been a forum at which group or category issues were discussed but as previously found, there is no ERC for pilots currently in operation."

I have already dealt with this matter in other contexts. Put simply if there is no ERC for pilots but there is evidence at least that this is only because the pilots unilaterally withdrew, how can it be said if that is in fact so that the internal dispute resolution procedures failed to resolve the dispute. If they were not availed of they cannot have been a failure. On this issue the Labour Court in its decision has also said the following:

"Ryanair has also referred to correspondence between it and the eight pilots who were offered conversion training in which the pilots requested and Ryanair agreed to a meeting at which the terms of the offer could be discussed. These eight pilots cannot and have not purported to represent anyone other than themselves. The dispute which was referred to the court relates to the terms on which all pilots will be offered this training now or in the future. That is clearly a broader issue than that affecting the first eight pilots offered training and would have to be resolved in that broader context."

All I can say about this is that on all the documentation before this court it would be impossible not to draw the natural inference that the dispute (using that expression in a non-technical sense) related in the main to the terms of the pilot retraining scheme. I am sure that the Labour Court is correct, strictly speaking, in characterising the so-called dispute as involving more than those eight pilots because naturally, others would be concerned for their own futures in relation to the scheme offered to the eight. But, in my view, it was unfair and virtually impossible for the Labour Court to make a determination on this issue without ascertaining what pilots were in dispute. For instance, although the union suggested it was acting on behalf of all the pilots this may not have included the Standsted pilots as distinct from the Dublin pilots who were treated within Ryanair as a completely separate category. The natural inference to draw (though it may prove to be incorrect) is that the real dispute was related to these pilots and it must be pointed out that those eight pilots were still trying amicably to deal with the company at the stage of the reference to the Labour Court. Again, in my view, the Labour Court did not have the evidence before it on which it could conclude that the internal procedures failed to resolve the dispute.

The court made the following conclusion:

"Having considered all of the information placed before it, the court is satisfied, on the balance of probabilities, that whilst Ryanair communicates and consults with employees, including pilots in relation to their pay and conditions of employment, it is not its practice to engage in collective bargaining negotiations"

as the court understands that expression. The court has also found that there are no operative internal dispute resolution procedures. The court is also satisfied that the other conditions specified at section 2(1) have been met.”

I have already expressed the opinion that the court did not have the evidence on which it was entitled to make these findings but in relation to that particular quotation, I would draw attention to the phrase “*as the court understands that expression*”. Both in that instance and in other instances in the Decision, it is clear that the court is acknowledging a special, what I might call, trade union meaning to the expression “*collective bargaining negotiations*”. As I have indicated, my view is that it should be given simply an ordinary meaning and not any special meaning as understood in trade union negotiations.

The court went on to express the view that even if it had been the practice of Ryanair to engage in collective bargaining negotiations it was no longer the case “*and cannot be the case where the parties do not agree on the basis upon which they will engage with each other.*” I have likewise expressed disagreement with this view and indicated that all that is required is that there be a system in place. Once that requirement is fulfilled the fact that the category of employees may not avail of it is irrelevant.

It would appear that a core sentence in the Decision of the Labour Court is the following:

“Ryanair, as its right, will not negotiate with IALPA. It seems axiomatic that if Ryanair do not recognise the only body which the group of employees who were party to the trade dispute wish to represent them, it could not be the practice to engage in collective bargaining negotiations in respect of that group.”

I do not think that this is a correct interpretation of section 2(1)(a). The relevant grade, group or category of employees would seem to be the Dublin pilots. Some or all of them may or may not be members of the union. The company, as is its right, does not negotiate with the union. It claims that it does negotiate with the Dublin pilots via the ERCs and that in so far as that cannot be done at present, it is only because the pilot representatives have themselves withdrawn. This may or may not be correct but as I see it, it has never been properly investigated by the Labour Court because of the adoption of a different, and in my opinion incorrect approach to what it had to decide. It should have been addressing its mind to whether there were in place adequate collective negotiation procedures (giving an ordinary meaning to that expression) within Ryanair. If the view that I take prevails, the Labour Court will still have to determine these questions.

In taking the view which it did take it would appear from the Decision that the Labour Court was influenced by the provisions of section 6 of the Trade Union Act, 1941, as amended. Section 6(1) of the 1941 Act reads as follows:

“It shall not be lawful for any body of persons, not being an excepted body, to carry on negotiations for the fixing of wages or other conditions of employment unless such body is the holder of a negotiations licence.”

Having cited this subsection, the Labour Court goes on to observe that it must be assumed that the reference to collective bargaining negotiations in the 2001 Act is not intended to comprehend collective bargaining unlawfully conducted. The court points out however, that Ryanair contended that pilots as a category constitute an “*excepted body*”. The union on the other hand argued that there was no excepted body representing pilots which could lawfully negotiate with Ryanair.

“*Excepted body*” is defined by section 6(3)(h) of the Trade Union Act, 1941 (as inserted by section 2 of the Trade Union Act, 1942) as follows:

“A body all the members of which are employed by the same employer and which carries on negotiations for the fixing of wages or other conditions of employment of its own members (but no other employees).”

If it can be demonstrated that the ERC is an instrument in place whereby pilots may enter into collective bargaining negotiations with Ryanair then it must surely be an excepted body. The argument against this and which was accepted by the Labour Court is based on the decision of this court in **Iarnród Éireann v. Holbrooke** cited above. The Labour Court has, in particular, relied on a passage from the judgment of Fennelly J. speaking for this court.

“At this point it is important to note that the definition of an excepted body is one which ‘carries on negotiations for fixing wages ...’ (my emphasis), whereas, as in this case, it cannot actually carry on such negotiations where the employer refuses to negotiate. No argument based on this point was advanced by the respondents, though it was raised by the court during the hearing. The court must, nonetheless, interpret the statute in what it conceives to be the manner required by law and cannot adopt an erroneous interpretation because none of the parties relies upon the correct one.

As I see it, the issue is whether a body can claim that it ‘carries on negotiations’ (noting the use of the present tense) where patently it does not and cannot do so because the employer refuses to negotiate.”

The Labour Court concluded from the judgment of Fennelly J. and in particular that passage that a body of persons can only be an exempted body if the employer consents to negotiate with the body. That, of course, is perfectly correct. But the court then went on to hold that “*by parity of reasoning*” if an employer wishes to negotiate with a group of its own staff rather than through a trade union but the employees are unwilling to negotiate on that basis they cannot be regarded as an excepted body. Not only do I believe that this interpretation does not follow but I believe it to be incorrect. That decision is relevant only to the situation where an employer refuses to negotiate. It is not relevant to a situation where a particular category of employees is unwilling to avail of internal machinery for negotiation within a non-unionised company where the machinery is fair and reasonable and there is no unreasonableness on the part of the company. It is important to consider the purpose of section 6 of the 1941 Act, as amended. Fennelly J. had this to say at p. 245 of the report:

“The learned trial judge was undoubtedly correct, however, in stating that the object of the section was to relieve the hardship that would arise if employees of small firms were deprived of the benefit of trade union representation in

carrying on negotiations. I would go further. Trade union membership is not compulsory and, although the court was not addressed on the constitutional implications of the interpretation of the section, it can hardly be doubted that it cannot be made so by law. Even at a practical level, if an employer and its workers agreed to exclude union representation, it would be extraordinary if it were illegal for a staff committee to enter into consensual negotiations with the employer.”

Fennelly J., however, then went on to point out that the employees could not be said to be carrying on negotiations for the fixing of the wages where the employer refused to negotiate. As I read his judgment what Fennelly J. had in mind was that the statutory permission given to excepted bodies to negotiate by virtue of the amendment in the 1942 Act was designed to assist employees in small companies. For one reason or another and possibly the financial implications, the employees in a small firm might want to be able legally to negotiate with their employer rather than join a registered trade union. In many instances they might be persuaded by their employer not to join a trade union. The 1941 Act had omitted to provide for the employee counterpart of the employer conducting negotiations in-house. It was considered desirable that employee bodies “*be not left exposed while employers were covered by an exception*”. But under the scheme of the Acts as Fennelly J. pointed out “*the activity is implicitly consensual*”. The purpose of the 1942 amendment was to deal with a situation where both employer and employees in a small firm wanted to negotiate terms and conditions in a situation where the employees would not be acting illegally for not having a negotiation licence under the 1941 Act. This element of consensus is not in any way of the essence of the legislation with which this appeal is primarily concerned. What is required under these statutory provisions is that the employer has in place an appropriate system.

The interpretation which I have placed on the legislation to the effect that the employer must have in place an appropriate internal system of collective negotiations is not admittedly a literal interpretation. In fairness to the Labour Court, it is the normal rule that legislation must be interpreted according to the words used but if a literal interpretation would potentially destroy the whole purpose of the legislation as would be the case here then it is appropriate that a purposive interpretation be applied. Ryanair may be right or wrong in perceiving the steps which have been taken by the pilots as effectively an attempt to force Ryanair to deal with the trade union. It would be especially important where that potentiality at least might exist and might indeed involve an element of unconstitutionality that a purposive interpretation be applied. In this connection, I would particularly rely on the Supreme Court judgment of Denham J. in **DPP (Ivers) v. Murphy** [1999] 1 IR 98, a case expressly relied upon by Ryanair. The following passage from that judgment at p. 111 of the report is worth quoting:

“The rules of construction are part of the tools of the court. The literal rule should not be applied if it obtains an absurd result which is pointless and which negates the intention of the legislature. If the purpose of the legislature is clear and may be read in the section without rewriting the section then that is the appropriate interpretation for the court to take.”

I would summarise the position, as I see it, as follows. The Labour Court did not adopt fair procedures by permitting complete non-disclosure of the identity of the

persons on whose behalf the union was purporting to be acting. There was a second and equally important element of unfair procedure. Two senior management figures in Ryanair appeared at the hearing and made submissions which were in effect unsworn evidence and accepted as such by the Labour Court. It would appear that they maintained at all stages that appropriate procedures were in place. That may or may not be true but the Labour Court was not entitled to disbelieve that evidence in the absence of hearing evidence from at least one relevant pilot who was an employee of Ryanair. Otherwise it was impossible to challenge the views put forward by the union which could only be characterised as opinion. The Labour Court decided the issue against Ryanair to a large extent on foot of omissions in Ryanair documentation and on foot of a view put forward by the union that the ERCs were consultative bodies only. This was not a fair procedure.

Ryanair has challenged the decision of the Labour Court both on the grounds of unfair procedure and on the grounds of irrationality. However in the actual arguments made in relation to irrationality, Ryanair have essentially challenged the Labour Court's interpretation of the relevant legislation. It could be argued therefore that Ryanair's case is not so much irrationality as that the Labour Court was wrong in law. I do not think this makes any difference because what was involved was an inquiry as to the Labour Court's own jurisdiction and the Labour Court was not entitled to make legal errors in considering its own jurisdiction. I believe that the Labour Court was incorrect for the reasons which I have given in its interpretation of the words "*the practice of the employer to engage in collective bargaining negotiations*" and also in its conclusion that "*the internal dispute resolution of procedures*" had necessarily "*failed to resolve the dispute*".

I would allow the appeal. I would quash the decision of the Labour Court and order that there be a rehearing by the Labour Court in which the Labour Court would apply the procedures and the law as indicated in this judgment.

Article 6 – The Right of Workers to Bargain Collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake

1. to promote joint consultation between workers and employers;
2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;

and recognise

4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

Appendix to Article 6§4

It is understood that each Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article G.

Article 6 – The Right of Workers to Bargain Collectively

Paragraph 1 – Joint Consultation

"With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake: to promote joint consultation between workers and employers;"

Questions asked of all Parties (member states of the Council of Europe, which have signed and ratified the Revised European Social Charter):-

Information to be submitted

Article 6§1

- 1) Please describe the general legal framework applicable to the private as well as the public sector. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Scope of the provisions as interpreted by the ECSR

Paragraph 1: Promotion of joint consultation between employees and employers or the organisations that represent them on all matters of mutual interest on national, regional or sectoral and enterprise level in the private and public sector (including the civil service).

Text of Ireland's Seventh Report under the Revised European Social Charter in relation to Article 6, Paragraph 1:

Reply to Questions 1,2 and 3 above :-

6.1.1 Please see earlier Reports, in particular, our last report under Article 6, as part of the Government of Ireland's Third Report under the Revised European Social Charter, which was submitted to the Council of Europe on 21 April 2006.

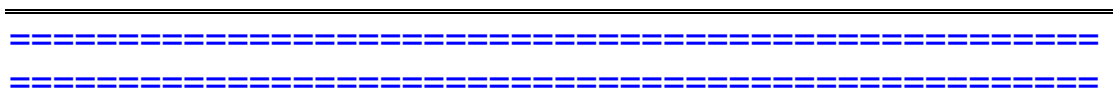
Conclusions of the Council of Europe's European Committee of Social Rights (ECSR):- ECSR Comments / Questions directed specifically at Ireland :-

Article 6 – Right to collective bargaining

Paragraph 1 – Joint consultation

6.1.2 The Committee notes from the Irish report that there have been no changes to the situation, which it has previously considered to be in conformity with Article 6§1 of the Revised Charter.

6.1.3 The Committee concludes that the situation in Ireland **is in conformity** with Article 6§1 of the Revised Charter.



Article 6 – The Right of Workers to Bargain Collectively

Paragraph 2 – Negotiation procedures

"With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake: to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;"

Questions asked of all Parties (member states of the Council of Europe, which have signed and ratified the Revised European Social Charter):-

Article 6§2

- 1) Please describe the general legal framework applicable to the private as well as the public sector. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, in particular on collective agreements concluded in the private and public sector at national and regional or sectoral level, as appropriate.

Scope of the provisions as interpreted by the ECSR

Paragraph 2: Promotion of the right of employee's and employer's organisations to free and voluntary collective bargaining and conclusion of collective agreements; right of public officials to participate in the determination of their working conditions.

Text of Ireland's Seventh Report under the Revised European Social Charter in relation to Article 6, Paragraph 2: -For convenience, the new material is shown in red print.

Reply to Questions 1,2 and 3 above :-

- 6.2.1 Please see earlier Reports, setting out the legal framework, in particular, our last report under Article 6, as part of the Government of Ireland's Third Report under the Revised European Social Charter, which was submitted to the Council of Europe on 21 April 2006. Please see also our response under Article 5 as part of this (our Seventh) Report.

Conclusions of the Council of Europe's European Committee of Social Rights (ECSR):- ECSR Comments / Questions directed specifically at Ireland :-

Article 6 – Right to collective bargaining

Paragraph 2 – Negotiation procedures

- 6.2.2 The Committee takes note of the information provided in the Irish report.
- 6.2.3 Irish law provides for the granting of negotiation licences to trade unions which fulfil the criteria laid down in the relevant legislation. Only trade unions that have been granted such licence have the right to engage in collective bargaining. The Committee refers in this context to the detailed description of the situation in its Conclusions XIV-1 (pp. 413-415). The Committee held the **situation not to be in conformity** with the requirements of the Charter and the Revised Charter on the ground that conditions for obtaining a negotiation license are excessive and are such as to infringe the right to bargain collectively.
- 6.2.4 The Committee had in particular observed that in order to obtain a negotiation licence applicant trade unions are required to notify the relevant Minister and the Irish Congress of Trade Unions eighteen months prior to making the application and that applicants **must deposit a very substantial sum with the High Court**, ranging from approximately 25,394 € to 76,182 €, depending on the number of members (Section 2 of the Trade Union Act 1971). It notes from the report that the situation in law has not changed in this respect.
- 6.2.5 The Committee understands from information supplied by the Government as well as the Irish Congress of Trade Unions (ICTU) to the Governmental Committee of the European Social Charter and the comments made by the Irish delegate within the Governmental Committee 1 that the negotiation licence system had been implemented with a view to **preventing the fragmentation** of the trade union movement and had contributed to the stability of industrial relations.
- 6.2.6 The Committee recalls in this context that in order to render the participation of trade unions in collective bargaining procedures efficacious, States parties may require trade unions to meet **requirements of representativeness**, subject to certain general conditions. Schemes pursuing the same objectives, albeit not employing the notion of or criteria otherwise associated with the notion of “representativeness”, must be assessed on an equal footing from a functional perspective. As regards Article 6§2 the Committee recalls that the requirements

concerned must not be such as to excessively limit the possibility of trade unions to effectively participate in collective bargaining. Further, the **criteria concerned should be prescribed by law**, they should be objective and reasonable, and they should be subject to judicial review so as to provide appropriate protection against arbitrary application.

6.2.7 The Committee finds that essentially, the Irish system of negotiation licences meets the said requirements.

6.2.8 The Committee, firstly, recalls that in order to be granted a negotiation licence a trade union must at the outset **fulfil two requirements**. It must be registered under the Trade Union Acts, 1871 to 1935, and, pursuant to the Trade Union Act 1941, it must have deposited with the High Court the appropriate sum. Both requirements clearly are prescribed by law. As for the former, to the extent any element of discretion applies on the part of the Registrar of trade unions, there is recourse to judicial review. As for the latter, at the outset there is no scope for discretion. Once the relevant sum of money is deposited, the granting of a negotiation licence is automatic. However, under sub-section 2 of the Trade Union Act 1947, as amended by sub-section 3 of the Trade Union Act 1952, a trade union may apply to the Minister for Enterprise, Trade and Employment for a reduction in the amount of the deposit. A reduction of up to 75 % is allowed for under the Act if the Minister is satisfied that it would cause undue hardship if such trade union were compelled to make and keep the full deposit. According to the report, the Minister has made orders in respect of nineteen applications under the 1947/1952 provisions, although no applications have been received or made in recent years. A decision by the Minister may be subject to review by the High Court. One of the two procedures for obtaining a negotiation licence is set out in sub-section 3 of the Trade Union Act 1971. This sub-section empowers the High Court to make a declaration that the granting of a negotiation licence would not be against the public interest. It would be up to the court to decide whether it would be appropriate to dispense with the other conditions that would normally apply. Once a trade union has obtained a declaration, the Minister for Enterprise, Trade and Employment must provide the trade union with a negotiation licence.

(1 Detailed Report 16(1), §§154 and 155, Report concerning Conclusions 2004, §§ 62-65)

6.2.9 As regards the **amounts to be deposited** with the High Court, if no reduction is granted these range from 25,394 € for a trade union with a membership of up to 2,000 to a maximum of 76,182 € for a trade union with a number of 20,000 members or an unlimited number. The Committee notes that the sums involved range from 25.40 €/12.70 € to 3.81 € or less per member, depending on the number of members of the trade union.

6.2.10 Further, pursuant to sub-section 2(1) of the Trade Unions Act 1971, as amended, an application for a negotiation licence must be preceded by **eighteen months** by a notification of the intent to apply, and the applicant must be able to show that, “both at a date not less than eighteen months before the date of the

application for the negotiation licence and at the date of that application, it had not less than 1,000 members resident in the State”.

6.2.11 Moreover, the system of negotiation licences is not a system prescribing exclusive bargaining rights for holders of licences. Pursuant to sub-section 6(3) of the Trade Union Act 1941, as amended, collective bargaining may be conducted also by various categories of “excepted bodies”, *inter alia*, recognised civil service staff associations and teachers’ organisations, joint labour committees, and “a body which carries on negotiations for the fixing of the wages or other conditions of employment of its own (but no other) employees”, i.e., at enterprise level.

6.2.12 From the information submitted, by the Government and also by the ICTU, the Committee notes that in 2003, a total of 46 trade unions, representing about 600,000 workers, held negotiation licences, and that the number of unions per capita was one of the highest in Europe. The Committee further notes from the information submitted by the ICTU that it is **not a requirement for obtaining a negotiation licence** to be affiliated to the ICTU and that 6 out of the 46 licence holders in 2003 were not ICTU affiliates.

6.2.13 **Noting that the Irish report is essentially restricted to presenting the formal rules applicable as regards negotiation licences, etc., the Committee requests that the next report provide an elaboration on the underlying rationale of the rules in question. In particular, the Committee requests an explanation of the purpose of the requirement of depositing a certain amount of money with the High Court and why an eighteen month “waiting period” for obtaining a negotiation licence is imposed.**

6.2.14 **Further, the Committee notes that in 2005, the Department of Enterprise, Trade and Employment established an Interdepartmental Committee to examine the issues in connection with the concerns expressed by the Committee with respect to the implementation of Articles 5 and 6 of the Revised European Social Charter. The Committee held its first meeting on 5 May 2005 and was expected to submit a report on its findings in 2006. The Committee asks to be informed on any development in this respect.**

6.2.15 **Pending receipt of the information requested, the Committee defers its conclusion.**

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Our Response :-

Inter-Departmental Group

6.2.16 Our response to the ECSR (European Committee of Social Rights) request to be informed on any development in respect of the Inter Departmental Committee, established with respect to the implementation of Articles 5 and 6 of the Revised European Social Charter, is shown hereunder :-

Inter-Departmental Group

Previously, Ireland informed the Committee of its intention to establish an Inter-Departmental Group to examine the issues raised by the Governmental Committee of the European Social Charter in relation to articles 5 and 6.

The Terms of Reference for the Group were as follows:

In light of

- *the long standing conclusions by the European Committee of Social Rights (ECSR) and the long standing recommendations/warnings issued by the Governmental Committee of the European Social Charter of the Council of Europe;*
- *the Report commissioned by the Department of Justice, Equality and Law Reform on Extending the Scope of the Employment Equality Legislation, and*
- *the social policy provisions of the new EU Constitution,*
 1. *Examine the voluntarist approach to industrial relations in Ireland*
 2. *Examine pre-entry closed shop arrangements*
 3. *Consider the conditions for obtaining Trade Union negotiation licences*
 4. *Examine existing protections provided to employees in relation to trade union membership/non-membership and activity/non-activity,*

and make recommendations as appropriate.

The deliberations of the Group Inter Departmental Committee concluded in 2005.

Negotiation Licences

6.2.17 Our response to the ECSR (European Committee of Social Rights) request that the report provide an elaboration of the underlying rationale of the rules in relation to Negotiation Licences is herewith. In particular, the Committee requested an explanation of the purpose of the requirement of depositing a

certain amount of money with the High Court and why an eighteen month “waiting period” for obtaining a negotiation licence is imposed.

- 6.2.18 It has long been government policy in Ireland to encourage the rationalisation of the trade union movement. Some progress has been made in reducing the number of unions holding negotiation licences from 95 in 1970 to 43 in 2010. A feature hidden by the global figure, however, is the very high number of small unions.
- 6.2.19 The objective of achieving further trade union rationalisation has been consistently maintained by the legislature and by all the social partners in Ireland. Despite the rationalisation which has taken place in recent years, it is generally agreed among the social partner interests that there are still far too many unions in Ireland. This is considered to be bad for industrial relations as it gives rise to inter-union rivalry, a multiplicity of bargaining units and demarcation disputes. The multiplicity of small unions is also bad for members as such unions cannot provide the services required in today's complex working environment. In 2009 the Irish Congress of Trade Unions launched an internal commission on trade union organisation to review the objectives and structure of the Irish trade union movement. It is noteworthy that the General Secretary of ICTU observed, *inter alia*, in a reflective background paper for the Commission³, that the resources of the trade union movement “are wholly inadequate and to some degree misdeployed and duplicated”. He added that the absence of coordination or optimisation of resources represented a serious disadvantage. It is understood that a report by the Commission is due to be presented to the ICTU biennial delegate conference in July, 2011.
- 6.2.20 The requirements for trade unions to put a sum on deposit with the High Court and for the eighteen-month “waiting period” are mechanisms for establishing the *bona fides* of the organisation. If the organisation can keep a sizeable sum of money on deposit – and if it has that sum for the 18 months prior to its application for a negotiating licence- then that organisation must be considered to be a body of substance.
- 6.2.21 In particular, the 18-month waiting period requirement is aimed at establishing evidence of the stability of trade unions and at ensuring that trade unions would be capable of providing minimum services to members. Nevertheless, section 3 of the Trade Union Act, 1971, provides that, if the Minister refuses to grant a negotiation licence on the ground that the applicant has not met the condition about the waiting time, the applicant can appeal to the High Court for a declaration that, despite this refusal, the granting of the negotiation licence would not be against the public interest. If the High Court should so declare, the Minister must grant the licence. This is considered to be a sufficient safeguard against any danger of genuine applicants being denied a licence.
- 6.2.22 The requirement for an applicant for a negotiation licence to lodge a deposit with the High Court is considered necessary to establish the viability from a

³ Industrial Relations News, IRN 21 - 02/06/2010

financial and service point of view of individual trade unions, as a trade union in financial difficulty could not properly represent its members. Given average weekly earnings of €683 during the 1st quarter of 2010, a requirement for a new trade union lodge a deposit with the High Court (€25,394 in respect of 1,000 members i.e. a maximum of €25.40 per member) would not be considered unreasonable. Moreover, a trade union may apply to the Minister for Enterprise, Trade and Innovation for a reduction in the amount of the deposit. A reduction of up to 75% is allowed for under the Act if the Minister is satisfied that it would cause undue hardship if the trade union were compelled to make and keep the full deposit.



Article 6 – The Right of Workers to Bargain Collectively

Paragraph 3 – Conciliation and arbitration

"With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;"

Questions asked of all Parties (member states of the Council of Europe, which have signed and ratified the Revised European Social Charter):-

Article 6§3

- 1) Please describe the general legal framework as regards conciliation and arbitration procedures in the private as well as the public sector, including where relevant decisions by courts and other judicial bodies, if possible. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, in particular on the nature and duration of Parliament, Government or court interventions in collective bargaining and conflict resolution by means of, *inter alia*, compulsory arbitration.

Scope of the provisions as interpreted by the ECSR

Paragraph 3: Promotion of voluntary and independent conciliation, mediation and/or arbitration procedures in order to facilitate the resolution of collective conflicts concerning the conclusion of a collective agreement or the modification, through collective bargaining, of conditions of work contained in an existing collective agreement as well as for resolving conflicts which may arise between the public administration and its employees.

Text of Ireland's Seventh Report under the Revised European Social Charter in relation to Article 6, Paragraph 3: -For convenience, the new material is shown in red print.

Reply to Questions 1,2 and 3 above :-

6.3.1 Please see earlier Reports, in particular, our last report under Article 6, as part of the Government of Ireland's Third Report under the Revised European Social Charter, which was submitted to the Council of Europe on 21 April 2006. Please see also our response under Article 5 as part of this (our Seventh) Report.

Social Partnership Developments since last Report

Social Partnership

6.3.2 “Towards 2016 Ten-Year Framework Social Partnership Agreement 2006 – 2015”

“Towards 2016 Ten-Year Framework Social Partnership Agreement 2006 – 2015” (“Towards 2016”) was an important and wide-ranging agreement, representing a shared vision and agreed framework for meeting Ireland's economic and social objectives. The Agreement addressed the need to maintain a supportive macro-economic environment, in order to enhance productivity and competitiveness, the successful management of and response to social needs and social change and the imperative of building a more inclusive society.

6.3.3 Towards 2016 set out an ambitious agenda aimed at delivering tangible social change. It adopted a longer-term perspective recognising that many social challenges are particularly complex, requiring coherent and strategic responses. Significantly also, the Agreement put in place a new social policy perspective based on the lifecycle framework. This approach sought to move away from a situation where policy is developed along Government Departmental (Ministry) lines, to one where the focus is on the outcomes needed to achieve for people at different stages of their lives.

6.3.4 The Agreement sets out a vision and long-term goals for *Children, People of Working Age, Older People* and *People with Disabilities*. As these are not goals that could be achieved during the usual three-year agreement, the Government and the social partners recognised that a ten-year framework agreement was more appropriate for the type of social dialogue that can be effective.

Pay and Workplace Elements of Agreement

6.3.5 Towards 2016 provided a special focus on employment standards and compliance in response to concerns about a so-called ‘race to the bottom’ in the context of rapid labour market change, especially in light of EU enlargement. The Agreement set out a comprehensive package of measures, including a new statutory National Employment Rights Authority; a trebling in the number of Labour Inspectors; increased penalties for non-compliance with employment law; the regulation of employment agencies and agency workers; and new legislation in relation to exceptional collective redundancy situations and dismissals in the context of industrial disputes.

6.3.6 For the first 27 months of Towards 2016, a 10% pay increase was provided for. The Agreement provided for a review of the pay and the workplace aspects to be undertaken after 27 months.

Review and Transitional Agreement 2008-2009

6.3.7 On 17 September 2008 agreement was reached between the Government and Social Partners on a successor to the first module of Towards 2016. The “Towards 2016: Review and Transitional Agreement 2008-2009” sought to provide certainty and stability during a period of great change and difficulty facing the economy while maintaining the orderly conduct of industrial relations.

6.3.8 The Transitional Agreement covered a range of workplace issues, including:

- Government commitment to enacting the Employment Law Compliance Bill;
- Setting up a process to develop a national framework on the employment and rights of temporary agency workers; while prohibiting their use in the case of official strikes or lock outs;
- Optional recourse to voluntary arbitration on change at enterprise level;
- In the area of collective bargaining (in non-unionised companies), the establishment of a review process which would consider the legal and other steps necessary to enable the mechanisms that had been in established under previous agreements to operate as they had been intended;
- Amendment of the Competition Act to exclude certain categories of self-employed workers (e.g. freelance journalists, voice-over actors) from the provisions of the Competition Act 2002;
- Government commitment to bring forward legislative proposals to prohibit victimisation and incentivisation, and to provide effective protection and means of redress to employees when engaged in the exercise of their rights to trade union membership or activity on behalf of a trade union or non-membership;
- Strengthening the existing legislation underpinning the Joint Labour Committee and Registered Employment Agreement systems;
- A Government commitment to introduce legislation to transpose into Irish law the optional pension provision under the Transfer of Undertakings Directive on the same basis as other terms and conditions of employment as at the date of transfer.

6.3.9 Copies of Towards 2016 and Review and Transitional Agreement 2008-2009 are available on the website of the Department of the Taoiseach: www.taoiseach.gov.ie.

http://www.taoiseach.ie/eng/Department_of_the_Taoiseach/Policy_Sections/Social_Partnership/Social_Partnership_Publications/Towards_2016_Ten-Year_Framework_Social_Partnership_Agreement_2006-2015.shortcut.html

http://www.taoiseach.ie/eng/Department_of_the_Taoiseach/Policy_Sections/Social_Partnership/Social_Partnership_Publications/Towards_2016_Review_and_Transitional_Agreement_2008-2009.shortcut.html

Subsequent Developments

- 6.3.10 In the period subsequent to the conclusion of the Transitional Agreement in September 2008, a serious deterioration in the global economy emerged, greatly exacerbating domestic economic and fiscal pressures.
- 6.3.11 The Government published a framework for sustainable economic renewal in December 2008, which outlined a set of measures to support a return to sustainable growth and jobs in the medium term, while also identifying the need for short-term measures to stabilise the economy and public finances.
- 6.3.12 The Government invited the views of the social partners on implementation of the framework for sustainable economic renewal and on the immediate fiscal adjustment required in 2009. The social partners engaged in extensive and meaningful discussions on these issues.
- 6.3.13 In January 2009, the Government and social partners agreed on a framework for a pact for stabilisation, social solidarity and economic renewal. That framework acknowledged that urgent and radical action was required to restore stability to the public finances, to maximise short-term economic activity and employment and to improve competitiveness.
- 6.3.14 Subsequently, there were intensive discussions between the Government and social partners to attempt to agree within that framework on the key elements of the fiscal adjustment required. In the context of the discussions, the Government tabled proposals to achieve a full-year saving of €1.4 billion through the introduction of a pension levy in the public service. The unions decided that they were not in a position to agree to that proposal.
- 6.3.15 The Government subsequently decided on a series of public expenditure savings taken as part of the Government's Implementation of the Framework on Stabilisation, Social Solidarity, and Economic Renewal, including
- Introduction of a new pension-related payment to be made by all public servants (including employees of local authorities), with a small element of the total to be secured through reductions in travelling and subsistence rates and other savings.
 - increases provided for under the Review and Transitional Agreement with effect from 1st September 2009 and 1st June 2010 would not now be paid on those dates.
- 6.3.16 In December 2009, IBEC formally withdrew from the terms of the Transitional Agreement private sector pay agreement, paving the way for enterprise level bargaining in unionised employments. The decision came after the collapse of efforts between ICTU private sector unions and IBEC to come to an accommodation, based on a proposed set of amendments to the Transitional Agreement put forward by Government to the social partners in June 2009.

IBEC guidelines to employers on local pay bargaining

6.3.17 In January 2010, IBEC produced detailed guidelines for its members on the conduct of enterprise-level bargaining in the private sector. The guidelines entitled 'Negotiating pay and related matters at enterprise level' cover areas such as how employers should handle outstanding claims under the Transitional Agreement, how to respond to new pay claims outside the national agreement, how to prepare for and conduct negotiations, as well as how to approach the issue of pay reductions. According to the guide, in general, employers should not entertain claims for pay increases in 2010. Companies should be aware of the effect of any pay concessions they may make on their overall sector.

Protocol on industrial relations in the private sector

6.3.18 In March 2010, IBEC and ICTU agreed a protocol providing negotiators with broad pay guidelines. IBEC and ICTU have agreed a protocol designed to govern the conduct of industrial relations in the private sector and to guide the State's industrial relations institutions (Labour Court, Labour Relations Commission) in how to process claims in the absence of a national pay agreement.

[http://www.ibec.ie/IBEC/Press/PressPublicationsdoclib3.nsf/vPages/Newsroom~ibec-ictu-protocol-on-private-sector-industrial-relations-24-03-2010/\\$file/IBEC+ICTU+Private+Sector+Protocol.pdf](http://www.ibec.ie/IBEC/Press/PressPublicationsdoclib3.nsf/vPages/Newsroom~ibec-ictu-protocol-on-private-sector-industrial-relations-24-03-2010/$file/IBEC+ICTU+Private+Sector+Protocol.pdf)

6.3.19 Following the collapse of the pay terms of the most recent partnership agreement, the private sector has entered a period of local bargaining in unionised workplaces. The protocol aims to ensure that disputes are dealt with in an orderly manner, without recourse to industrial unrest.

6.3.20 The agreement recognises that protecting the maximum number of jobs is the most important objective. Parties also agreed to utilise the machinery of the State, the Labour Court and Labour Relations Commission (or other agreed machinery) to resolve disputes.

Public Service Agreement 2010 – 2014

6.3.21 In March 2010, Public Service management and unions reached agreement on a comprehensive agenda for Public Service transformation and on a framework for public service pay determination over the period to 2014. The agreement covers a range of important transformation issues across all of the main sectors of the Public Service including Health, Education, Local Government, Justice, Defence, the Civil Service and State Agencies. It includes a joint mechanism to support implementation and it also addresses the issue of pay determination in the period to 2014.

<http://www.finance.gov.ie/viewdoc.asp?DocID=6275>.

Conclusions of the Council of Europe's European Committee of Social Rights (ECSR):- ECSR Comments / Questions directed specifically at Ireland :-

Article 6 – Right to collective bargaining

Paragraph 3 – Conciliation and arbitration

6.3.22 The Committee notes from the Irish report that there have been no changes to the situation, which it has previously considered to be in conformity with Article 6§3 of the Revised Charter.

6.3.23 The Committee further notes from another source 1 that the Labour Relations Commission announced in 2004 that it plans to launch a **new mediation and a voluntary arbitration service** as from 2005 in addition to the existing conciliation machinery and **asks to be informed** on any development in this respect.

6.3.24 The Committee concludes that the situation in Ireland is in conformity with Article 6§'33 of the Revised Charter.

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Our Response :-

Article 6.3 Conciliation and Arbitration

6.3.25 The Committee noted that Ireland planned to launch a new mediation and a voluntary arbitration service as from 2005 in addition to the existing conciliation machinery and asked to be informed on any development in this respect.

Workplace Mediation Service

6.3.26 In December 2005, the Labour Relations Commission established a Workplace Mediation Service. The Service, which is of significant relevance to individual and inter-personal conflicts, is delivered as a separate service to the Commission's Conciliation Service and is provided on a cross-divisional basis by the experienced practitioners of the Conciliation and Advisory Services. The Workplace Mediation Service operates under the responsibility of the Conciliation Services Division and under the guidance of a three-person cross-divisional development team.

6.3.27 Generally the issues in cases requiring mediation involve interpersonal workplace relationships, often between managers/supervisors and subordinates. Issues around disciplinary and grievance procedures have also arisen together with workplace bullying. The majority of cases relate to individuals, although cases centred on group dynamics, relationships and reporting arrangements also

arise. Please see the link below to a copy of an information brochure on the service. <http://www.lrc.ie/documents/multilingualpdfs/5english.pdf>



Article 6 – The Right of Workers to Bargain Collectively

Paragraph 4 – Collective action

"With a view to ensuring the effective exercise of the right to bargain collectively, the Parties recognise the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into."

Questions asked of all Parties (member states of the Council of Europe, which have signed and ratified the Revised European Social Charter):-

Article 6§4

- 1) Please describe the general legal framework as regards collective action in the private as well as the public sector, including where relevant decisions by courts and other judicial bodies, if possible. Please also indicate any restrictions on the right to strike. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, in particular: statistics on strikes and lockouts as well as information on the nature and duration of Parliament, Government or court interventions prohibiting or terminating strikes and what is the basis and reasons for such restrictions.

Scope of the provisions as interpreted by the ECSR

Paragraph 4: Guarantee whether in law or case-law of the right to call and participate in a strike in connection with a conflict of interests between employers and employees including public officials.

Procedural requirements in connection with the exercise of the right to strike (e.g. peace obligation, prior approval by workers, cooling-off periods, etc.) shall not excessively limit the right to strike.

A strike should not be considered a violation of the contractual obligations of the striking employees entailing a breach of their employment contract. It should be accompanied by a prohibition of dismissal.

Appendix to Article 6§4

It is understood that each Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article G.

Text of Ireland's Seventh Report under the Revised European Social Charter in relation to Article 6, Paragraph 4: -For convenience, the new material is shown in red print.

Reply to Questions 1,2 and 3 above :-

6.4.1 Please see earlier Reports, in particular, our last report under Article 6, as part of the Government of Ireland's Third Report under the Revised European Social Charter, which was submitted to the Council of Europe on 21 April 2006. Please see also our response under Article 5 as part of this (our Seventh) Report.

Conclusions of the Council of Europe's European Committee of Social Rights (ECSR):- ECSR Comments / Questions directed specifically at Ireland :-

Article 6 – Right to collective bargaining

Paragraph 4 – Collective action

6.4.2 The Committee takes note of the information provided in the Irish report.

6.4.3 There have been **no changes to the situation** which the Committee previously held not to be in conformity with Article 6§4 of the Charter and the Revised Charter (Conclusions 2004, p. 265).

6.4.4 As already stated in the conclusion under Article 6§2 an Interdepartmental Committee examined the issues in connection with the concerns expressed by the Committee with respect to the implementation of Articles 5 and 6 of the Revised European Social Charter and **the Committee reiterates its request to be informed on the outcome of the Interdepartmental Committee's work.**

6.4.5 The Committee concludes that the situation in Ireland is **not in conformity** with Article 6§4 of the Revised Charter on the following grounds:

Note 1 Website of the European Foundation for the Improvement of Living and Working Conditions (www.eiro.eurofound.eu.int).

- only authorized trade unions, i.e. trade unions holding a negotiation licence, their officials and members are granted **immunity from civil liability** in the event of a strike;

– under the Unfair Dismissals Act, an employer may dismiss all employees for taking part in a strike. The dismissal of a striking employee will only be unfair if the employer dismisses certain employees or selectively rehires certain employees.

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Our Response :-

6.4.6 Please see our response under Article 6, paragraph 2, sub-paragraph 6.2.16 above.

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ARTICLE 21: THE RIGHT TO INFORMATION AND CONSULTATION

Text of ARTICLE 21 of the Revised European Social Charter

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

- a. to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and
- b. to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.

Appendix to Articles 21 and 22

1. For the purpose of the application of these articles, the term “workers’ representatives” means persons who are recognised as such under national legislation or practice.
2. The terms “national legislation and practice” embrace as the case may be, in addition to laws and regulations, collective agreements, other agreements between employers and workers’ representatives, customs as well as relevant case law.
3. For the purpose of the application of these articles, the term “undertaking” is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or provide services for financial gain and with power to determine its own market policy.
4. It is understood that religious communities and their institutions may be excluded from the application of these articles, even if these institutions are “undertakings” within the meaning of paragraph 3. Establishments pursuing activities which are inspired by certain ideals or guided by certain moral concepts, ideals and concepts which are protected by national legislation, may be excluded from the application of these articles to such an extent as is necessary to protect the orientation of the undertaking.
5. It is understood that where in a state the rights set out in these articles are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.

6. The Parties may exclude from the field of application of these articles, those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.

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Standard Questions asked of all Parties (member states of the Council of Europe, which have signed and ratified the Revised European Social Charter) :-

Article 21 – The right of workers to be informed and consulted within the undertaking

Information to be submitted

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, in particular on the percentage of workers out of the total workforce which are not covered by the provisions granting a right to information and consultation either by legislation, collective agreements or other measures.

Scope of the provision as interpreted by the ECSR

Right of employees in private or public undertakings and/or their representatives to be informed on all matters relevant to their working environment and to be consulted in good time with respect to proposed decisions that could substantially affect the employees' interests.

Workers must have legal remedies when these rights are not respected. There must also be sanctions for employers which fail to fulfil their obligations under this Article.

For a list of selected other international instruments in the same field, see [Appendix](#).

**Text of Ireland's Seventh Report under the Revised European Social Charter
in relation to Article 21 :**

Response from the Industrial Relations' Section, Department of Enterprise, Trade and Employment :- Questions 1,2 and 3 above refer.

No Change from Our Second Report on Article 21, which was submitted to the Council of Europe on 24 March 2009.

21.1 In relation to Questions 1-3 above concerning the right of workers to information and consultation within an undertaking, provisions of the following pieces of Irish legislation are relevant:

1. The Employees (Provision of Information and Consultation) Act 2006
2. The Transnational Information and Consultation of Employees Act 1996
3. The European Communities (European Public Limited-Liability Company) (Employee Involvement) Regulations 2006 (S.I. No. 623 of 2006)
4. The European Communities (European Cooperative Society) (Employee Involvement) Regulations 2007 (S.I. No. 259 of 2007)
5. **The European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008).**
6. The Worker Participation (State Enterprises) Act 1988.

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SUMMARY OF THE ABOVE LISTED LEGISLATION :- Text of the Legislation is also given in the document "Completed Appendix to Article 21".

1. The Employees (Provision of Information and Consultation) Act 2006 (No. 9 of 2006) –
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Questions A and B above, in particular refer.

21.2 The Employees (Provision of Information and Consultation) Act 2006 (No. 9 of 2006), which implements EU Directive 2002/14/EC of 11 March 2002, provides for the establishment of a general framework setting out minimum requirements for the right to information and consultation of employees in undertakings with at least 50 employees.

21.3 The Act provides for three types of information and consultation agreements:

- Pre-Existing Agreements: The Act provides an opportunity for the parties to develop customised information and consultation arrangements – either through the retention of existing arrangements or the establishment of new arrangements.

- Negotiated Agreements: Section 8 provides the employer and the employees and/or their representatives with the opportunity to devise their own tailor-made information and consultation agreement through negotiations.
- Standard Rules: The Standard Rules are set out in Section 10, Schedule 1 and Schedule 2 of the Act. They are essentially a fallback position for setting up an information and consultation arrangement.

21.4 Negotiated agreements and pre-existing agreements afford the parties the opportunity to devise their own tailor-made information and consultation arrangements. Reference must be made to the subjects for information and consultation and the method by which information is to be provided or consultation to be conducted. The Standard Rules are more prescriptive. Schedule 1 sets out the detail of the Rules, including what is covered by information and consultation and the practical arrangements for information and consultation.

21.5 Section 14 of the Act provides that an individual who at any time is or was -

- (a) a member of an Information and Consultation Forum (established under the Standard Rules),
- (b) an employees' representative who is party to an information and consultation arrangement,
- (c) an employee participant in an information and consultation arrangement, or,
- (d) an expert providing assistance,

is not permitted to disclose confidential information to employees or to third parties, unless those employees or third parties are subject to a duty of confidentiality under this Act. An employer may refuse to communicate information or undertake consultation where the nature of that information or consultation is such that it would seriously harm the functioning of the undertaking or be prejudicial to the undertaking. An employer shall refuse to disclose information where this is prohibited by any other legislation. The Labour Court, including any expert or mediator appointed by the Labour Court, is also bound by the confidentiality requirements of this Section.

21.6 No particular category of worker is excluded from the legislation. EU Directive 2002/14/EC applied to either undertakings employing at least 50 employees or establishments employing at least 20 employees in the Member State. The Irish legislation applies to undertakings with at least 50 employees.

21.7 No particular category of undertaking is specifically excluded from the scope of the Act.

21.8 The Act ensures the protection of the rights of the employees and the employees' representatives in the event of non compliance with the Directive in terms of:

- Adequate administrative or judicial procedures (Sections 13, 15, 16, 17, 18 & Schedule 3 of the Act)
- Adequate sanctions (Sections 19 and 20 of the Act).

21.9 A copy of the Irish legislation is attached at **Appendix 1** in the document Completed Appendix to Article 21, for reference and may also be accessed at <http://www.oireachtas.ie/documents/bills28/acts/2006/A906.pdf> or also at <http://www.irishstatutebook.ie/2006/en/act/pub/0009/index.html>

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2. **2. Transnational Information and Consultation of Employees Act 1996**
(No. 20 of 1996) Question A refers :-

21.10 Directive 94/45/EC was transposed into Irish law by way of the Transnational Information and Consultation of Employees Act 1996. The Irish legislation provides for the establishment of a European Works Council or a procedure in community Scale undertakings and community-scale groups of undertakings for the purposes of informing and consulting employees (Community-scale undertakings are large multi-nationals with at least 1,000 across the member states and with at least 150 in each of at least two Member States). This involves the establishment of an employee forum where issues of concern to the employees across the EU can be discussed with management and employees can be informed and consulted in a structured way.

21.11 The Act ensures the protection of the rights of the employees and the employees' representatives in the event of non-compliance with the Directive in terms of:

- Adequate administrative or judicial procedures (Sections 17, 20, and 21 of the Act)
- Adequate sanctions (Sections 18 and 19 of the Act).

21.12 A copy of the Irish legislation is attached at **Appendix 2** in the document Completed Appendix to Article 21, for reference and may also be accessed at <http://www.irishstatutebook.ie/1996/en/act/pub/0020/index.html>

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3. European Communities (European Public Limited-Liability Company) (Employee Involvement) Regulations 2006 (S.I. No. 623 of 2006)

21.13 The Regulations transpose EU Directive 2001/86/EC of 8 October 2001 “Supplementing the Statute for a European Company with Regard to the Involvement of Employees”.

21.14 The European Company Statute is a new legal instrument that gives companies with commercial interests in more than one Member State the option of forming a European Company (to be known as Societas Europea, “SE”), the

objective of which is to make it easier for such companies to operate across the EU.

21.15 The Irish Regulations transposing the European Company Directive provide that a new SE cannot be registered without first negotiating with employees on their involvement in the company, whether through information and consultation and/or, in certain circumstances, participation at board level.

21.16 The main provisions of the Regulations are as follows:

- Where a plan is made to establish an SE, negotiations must be commenced with the representatives of the companies' employees on arrangements for the involvement of employees in the SE. To this end, a special negotiating body representative of the employees must be created.
- The special negotiating body and the competent organs of the participating companies negotiate and determine, by written agreement, arrangements for the involvement of employees within the SE.
- Standard Rules are provided for as a fallback position if the parties cannot or don't want to agree their own arrangements. These Rules set out the details regarding the representative body, information and consultation and, where relevant, participation. Where employees already participate at board level in companies forming the SE, they may be afforded board level representation in the SE. Otherwise the rules provide for information and consultation.
- The special negotiating body has the power to decide by a majority not to open

negotiations with the competent organs of the participating companies or to terminate negotiations already opened, and to rely on the rules on information and consultation of employees in force in the Member States where the SE has its employees.

- The Regulations provide protections for employees' representatives.
- The Regulations lay down enforcement mechanisms in cases of non-compliance.
- Confidential information provisions are set out in Regulation 18.

21.17 A copy of the Irish legislation is attached at **Appendix 3 in the document Completed Appendix to Article 21**, for reference and may also be accessed at <http://www.entemp.ie/publications/sis/2006/si623.pdf>

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4. The European Communities (European Cooperative Society) (Employee Involvement) Regulations 2007 (S.I. No. 259 of 2007)

21.18 The Regulations transpose EU Directive 2003/72/EC of 22 July 2003 "Supplementing the Statute for a European Cooperative Society with Regard to the Involvement of Employees".

21.19 The European Cooperative Society Statute is a new legal instrument that enables the establishment of a European Cooperative Society (to be known as an “SCE”), the objective of which is to make it easier for cooperatives to operate across the EU.

21.20 The Irish Regulations transposing the European Cooperative Society Directive provide that a new SCE cannot be registered without first negotiating with employees on their involvement in the cooperative, whether through information and consultation and/or, in certain circumstances, participation at board level.

21.21 The main provisions of the Regulations are as follows:

- Where a plan is made to establish an SCE, negotiations must be commenced with the representatives of the cooperatives’ employees on arrangements for the involvement of employees in the SCE. To this end, a special negotiating body representative of the employees must be created.
- The special negotiating body and the competent organs of the participating legal entities negotiate and determine, by written agreement, arrangements for the involvement of employees within the SCE.
- Standard Rules are provided for as a fallback position if the parties cannot or don’t want to agree their own arrangements. These Rules set out the details regarding the representative body, information and consultation and, where relevant, participation. Where employees already participate at board level in cooperatives forming the SCE, they may be afforded board level representation in the SCE. Otherwise the rules provide for information and consultation.
- The special negotiating body has the power to decide by a majority not to open negotiations with the competent organs of the participating legal entities or to terminate negotiations already opened, and to rely on the rules on information and consultation of employees in force in the Member States where the SCE has its employees.
- The Regulations provide protections for employees’ representatives.
- The Regulations lay down enforcement mechanisms in cases of non-compliance.
- Article 8 of the Directive deals with the rules which are applicable to SCEs established exclusively by natural persons or by a single legal entity and natural persons. Article 9 sets down the circumstances in which the employees of the SCE and/or their representatives are entitled to participate in the general meeting or, if it exists, in the section or sectorial meeting, with the right to vote.
- Confidential information provisions are set out in Regulation 19.

21.22 A copy of the Irish legislation is attached at **Appendix 4** in the document Completed Appendix to Article 21, for reference and may be accessed at <http://www.entemp.ie/publications/sis/2007/si259.pdf>



5. European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008)

21.23 The Regulations transpose EU Directive 2005/56/EC of 26 October 2005 on Cross-Border Mergers of Limited-Liability Companies. Part 3 of the Regulations deals with employee participation in the company resulting from the cross-border merger and their involvement in the definition of such rights. The aim of the Regulations is to facilitate cross-border mergers of commercial companies under favourable conditions in terms of costs and legal certainty.

21.24 A cross-border merger cannot be approved without the Court being satisfied that the obligations regarding employee participation in the new company have been met.

21.25 The main provisions of the Regulations with regard to employee participation are as follows:

- **National rules on employee participation in companies must apply. (At present no such rules exist in Irish law, apart from legislation providing for participation in certain state enterprises.) However, where at least one of the merging companies has more than 500 employees and is operating a participation system, or where the national rules don't provide for at least the same level of participation as already exists or don't extend it to all of the employees, then the Directive sets out a system of rules which must be followed by the participating companies in the cross-border merger. These rules are closely based on the rules provided for in Directive 2001/86/EC supplementing the Statute for a European Company with regard to the involvement of employees, which was transposed into Irish law by the European Communities (European Public Limited-Liability Company) (Employee Involvement) Regulations 2006. The key elements of these rules are set out in the following bullets.**
- **Where the draft terms of a cross-border merger are published, negotiations must be commenced with the representatives of the companies' employees on arrangements for the involvement of employees in the successor company. To this end, a special negotiating body representative of the employees must be created.**
- **The special negotiating body and the competent organs of the participating companies negotiate and determine, by written agreement,**

arrangements for the involvement of employees within the successor company.

- **Standard Rules** are provided for as a fallback position if the parties cannot or don't want to agree their own arrangements. These Rules set out the details regarding the representative body, information and consultation and, where relevant, participation. Where employees already participate at board level in the companies involved in the merger, they may be afforded board level representation in the successor company. Otherwise the rules provide for information and consultation.
- The special negotiating body has the power to decide not to open negotiations with the participating companies or to terminate negotiations already opened, and to rely on the rules on information and consultation of employees in force in the Member States where the successor company has its employees. The special negotiating body can also agree to limit the proportion of employees' representatives in the administrative organ of the new company.
- Employees' participation rights are protected in the case of any subsequent domestic merger that the successor company is involved in for a period of three years after the cross-border merger.
- The Regulations provide for the protection of employees' representatives.
- The Regulations provide enforcement mechanisms in cases of non-compliance with their provisions.

21.26 A copy of the Irish legislation is attached at **Appendix 5 in the document Completed Appendix to Article 21**, for reference and may be accessed at <http://www.attorneygeneral.ie/esi/2008/B26146.pdf>

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6.The Worker Participation (State Enterprises) Act 1988

21.27 The Worker Participation (State Enterprises) Act 1988 provides for sub-board participation in certain State enterprises. If sub-board participative arrangements are initiated, an agreement is drawn up between the State enterprise and the employees which must include at least the following essential features:

- a regular exchange of views and information between management and employees concerning matters which are specified in the agreement;
- the giving in good time by management to employees of information about certain decisions which are liable to have a significant effect on employees' interests;

- the dissemination to all employees of information and views arising from the participative arrangements, except in the circumstances, if any, provided for in the agreement.

21.28 No category of employees is excluded from the Act although the Act only covers employees of the State enterprises specified.

21.29 A copy of the Irish legislation can be found at Appendix 6 in the document Completed Appendix to Article 21, for reference, or at website

<http://www.irishstatutebook.ie/1988/en/act/pub/0013/index.html>.

Response from Redundancy Payments Section, Department of Enterprise, Trade and Employment :- Question G refers :- [Redundancy Section Changes in respect of the 7th Report are shown in Blue Print :-](#)

21.30 Protection of Employment (**Exceptional Collective Redundancies and Related Matters**) Act 2007 (No. 27/2007)

A copy of the Irish legislation can be found at Appendix 7 in the document Completed Appendix to Article 21, for reference, or at website

<http://www.irishstatutebook.ie/2007/en/act/pub/0027/index.html>

- Addresses cases of collective redundancies where specific situations apply
- Provides for the establishment of a new body – the Redundancy Panel (**The Redundancy Panel was formally established in May 2009 and is made up of representatives of the employers, the trade unions and is currently chaired by a representative from the Department of the Taoiseach (Prime Minister). Since its establishment there have been two referrals under the legislation to the Panel which have been considered.**)

- Establishes roles, responsibilities and time frames for the Minister, the Labour Court and the Redundancy Panel
- Provides for situations where dismissals take place contrary to an opinion of the Labour Court with particular reference to redundancy rebate entitlements and tax treatment as well as consideration of Unfair Dismissal entitlements, penalties and appeals
- Provides protection under the Unfair Dismissals Act in cases of lockout/strike where none of those engaged in strike or subject to the lockout are re-engaged
- A number of other measures to up-date employment rights legislation are also included, principally the removal of the upper age limit of 66 for statutory redundancy entitlement. Employees who are made redundant at age 66 and over are now be entitled to a statutory redundancy lump sum payment.
- This piece of legislation also allows for the implementation of the mandatory judgement of the European Court of Justice in the ‘Junk v Kuhnel’ case of 27th January, 2005 in relation to mandatory notice periods. Employers will not be able to give notice of redundancy to employees during the 30 day notice period during which the Minister is notified of the forthcoming collective redundancies and the consultation process takes place.

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Response from Employment Rights’ Legislation Section, Department of Enterprise, Trade and Employment :-

21.31 The current Irish law in the area of “transfer of undertakings” is the *European Communities (Protection of Employees on Transfer of*

Undertakings) Regulations 2003 – Statutory Instrument (S.I.) No. 131 of 2003. <http://www.irishstatutebook.ie/2003/en/si/0131.html> The Regulations implement the mandatory (i.e. mandatory to transpose) provisions of EU Council Directive 2001/23/EC of 12 March 2001 which is aimed at safeguarding the rights of employees in the event of a transfer of an undertaking, business or part of a business to another employer as a result of a legal transfer (including the assignment or forfeiture of a lease) or merger. Also, a further provision of the European Directive (a provision relating to the information to be provided by the original employer to the new employer) was transposed into Irish law by Section 21 of the Employees (Provision of Information and Consultation) Act 2006.

The Regulations provide that all the rights and obligations of an employer arising from a contract of employment (including terms inserted by collective agreements) other than pension rights, existing on the date of a transfer, are transferred to the new employer on the transfer of the business or part thereof.

Another provision of the Regulations is that both the outgoing and incoming employers are obliged to inform their respective employees' representatives of, *inter alia*, the date or proposed date of the transfer, the reasons for the transfer and the legal, social and economic implications of the transfer for the employees. Where there are no representatives, employers must arrange for the employees to choose representatives for this purpose.

Under the Regulations, an employee may take a case to a Rights Commissioner or (on appeal) to the Employment Appeals Tribunal if the employee considers that an infringement of rights has occurred.

It is a matter for a Rights Commissioner or (on appeal) the Employment Appeals Tribunal to interpret the provisions of the Regulations and a legal interpretation would only be given if an employee took a case to a Rights Commissioner under the Regulations.

21.32 Question 2 refers:- Our Response :-

In a transfer of an undertaking situation, i.e. a situation in which an undertaking, or part an undertaking, whilst maintaining its identity, transfers (as a result of a legal transfer) from one employer to another; the employers must inform the representatives of their affected employees in relation to:

- (i) the date or proposed date of the transfer;**
- (ii) the reasons for the transfer;**
- (iii) the legal implications of the transfer for the employees and a summary of any relevant economic and social implications of the transfer for them, and any measures envisaged in relation to the employees.**

Both employers must give this information to their respective employees' representatives, and if necessary consult with them, where reasonably practical, not later than 30 days before the transfer is due to take place. Where no representatives exist, the employers must arrange a procedure whereby the employees can choose representatives for this purpose. If however there are still no representatives through no fault of the employees, the employers must notify the affected employees in writing of the particulars described at (i), (ii) & (iii) above, where reasonably practical, not later than 30 before the transfer.

21.33 Question 2 refers :- Our Response :-

If an employee considers that his/her rights under this Regulation have not been respected, he or she (or his or her representative) may present a complaint to a rights commissioner of the Labour Relations Commission. The rights commissioner will hear the case from both sides, accept any evidence, and communicate a written decision to the parties. The decision will do one or more of the following:

- (a) declare that the complaint is or is not well founded;**
- (b) require the employer to comply with Regulation 8 and , for that purpose, to take a specific course of action; or**
- (c) require the employer to pay the employee compensation not exceeding 4 weeks remuneration.**

A decision of the rights commissioner may be appealed by either party (within 6 weeks of its written communication to them) to the Employment Appeals Tribunal.

21.34 Specific Questions Addressed to Ireland by the ECSR (European Committee of Social Rights):-

None so far.

Article 21

ARTICLE 21: THE RIGHT TO INFORMATION AND CONSULTATION

Appendix :	Legislation	Pages
No. 1	THE EMPLOYEES (PROVISION OF INFORMATION AND CONSULTATION) ACT 2006 - Number 9 of 2006	2-22 of the Appended Document
No. 2	TRANSNATIONAL INFORMATION AND CONSULTATION OF EMPLOYEES ACT, 1996 (No. 20 of 1996)	22- 56 of the Appended Document
No. 3	The European Communities (European Public Limited-Liability Company) (Employee Involvement) Regulations 2006 (S.I. No. 623 of 2006)	57- 78 of the Appended Document
No. 4	The European Communities (European Cooperative Society) (Employee Involvement) Regulations 2007 (S.I. No. 259 of 2007)	78- 97 of the Appended Document
No. 5	European Communitis (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008)	97- 129 of the Appended Document
No. 6	The Worker Participation (State Enterprises) Act 1988	129- 192 of the Appended Document
No. 7	Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007 (No. 27/2007)	192- 199 of the Appended Document
No. 8	Regulation 8 of European Communities (Protection of	199- 222 of the Appended Document

	Employees on Transfer of Undertakings) Regulations 2003, Statutory Instrument Number 131 of 2003	

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Article 22 – The Right to take part in the Determination and Improvement of the Working Conditions and Working Environment

ARTICLE 22: THE RIGHT TO TAKE PART IN THE DETERMINATION AND IMPROVEMENT OF THE WORKING CONDITIONS AND WORKING ENVIRONMENT

Text of ARTICLE 22 of the Revised European Social Charter

With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

- a. to the determination and the improvement of the working conditions, work organisation and working environment;
- b. to the protection of health and safety within the undertaking;
- c. to the organisation of social and socio-cultural services and facilities within the undertaking;
- d. to the supervision of the observance of regulations on these matters.

Appendix to Articles 21 and 22

1. For the purpose of the application of these articles, the term “workers’ representatives” means persons who are recognised as such under national legislation or practice.
2. The terms “national legislation and practice” embrace as the case may be, in addition to laws and regulations, collective agreements, other agreements between employers and workers’ representatives, customs as well as relevant case law.
3. For the purpose of the application of these articles, the term “undertaking” is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or provide services for financial gain and with power to determine its own market policy.
4. It is understood that religious communities and their institutions may be excluded from the application of these articles, even if these institutions are “undertakings” within the meaning of paragraph 3. Establishments pursuing activities which are inspired by certain ideals or guided by certain moral concepts, ideals and concepts which are protected by national legislation, may be excluded from the application of these articles to such an extent as is necessary to protect the orientation of the undertaking.
5. It is understood that where in a state the rights set out in these articles are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.
6. The Parties may exclude from the field of application of these articles, those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.

Appendix to Article 22

1. This provision affects neither the powers and obligations of states as regards the adoption of health and safety regulations for workplaces, nor the powers and responsibilities of the bodies in charge of monitoring their application.
2. The terms “social and socio-cultural services and facilities” are understood as referring to the social and/or cultural facilities for workers provided by some undertakings such as welfare assistance, sports fields, rooms for nursing mothers, libraries, children’s holiday camps, etc.

Standard Questions asked of all Parties (member states of the Council of Europe, which have signed and ratified the Revised European Social Charter) :-

Information to be submitted

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information on employees who are not covered by Article 22, the proportion of the workforce who is excluded and the thresholds below which employers are exempt from these obligations.

Scope of the provision as interpreted by the ECSR

Right of employees in private or public undertakings and/or their representatives to participate in the decision-making process and the supervision of the observance of regulations in all matters referred to in Article 22.

Workers must have legal remedies when these rights are not respected. There must also be sanctions for employers which fail to fulfil their obligations under this Article.

Text of Ireland’s Seventh Report under the Revised European Social Charter in relation to Article 22 :-.



Response from the Industrial Relations' Section, Department of Enterprise, Trade and Employment :- Questions 1, 2 and 3 above refer :-

22.1 Questions 1,2 and 3

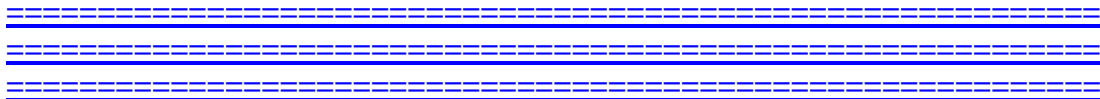
In relation to Questions 1,2 and 3 please refer to our report on Article 21 (sub-paragraphs 21.1 to 21.29 inclusive, for a description of the rules whereby the right of workers to information and consultation within the undertaking either directly or through their representatives is guaranteed.

22.2 Questions 1 and 2

The Irish legislation outlined in the preceding answer can be interpreted as implicitly including the areas mentioned as topics that can be included in the information and consultation arrangements put in place in an undertaking.

22.3 Specific Questions Addressed to Ireland by the ECSR (European Committee of Social Rights):-_

None so far.



ARTICLE 26: THE RIGHT TO DIGNITY AT WORK

Article 26 – General

Please indicate how organisations of employers and workers are consulted by the authorities on the measures required to implement each of the paragraphs of Article 26 (procedure and level of consultation, content, and frequency of consultation).

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Article 26 – The Right to Dignity at Work - General Introduction

With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers’ and workers’ organisations:

1. to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;
2. to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

Appendix to Article 26

It is understood that this article does not require that legislation be enacted by the Parties.

It is understood that paragraph 2 does not cover sexual harassment.

Text of ARTICLE 26 PARA. 1 of the Revised European Social Charter

ARTICLE 26 PARA. 1

“With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers’ and workers’ organisations: to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;”

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Questions asked of all Parties (member states of the Council of Europe, which have signed and ratified the Revised European Social Charter):-

Information to be submitted

Article 26§1

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please supply any relevant statistics or other information on awareness-raising activities and programmes and on the number of complaints received by ombudsmen or mediators, where such institutions exist.

Scope of the provisions as interpreted by the ECSR

Paragraph 1: This concerns forms of behaviour deemed to constitute sexual harassment in the work place or in relation to work. Existing measures must ensure effective protection for workers against sexual harassment. It also concerns the liability of employers and/or their employees. There should be effective remedies for victims and reparation for pecuniary and non-pecuniary harm suffered, including appropriate compensation. The burden of proof should be adjusted and steps should be taken to increase awareness of and prevent sexual harassment.

Text of Ireland's Seventh Report under the Revised European Social Charter in relation to Article 26, Paragraph 1: - For convenience, the new material is shown in red print.

26.1.1 Our Response to Question 1 above :-

Section 14A(7) of the Employment Equality Act 1998, as amended by the Equality Act 2004, defines sexual harassment as follows:

“(a)(ii) references to sexual harassment are to any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, being conduct which has the purpose or effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.”

The Employment Equality Acts can be viewed in full on the following websites

- www.gov.ie
- www.oireachtas.ie or
<http://www.irishstatutebook.ie/1998/en/act/pub/0021/index.html>
- <http://www.irishstatutebook.ie/2004/en/act/pub/0024/index.html>

26.1.2 Our response to Questions 1 and 2 above :-

The Employment Equality Act 1998, as amended by the Equality Act 2004, is the main piece of legislation in Ireland for the prevention of harassment and sexual harassment.

The Equality Authority is the body responsible for the implementation of this Act, including the provisions relating to sexual harassment.

The Equality Authority produced a Code of Practice on Harassment and Sexual Harassment at Work, which can be viewed on the following websites

- www.equality.ie
- www.oireachtas.ie or

<http://www.equality.ie/index.asp?locID=108&docID=-1>

This code has been given legal effect in the Statutory Instrument entitled Employment Equality Act 1998 (Code of Practice) (Harassment) Order 2002 (S.I. No. 78 of 2002). A copy of S.I. No. 78 of 2002 is available at www.irishstatutebook.ie or <http://www.irishstatutebook.ie/2002/en/si/0078.html>

26.1.3 Our Response to Question 2 above :-

The Employment Equality Act 1998 requires employers to act in both a preventative and remedial way in relation to sexual harassment. The redress which may be ordered by the court on finding a case for sexual harassment include an order for compensation, an order for equal treatment and an order for re-instatement or re-engagement, with or without an order for compensation.

The procedure in relation to taking a case is as follows:

The relevant complaint forms (which are available at www.equalitytribunal.ie) are completed and submitted to the Tribunal, within a specified time limit, the equality officers in the tribunal make a decision as to whether there is a case, notify parties, the hearing takes place and a decision is reached. The equality officer can make an order for compensation, if he/she deems it appropriate. After a decision has been issued, each party has 42 days to make an appeal about the decision.

<http://www.equalitytribunal.ie/uploadedfiles/AboutUs/EE1%20Form%20for%20making%20a%20claim.doc> (complaint forms)

In 2001, Ireland introduced legislation regarding the burden of proof in gender discrimination cases (S.I. 337 of 2001). This statutory instrument (S.I.) provides for the transfer to a respondent of the evidential burden of proof, where a complainant establishes a prima facie case of discrimination. A copy of S.I. No. 337 of 2001 is available at www.irishstatutebook.ie or <http://www.irishstatutebook.ie/2001/en/si/0337.html>

26.1.4 Our Response to Question 3 above :-

Section 82(1) of the Employment Equality Act 1998, as amended by the Equality Act 2004 allows for the following forms of redress

- (a) an order for compensation in the form of arrears of remuneration (attributable to a failure to provide equal remuneration) in respect of so much of the period of employment as begins not more than 3 years before the date of the referral under section 77(1) which led to the decision.
- (b) an order for equal remuneration from the date referred to in paragraph (a).
- (c) an order for compensation for the effects of acts of discrimination or victimisation which occurred not earlier than 6 years before the date of the referral of the case under section 77.
- (d) an order for equal treatment in whatever respect is relevant to the case.
- (e) an order that a person or persons specified in the order take a course of action which is so specified.

Section 82(4) provides that:

“The maximum amount which may be ordered by the Director or the Labour Court by way of compensation under subsection (1)(c) or by that Court under subsection (2)(b), in any case where the complainant was in receipt of remuneration at the date of the reference of the case, or if it was earlier, the date of dismissal, shall be an amount equal to 104 times either;

- the amount of that remuneration, determined on a weekly basis, or
- where it is greater, the amount, determined on a weekly basis, which the complainant would have received at that date but for the act of discrimination or victimisation in question.”

26.1.5 Seventh Report on the Implementation of the Revised European Social Charter by the Government of Ireland :- Article 26, Paragraph 1, concerning the Conclusions of the Council of Europe’s European Committee of Social Rights (ECSR):- ECSR Comments / Questions directed specifically at Ireland :-

Article 26 – The Right to Dignity at Work

Paragraph 1 – Sexual harassment

The Committee takes note of the information in the Irish report. It notes that under Irish law, harassment is regarded as a form of discrimination when it is linked to employment conditions. Legal protection is provided by the Employment Equality Act 1998, as amended by the Equality Act 2004 (Section 23§1), which defines sexual harassment as “any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, being conduct which has the purpose or effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for that person”.

The law protects employees from acts of harassment by employers and colleagues but also by customers and visitors or any of their employers’ contacts in the workplace including suppliers, service providers and volunteers. The law also applies beyond the

workplace as it also covers conferences and other work-related activities outside the workplace.

The Code of Practice on Sexual Harassment and Harassment at Work published by the Equality Authority⁴ contains a list of forms of behaviour which may be regarded as acts of sexual harassment such as acts of physical intimacy, requests for sexual favours or any other unwelcome conduct, words or gestures that can be regarded as sexually offensive or humiliating.

Employers' liability and means of redress

Under the Employment Equality Act, employers are required both to take all the necessary measures to bring a halt to acts of sexual harassment at work and to take preventive measures to avoid such situations.

The Committee also notes from another source⁵ that employers can be held liable towards persons working for them who are not their employees (sub-contractors, self-employed persons, etc.) and have suffered sexual harassment on their business premises or from employees under their responsibility. Employers' liability for workers, whether or not their employees, also applies in cases of sexual harassment suffered by persons not working for them, such as customers and visitors.

It is the Equality Authority's task to monitor the application of the aforementioned Act. Complaints of sexual harassment are made to the Office of the Director of Equality Investigations, who may refer the complaint to an Equality Officer or, with the parties' agreement, for mediation.

In cases of dismissal covered by the Employment Equality Act, victims may also refer the case to a Labour Court while in cases of harassment they may also refer the matter to a Circuit Court. Complaints must be made within six months of the alleged incident or, under exceptional circumstances, within twelve months.

Damages

The Employment Equality Act authorises victims of harassment or discrimination to bring actions for damages against their employers in court or with the Equality Authority to obtain compensation for pecuniary and non-pecuniary damage suffered. Damages may amount to the equivalent of up to 104 weeks' wages.

The Committee asks for the next report to provide information on the relevant case-law.

Besides awarding damages, the courts may require that employees are reinstated in their jobs and that they are granted financial compensation for the consequences of the act of harassment. **The Committee asks whether the courts may award additional compensation to employees if they do not wish to be reinstated. It would also like to know whether reinstatement is also**

⁴ Code of Practice on Sexual Harassment and Harassment at Work, published by the Equality Authority, 2002

⁵ Ibid.

possible when employees have been forced to resign because of the hostile atmosphere resulting from sexual harassment.

Burden of proof

Under the legislation regarding the burden of proof in gender discrimination cases (S.I. 337), the burden of proof is shifted, and shared between the employee and the employer or the presumed perpetrator of the harassment when this is not the employer. Complainants who consider themselves to be victims of harassment must establish a presumption that this did occur and defendants must prove that harassment did not take place.

Prevention

The Committee notes that the Code of Practice on Sexual Harassment and Harassment at Work cited above, which is published by the Equality Authority for use by employers, employees, employers' organisations and trade unions, takes the form of a set of recommendations (on prevention policies to be adopted by employers, the role of employers' and workers' representatives and the remedies available to victims in particular) intended to promote the development of specific policies to combat harassment.

The Committee asks what other preventive measures have been introduced by the government and what steps have been taken to make the public more aware of the problem of sexual harassment.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Ireland is in conformity with Article 26§1 of the Revised Charter.

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26.1.6 Our Response to the Specific Questions addressed to the Government of Ireland by the European Committee of Social Rights (ECSR) :-

Question 1 (re :- Case Law of the Equality Tribunal)

The Equality Tribunal, which is a quasi-judicial body, has jurisdiction to investigate and decide complaints of discrimination referred to it under the Employment Equality Acts 1998 to 2008, the Equal Status Acts 2000 to 2008, and the Pensions Acts 1990 to 2008. The Acts prohibit direct discrimination, indirect discrimination or harassment based on any of nine protected grounds:

- gender
- marital status

- family status
- race including nationality and ethnicity
- religious belief
- age
- disability
- sexual orientation
- membership of the Traveller community

They also prohibit victimisation of a person for making a complaint. In addition, the Employment Equality Acts and Equal Status Acts both prohibit sexual harassment.

The Equality Tribunal has a statutory obligation to publish all its decisions. The full texts of the decisions issued are published on a **Database of Decisions** on the Tribunal's website (www.equalitytribunal.ie), giving a comprehensive summary of the evidence and a cogently reasoned decision. Names of parties are excluded in particularly sensitive issues, for instance in cases involving harassment or sexual harassment and in certain cases involving disability or children.

Summaries of all Tribunal decisions are included in the **Legal Reviews** published annually by the Tribunal. The Legal Reviews also include a detailed overview of the legal issues raised before the Tribunal in a given year, including developments in regard to the case law on harassment and sexual harassment. Legal Reviews for 2001 to 2008 inclusive are available on the Publications section of the Tribunal's website.

Question 2 (re :- Redress Mechanisms available)

The Director of the Tribunal is empowered under Section 82(1) of the Employment Equality Acts 1998 to 2008 to make orders for redress consisting of one or more of the following, as may be considered appropriate in the circumstances of the particular case:

- order for compensation by way of arrears of remuneration
- order for equal remuneration
- order for compensation for the effects of acts of discrimination or victimisation, to a maximum amount of two years' remuneration
- order for equal treatment
- order that a specific course of action be taken by a specified person or persons
- order for re-instatement or re-engagement (with or without an order for compensation as described above)

In practice, the powers of the Director in relation to investigations and decisions are delegated to Equality Officers appointed in accordance with Section 75 of the Employment Equality Acts 1998 to 2008. The Equality Officer decides the redress to be ordered depending on the facts and circumstances of the case.

For example, in the recent decision *DEC-E2008-015 A Female Employee v A Recruitment Company*, which concerned sexual harassment and discrimination on the gender ground and victimisation, the complainant was awarded redress by way of an order for compensation of €10,000 and €15,000 respectively for the effects of discrimination and victimisation. The respondent was also ordered to take the

following course of action - to draft a policy on the prevention of harassment and sexual harassment in the workplace in accordance with the Equality Authority's Code of Practice on Sexual Harassment and Harassment at Work; and to take appropriate measures to communicate the policy to all of its employees and display it permanently in a prominent position.

Question 3 (re:- Issues of Re-instatement and Compensation)

Yes. In accordance with Section 82(1)(f) of the Employment Equality Acts 1998 to 2008, the Director of the Equality Tribunal has the power to make an order for re-instatement or re-engagement, with or without an order for compensation for the effects of acts of discrimination or victimisation. Other options available by way of redress, in addition to the above, include the power to order the taking of certain actions, such as introduction of codes of practice and/or staff training to ensure the offence does not reoccur.

The Equality Officer decides the redress to be ordered depending on the facts and circumstances of the case.

Question 4 (re:- Issues of Sexual Harassment – Further Measures of Prevention and the Promotion of Greater Public Awareness)

The Equality Authority has a statutory obligation to provide information to the public on the working of the Employment Equality and Equal Status Acts. It has produced and distributed user friendly booklets to improve public awareness and knowledge of rights and obligations under these Acts, which are available on the Publications section of its website (www.equality.ie) and from its Public Information Centre. Details on the prevention of sexual harassment and harassment feature in these Guides and in all the Authority's training provision. The Authority includes promotion of the prevention of harassment in its general public awareness campaigns, such as the Anti-Racist Workplace week campaigns conducted in 2006/7 and 2007/8. The Authority's Code of Practice on Harassment and Sexual Harassment at Work is promoted in its engagements with employers, through, for example, the Equality Mainstreaming Unit established with assistance from the European Social Fund under the Human Capital Investment Operational Programme 2007-2013 to support enterprises and labour market programme providers in integrating an equality mainstreaming perspective into their work.

The Citizens Information Service provides information to the public about their rights and obligations, including information on the prohibition of harassment and sexual harassment at work. This information can be found at www.citizensinformation.ie

Similar information, for employers and employees, is provided by the National Employment Rights Authority, and can be found on its website (www.employmentrights.ie)

The National Women's Strategy (NWS) is the Irish government's statement of priorities in relation to the advancement of women in Irish society for the period 2007 to 2016. The Strategy was launched by the Taoiseach (Prime Minister) in April 2007.

The NWS is a "whole-of-Government" strategy. It contains 20 Key Objectives and over 200 planned Actions grouped under the three Key Themes of;

- Equalising socio-economic opportunity for women;
- Ensuring the wellbeing of women; and
- Engaging women as equal and active citizens.

Objective 11 under the Key Theme of "Ensuring the wellbeing of women" has as its aim

"To protect women from bullying and harassment in the workplace"

There are four planned Actions listed under this Key Objective

1. Preparation of a revised Code of Practice for employers and employees in the prevention and resolution of bullying at work.
2. Media campaigns to promote awareness of bullying.
3. Further consideration of bullying and harassment under the Safety, Health and Welfare at Work Act, 2005.
4. Identify and gather better statistics and indicators in relation to the incidence of bullying.



ARTICLE 26: THE RIGHT TO DIGNITY AT WORK

ARTICLE 26 PARA. 2

Text of ARTICLE 26 PARA. 2 of the Revised European Social Charter

“With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers’ and workers’ organisations: to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct”.

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Questions asked of all Parties (member states of the Council of Europe, which have signed and ratified the Revised European Social Charter): For convenience, the new material is shown in red print.

Article 26§2

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

- 3) Please supply any relevant statistics or other information on awareness-raising activities and programmes and on the number of complaints received by ombudsmen or mediators, where such institutions exist.

Scope of the provisions as interpreted by the ECSR

Paragraph 2: This concerns forms of behaviour deemed to constitute psychological harassment in the work place or in relation to work. Existing measures must ensure effective protection for workers against psychological harassment. It also concerns legal protection against psychological harassment and the liability of employers and/or their employees. There should be effective remedies for victims and reparation for pecuniary and non-pecuniary harm suffered, including appropriate compensation. The burden of proof should be adjusted and steps should be taken to increase awareness of and prevent psychological harassment.

Appendix to Article 26

It is understood that this article does not require that legislation be enacted by the Parties. It is understood that paragraph 2 does not cover sexual harassment

Text of Ireland’s Seventh Report under the Revised European Social Charter in relation to Article 26, Paragraph 2: -

26.2.1 Our Response to Question A (New Questions 1 and 2)above :-

Harassment that is based on the following grounds –marital status, family status, sexual orientation, religion, age, disability, race, or Traveller community ground - is a form of discrimination in relation to conditions of employment.

This form of harassment comes under the scope of, and is prohibited by, the Employment Equality Acts 1998 and 2008.

26.2.2 Our Response to Question B (New Questions 1 and 2) above :-

Harassment that is based on the following grounds – marital status, family status, sexual orientation, religion, age, disability, race, or Traveller community ground - is a form of discrimination in relation to conditions of employment.

This form of harassment comes under the scope of, and is prohibited by, the Employment Equality Acts 1998 and 2008.

26.2.3 Our Response to Question C (New Question 3) above :-

All provisions which apply to sexual harassment also apply to harassment of a non sexual nature.

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26.2.4 Seventh Report on the Implementation of the Revised European Social Charter by the Government of Ireland :- Article 26, Paragraph 2, concerning the Conclusions of the Council of Europe’s European Committee of Social Rights (ECSR):- ECSR Comments / Questions directed specifically at Ireland :-

Article 26 – The Right to Dignity at Work

Paragraph 2 – Moral Harassment

The Committee takes note of the information in the Irish report. It notes that under Irish law, harassment is regarded as a form of discrimination when it is linked to employment conditions. Legal protection is provided by the

Employment Equality Act 1998, as amended by the Equality Act 2004 (Section 32), which defines harassment in general as a form of discrimination in relation to conditions of employment on grounds of marital status, family status, sexual orientation, religion, age, disability, race or membership of the Traveller community. The law protects employees from acts of harassment by employers and colleagues but also by customers and visitors or any of their employers' contacts in the workplace including suppliers, service providers and volunteers. The law also applies beyond the workplace as it also covers conferences and other work-related activities outside the workplace.

The Code of Practice on Sexual Harassment and Harassment at Work published by the Equality Authority⁶ contains a list of forms of behaviour that may be regarded as acts of non-sexual harassment such as verbal harassment (comments, jokes), written harassment (including faxes, text messages and e-mails), physical harassment (any form of assault), intimidation (gestures, threats), pressure and exclusion.

Considering that the legal protection provided in cases of non-sexual harassment is identical to that afforded against sexual harassment, **the Committee refers to its conclusion under Article 26§1 of the Revised Charter.**

As for the first paragraph, the Committee asks the next report to provide information on the following points:

- **the relevant case-law on victim's compensation;**
- **whether the courts may award additional compensation to employees if they do not wish to be reinstated;**
- **what other preventive measures have been introduced by the government.**

Conclusion

Pending receipt of the information requested under Article 26§1, the Committee concludes that the situation in Ireland is in conformity with Article 26§2 of the Revised Charter.

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26.2.5 Our Response to the Specific Questions addressed to the Government of Ireland by the European Committee of Social Rights (ECSR) :-

All provisions, which apply to sexual harassment, also apply to harassment of a non-sexual nature.

The reader is therefore directed to Ireland's responses to the ECSR questions 1, 2 and 4 in regard to Article 26, Paragraph 1.

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⁶ Code of Practice on Sexual Harassment and Harassment at Work, published by the Equality Authority, 2002

ARTICLE 28: THE RIGHT OF WORKERS' REPRESENTATIVES TO PROTECTION IN THE UNDERTAKING AND FACILITIES TO BE ACCORDED TO THEM

Standard Questions asked of all Parties (member states of the Council of Europe, which have signed and ratified the Revised European Social Charter) :-

With a view to ensuring the effective exercise of the right of workers' representatives to carry out their functions, the Parties undertake to ensure that in the undertaking:

- a. they enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as workers' representatives within the undertaking;
- b. they are afforded such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.

Appendix to Article 28

For the purpose of the application of this article, the term "workers' representatives" means persons who are recognised as such under national legislation or practice"

Information to be submitted

- 1) Please describe the general legal framework, including decisions by courts and other judicial bodies, if possible. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Scope of the provision as interpreted by the ECSR

This provision guarantees the right of workers' representatives to protection in the undertaking and to certain facilities. It complements Article 5, which recognises a similar right in respect of trade union representatives.

The term "workers' representatives" means persons who are recognised as such under national legislation or practice.

Protection should cover the prohibition of dismissal on the ground of being a workers'

representative and the protection against detriment in employment other than dismissal.

The facilities to be provided may include for example paid time off to represent workers, financial contributions to the workers' council, the use of premises and materials for the operation of the workers' council, etc.

Text of Ireland's Seventh Report under the Revised European Social Charter
in relation to Article 28 :

Response from Industrial Relations Section, Department of Enterprise,
Trade and Employment :-

28.1 In relation to Questions 1-3 above concerning the right of workers' representatives to protection in the undertaking and facilities to be accorded to them, provisions of the following pieces of Irish legislation (with website address) are relevant:

7. The Employees (Provision of Information and Consultation) Act 2006

<http://www.irishstatutebook.ie/2006/en/act/pub/0009/index.html>

8. The Transnational Information and Consultation of Employees Act 1996

<http://www.irishstatutebook.ie/1996/en/act/pub/0020/index.html>

9. The European Communities (European Public Limited-Liability Company) (Employee Involvement) Regulations 2006 (S.I. No. 623 of 2006)

<http://www.irishstatutebook.ie/2006/en/si/0623.html>

10. The European Communities (European Cooperative Society) (Employee Involvement) Regulations 2007 (S.I. No. 259 of 2007)

<http://www.attorneygeneral.ie/esi/2007/B25208.pdf>

11. The European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008).

<http://www.attorneygeneral.ie/esi/2008/B26146.pdf>

12. The Worker Participation (State Enterprises) Acts 1977 and 1988

<http://www.irishstatutebook.ie/1977/en/act/pub/0006/index.html>

<http://www.irishstatutebook.ie/1988/en/act/pub/0013/index.html>

13. The Industrial Relations Act 1990

<http://www.irishstatutebook.ie/1990/en/act/pub/0019/index.html>

14. The Industrial Relations (Miscellaneous Provisions) Act 2004

<http://www.irishstatutebook.ie/2004/en/act/pub/0004/index.html>

15. Code of Practice on Employee Representatives (Declaration) Order 1993
(S.I. No. 169 of 1993)

<http://www.irishstatutebook.ie/1993/en/si/0169.html>

16. Trade Union Act, 1941 (as amended)

<http://www.irishstatutebook.ie/1941/en/act/pub/0022/index.html>

Also -

<http://www.irishstatutebook.ie/acts.html> (Acts, 1922-2010)

<http://www.irishstatutebook.ie/statutory.html> (SI 1922-2010)

http://www.attorneygeneral.ie/esi/esi_index.html (SI 2007-2010)

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Questions 1-3 above refer :-

28.2 The Employees (Provision of Information and Consultation) Act 2006, the Transnational Information and Consultation of Employees Act 1996, S.I. No. 623 of 2006, S.I. No. 259 of 2007 and S.I. No. 157 of 2008 define employees' representatives as representatives elected or appointed for the purposes of the particular legislation. The Worker Participation (State Enterprises) Acts 1977 and 1988 provide for board level representation of workers in certain State enterprises through the election of employees from among the workforce for appointment to the boards.

28.3 Section 6 of the Trade Union Act 1941 (as amended) provides as follows:

“6.—(1) It shall not be lawful for any body of persons, not being an excepted body, to carry on negotiations for the fixing of wages or other conditions of employment unless such body is the holder of a negotiation licence.

(2) Where any body of persons acts in contravention of this section, the members of the committee of management or other controlling authority of such body and such of the officers of such body as consent to or facilitate such act shall each be guilty of an offence under this section and shall each be liable on summary conviction thereof to a fine not exceeding ten pounds, together with, in the case of a continuing offence, a further fine not exceeding one pound for every day during which the offence is continued.

(3) In this section the expression "excepted body" means any of the following bodies, that is to say:—

(a) a body which carries on negotiations for the fixing of the wages or other conditions of employment of its own (but no other) employees,

- (c) *a civil service staff association recognised by the Minister for Finance,*
- (d) *an organisation of teachers recognised by the Minister for Education,*
- (g) *a body in respect of which an order under sub-section (6) of this section is for the time being in force, and*
- (6) *The Minister may by order declare that this section shall not apply in respect of any particular body of persons.*
- (7) *The Minister may by order (which shall come into operation on a specified date not earlier than one month after it is made) revoke any order under the next preceding sub-section of this section.*
- (8) *Nothing in this section shall render it unlawful for any person or group of persons to mediate in a trade dispute or to bring together the parties in a trade dispute with a view to reaching an amicable settlement.*
- (9) *This section shall come into operation on such date not earlier than six months after the passing of this Act as the Minister by order appoints for that purpose.”*

28.4 The Trade Union Acts do not impose restrictions relating to the economic sector or size of the undertaking. Procedures for the designation of workers representatives are not legislated for in the Trade Union Acts. Trade unions adopt their own procedures. Normally trade unions employ full time officials and members in the undertaking elect shop stewards to represent them also. Excepted bodies also elect representatives based on procedures set out in their own constitutions.

28.5 Protections and facilities afforded to employees’ representatives are set out in the following sections of the relevant legislation:

- The Employees (Provision of Information and Consultation) Act 2006 – Section 6 and Section 13. Section 6 defines employees’ representatives. Section 13 prohibits an employer from penalising an employees’ representative for performing his or her functions in accordance with the Act. The following constitutes penalisation - dismissal, any unfavourable change in conditions of employment; any unfair treatment (including selection for redundancy); and any other action that is prejudicial to his or her employment.

- The Transnational Information and Consultation of Employees Act 1996 – Section 17. This Section provides that employees’ representatives who perform their functions in accordance with the Act shall not be dismissed or suffer any unfavourable change in their conditions of employment or any unfair treatment, including selection for redundancy, or suffer any other action prejudicial to their employment.
- The European Communities (European Public Limited-Liability Company) (Employee Involvement) Regulations 2006 (S.I. No. 623 of 2006) – Regulation 19. Regulation 19 provides that a relevant undertaking or an SE shall not penalise a person (as defined in Regulation 19(1)) for the performance of his or her functions in accordance with the Regulations. A person is penalised if he or she is dismissed or suffers any unfavourable change to his or her conditions of employment or any unfair treatment (including selection for redundancy), or is the subject of any other action prejudicial to his or her employment.
- The European Communities (European Cooperative Society) (Employee Involvement) Regulations 2007 (S.I. No. 259 of 2007) – Regulation 20. Regulation 20 provides a relevant undertaking or SCE shall not penalise a person (as defined in Regulation 20(1)) for the performance of his or her functions in accordance with the Regulations. A person is penalised if he or she is dismissed or suffers any unfavourable change to his or her conditions of employment or any unfair treatment (including selection for redundancy), or is the subject of any other action prejudicial to his or her employment.
- The European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008) – Regulation 39. Regulation 39 provides that a relevant company shall not penalise a person (as defined in Regulation 39(1)) for the performance of his or her functions in accordance with the Regulations. A person is penalised if he or she is dismissed or suffers any unfavourable change to his or her conditions of employment or any unfair treatment (including selection for redundancy), or is the subject of any other action prejudicial to his or her employment.
- The Worker Participation (State Enterprises) Acts, 1977 and 1988 – Section 18 of the 1977 Act. This Section provides that a person who is appointed pursuant to the Act to be a member or director of a designated body and whose duties as such member or director are not whole-time shall not suffer any reduction in the remuneration and allowances which, as an employee of the body, he would, if he were not such a member or director, expect to receive.
- Section 8 of the Industrial Relations (Miscellaneous Provisions) Act 2004. This section contains a provision making it illegal, in situations where it is not the practice of the employer to engage in collective bargaining negotiations and where other pre-conditions have been met, to victimise an employee on account of the employee’s being, or not-being, a member of a trade union or

excepted body or the employee's engaging, or not engaging, in any activities on behalf of a trade union or an excepted body. A copy of the Act is attached.

- Sections 11, 12 and 13 of the Industrial Relations Act 1990 (attached) provide rights and immunities to trade union officials and members. Section 11 of the Act provides protections in respect of peaceful picketing. Section 12 of the Act provides immunities in relation to threats of breach of contracts of employment. Section 13 of the Act provides immunities to actions in torts.
- In June 1993, the Minister for Enterprise and Employment signed an Order declaring the Code of Practice on Employee Representatives (Declaration) Order 1993 to be a code of practice for the purposes of the Industrial Relations Act 1990. The main purpose of this code of practice is to set out for the guidance of employers, employees and trade unions the duties and responsibilities of employee representatives and the protection and facilities which should be afforded them in order to enable them to carry out their duties in an effective and constructive manner.

28.6 Legal remedies available to employees' representatives are set out in the

following sections of the relevant legislation:

- The Employees (Provision of Information and Consultation) Act 2006 – Section 6(5), Section 17, Section 19, Section 20 & Schedule 3. Section 6(5), which deals with employees' representatives, provides that disputes arising under that Section may be referred by the employer, trade union, excepted body or one or more than one employee to the Labour Court for determination. Schedule 3 of the Act provides redress for contravention of Section 13(1). Employees' representatives who believe they have been penalised by their employer can make a complaint to a Rights Commissioner. The employer or employees' representative can appeal the decision of the Rights Commissioner to the Labour Court, who will make a determination in writing in relation to the appeal. Section 17 enables one or more of the parties to apply to the Circuit Court for an enforcement order regarding a Labour Court determination in relation to a dispute under Section 6 or Section 15 or a decision of a Rights Commissioner or a determination of the Labour Court under Schedule 3. Section 19 provides that a person who fails to comply with Section 13 is guilty of an offence. Section 20 sets out the penalties for such offences.
- The European Communities (European Public Limited-Liability Company) (Employee Involvement) Regulations 2006 (S.I. No. 623 of 2006) – Regulation 20, Regulation 22 & Schedule 2. Regulation 20(1)(d) sets down

dispute resolution procedures for disputes between one or more than one relevant undertaking or the SE and employees or their representatives (or both) concerning matters provided for in paragraphs (4), (5), (6) and (7) of Regulation 19 (“Protection of Employees’ Representatives”). The procedures can ultimately lead to a determination from the Labour Court in writing. Regulation 22 provides for enforcement of such determinations and for enforcement of a decision of a Rights Commissioner or a determination of the Labour Court under Schedule 2. Schedule 2 of the Regulations provides redress in cases where a relevant undertaking or SE is alleged to have penalised a person as defined in Regulation 19(1). A person referred to in Regulation 19(1) can make a complaint to a Rights Commissioner. The decision of the Rights Commissioner can be appealed to the Labour Court, who will make a determination in writing in relation to the appeal.

- The European Communities (European Cooperative Society) (Employee Involvement) Regulations 2007 (S.I. No. 259 of 2007) – Regulation 21, Regulation 23 & Schedule 2. Regulation 21(1)(e) sets down dispute resolution procedures for disputes between one or more than one relevant undertaking or the SCE and employees or their representatives (or both) concerning matters provided for in paragraphs (4), (5), (6) and (7) of Regulation 20 (“Protection of Employees’ Representatives”). The procedures can ultimately lead to a determination from the Labour Court in writing. Regulation 23 provides for enforcement of such determinations and for enforcement of a decision of a Rights Commissioner or a determination of the Labour Court under Schedule 2. Schedule 2 of the Regulations provides redress in cases where a relevant undertaking or SCE is alleged to have penalised a person as defined in Regulation 20(1). A person referred to in Regulation 20(1) can make a complaint to a Rights Commissioner. The decision of the Rights Commissioner can be appealed to the Labour Court, who will make a determination in writing in relation to the appeal.
- The European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008) – Regulation 40, Regulation 42 and Schedule 2. Regulation 40(1)(d) sets down dispute resolution procedures for disputes between any relevant company and employees or their representatives (or both) concerning a matter provided for in paragraph (4), (5), (6) or (7) of Regulation 39 (“Protection of Employees’ Representatives”). The procedures can ultimately lead to a determination from the Labour Court in writing. Regulation 42 provides for enforcement of such determinations and for enforcement of a decision of a Rights Commissioner or a determination of the Labour Court under Schedule 2. Schedule 2 of the Regulations provides redress in cases where a relevant company is alleged to have penalised a person as defined in Regulation 39(1). A person referred to in Regulation 39(1) can make a complaint to a Rights Commissioner. The decision of the Rights Commissioner can be appealed to the Labour Court, who will make a determination in writing in relation to the appeal.
- Sections 9 to 13 of the Industrial Relations (Miscellaneous Provisions) Act 2004 detail the remedies available for a breach of section 8 of that Act. A

complaint of a breach of section 8 may be referred to a rights commissioner in the first instance, with a right of appeal to the Labour Court.

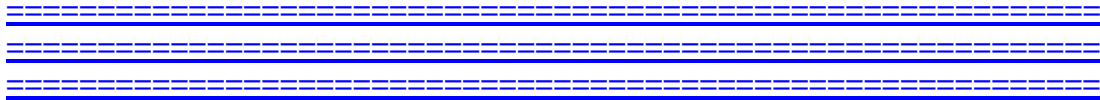
28.7 Protections and facilities afforded to employees' representatives are set out in the following sections of the relevant legislation:

- The Employees (Provision of Information and Consultation) Act 2006 – Section 13. The Act provides that employees' representatives must be afforded any reasonable facilities, including paid time off, that will enable them to perform their functions as employees' representatives promptly and efficiently.
- The Transnational Information and Consultation of Employees Act 1996 – Section 17. This Section provides that employees' representatives shall be afforded such reasonable facilities, including paid time off, as will enable them to carry out their functions as employees' representatives promptly and efficiently.
- The European Communities (European Public Limited-Liability Company) (Employee Involvement) Regulations 2006 (S.I. No. 623 of 2006) – Regulation 19. Regulation 19 provides that a person as defined in Regulation 19(1) shall be afforded any reasonable facilities, including paid time off, that will enable him or her to perform his or her functions as a member of the special negotiating body or representative body or as an employees' representative, promptly and efficiently.
- The European Communities (European Cooperative Society) (Employee Involvement) Regulations 2007 (S.I. No. 259 of 2007) – Regulation 20. Regulation 20 provides that a person as defined in Regulation 20(1) shall be afforded any reasonable facilities, including paid time off, that will enable him or her to perform his or her functions as a member of the special negotiating body or representative body or as an employees' representative, promptly and efficiently.
- The European Communities (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008) – Regulation 39. Regulation 39 provides that a person as defined in Regulation 39(1) shall be afforded any reasonable facilities, including paid time off, that will enable him or her to perform promptly and efficiently his or her functions as a member of the special negotiating body or representative body or as an employees' representative.

- Code of Practice on Employee Representatives (Declaration) Order 1993. In June 1993, the Minister for Enterprise and Employment signed an Order declaring the Code of Practice on Employee Representatives (Declaration) Order 1993 to be a code of practice for the purposes of the Industrial Relations Act 1990. The main purpose of this code of practice is to set out for the guidance of employers, employees and trade unions the duties and responsibilities of employee representatives and the protection and facilities which should be afforded them in order to enable them to carry out their duties in an effective and constructive manner. A copy of the code of practice is attached.

28.8 Specific Questions Addressed to Ireland by the ECSR (European Committee of Social Rights):-_

None so far.



ARTICLE 29: THE RIGHT TO INFORMATION AND CONSULTATION IN COLLECTIVE REDUNDANCY

With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned.

Appendix to Articles 28 and 29

For the purpose of the application of this article, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.

Standard Questions asked of all Parties (member states of the Council of Europe, which have signed and ratified the Revised European Social Charter) :-

Information to be submitted

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Scope of the provision as interpreted by the ECSR

Workers' representatives have the right to be informed and consulted in good time by employers planning to make collective redundancies. The collective redundancies referred to are redundancies affecting several workers within a period of time set by law and decided for reasons which have nothing to do with individual workers, but correspond to a reduction or change in the firm's activity.

Consultation procedures must take place in good time, before the redundancies. The purpose of the consultation procedure, which must cover at least the "ways and means" of avoiding collective redundancies or limiting their occurrence and support measures.

Consultation rights must be accompanied by guarantees that they can be exercised in practice

Article 29 – The Right to Information and Consultation in Collective Redundancy Procedures

Text of Ireland’s Seventh Report under the Revised European Social Charter in relation to Article 29: -

ARTICLE 29: THE RIGHT TO INFORMATION AND CONSULTATION IN COLLECTIVE REDUNDANCY PROCEDURES

2009 reply from Redundancy Payments Section Department of Enterprise, Trade and Employment :- Reply as of September 2009 follows:

.
.29.1 Previous material supplied in May 2005, as part of Ireland’s Second Report under the Revised European Social Charter, is deleted for ease of reading. The following updates the 2005 material.

‘
‘
‘

New Material :-

Questions 1-3 refer

29.2 Copy herewith of changes to Guide to the Redundancy Payments Scheme

Redundancy Payments Acts 1967 to 2007 published in June 2009

The following in italics are the changes that were made to the previous booklet issued in 2005 and pu

2009.

“

Amendments to “Guide to the Redundancy Payments Scheme”

Removal of 66 year age cap on Redundancy payments

- (1) Section 2, paragraph 3 add “except for employees whose Date of Termination is on or after 8th May 2007 there is no upper age cap”
- (2) Section 21, 2nd paragraph after 66 add “except for employees whose Date of Termination is on or after 8th May 2007 there is no upper age cap”
- (3) Appendix 1 -> Scheme and Entitlements -> Who is eligible for Statutory Redundancy? After (b) add “except for employees whose Date of Termination is on or after 8th May 2007 there is no upper age cap”

Changes to Maternity and Adoptive Leave

- (4) In Section 12(f), first paragraph substitute “**18 weeks**” with “**26 weeks (from 1 March 2007)**” and in the second paragraph substitute “8 weeks” with “**16 weeks (from 1 March 2007)**” and in the third paragraph substitute “Additional Maternity Leave.” with “**Additional Maternity Leave.**”

- (5) The following replaces Section 13(d). **13 (d) Adoptive Leave**

Additional Adoptive Leave for redundancy calculation purposes

Since 1st March 2007, **24 weeks** of absence due to Adoptive Leave has been fully reckonable for redundancy calculation purposes, up from 20 weeks since 1st March 2006 and 16 weeks since 19th November 2005. Additional adoptive leave of 16 weeks from 1st March 2007, up from 12 weeks is also fully reckonable for redundancy calculation purposes.

Of course, with respect to redundancies notified on or after 10th April, 2005, any adoptive leave taken in **the last 3 years** of employment will be **fully reckonable** – the 3 year rule therefore applies.

- (6) Appendix 4, item 6 replace with “**leave under Adoptive Leave legislation**”

- (7) In Appendix 5 under the 4th paragraph which begins “The following allowances..... Replace (a) with

- a. (i) absence from work while on adoptive leave under the Adoptive Leave legislation (as amended) – increased from 14 weeks to 16 weeks from 19th November 2005, increased to 20 weeks on 1st March 2006 and increased to 24 weeks from 1st March 2007
- (ii) absence from work while on additional adoptive leave under the Adoptive Leave legislation

(as amended) – increased from 8 weeks to 12 weeks from 1st March 2006 and further increased to 16 weeks from 1st March 2007.

In (b) after additional maternity leave replace “8 weeks” with the following “increased from 8 weeks to 12 weeks from 1st March 2006 and further increased to 16 weeks from 1st March 2007 and further increased to 22 weeks from 1st March 2008 and further increased to 26 weeks from 1st March 2009,”

In (d) replace “maximum of 65 weeks” with “minimum of 13 weeks and a maximum of 104 weeks” and add “and as amended by section (7) of the Social Welfare Law (No. 10) of 2006 and the Pensions Act 2006”

Carers Leave

(8) In Section 13 (e) remove “of 65 weeks” from line 1. Include following after line 1. **Since 24th March 2006 the minimum period of leave is 13 weeks and the maximum period is 104 weeks (was 65 weeks)**

Parental Leave

(9) In Section 12 (g) substitute “14 weeks” with “14 weeks per child” Add the lines “Where an employee has more than one child, parental leave is limited to 14 weeks in a 12-month period. Both parents have an equal separate entitlement to parental leave. If both parents work for the same employer and the employer agrees, parents may transfer their parental leave entitlement to each other”.

Other Amendments

(10) In Appendix 8, page 61, in line 2 of the second paragraph under “Redundancy Calculation” insert the words “**VALIDATED AND**” between “**ARE AUTOMATICALLY**” and “**RECORDED ON CARD**”

(11) In the middle of the first paragraph of section 14 in the third line at the top of page 24 (“How to make an application to the Department of Enterprise, Trade and Employment (Redundancy Payments) for an Employer’s Rebate”), insert the words “**before it becomes a valid claim**” after the words “submitted for verification purposes,”

(12) In the “**PLEASE NOTE:**” part of Section 15 in the middle of page 27 (showing how to make an application to the Department for a redundancy lump sum where the employer is unable or unwilling to pay) – insert the words “**before it becomes a valid claim**” after the words “Form RP50 must be submitted for verification purposes,”

Copy at Appendix “**Sep 2009 –Start of Appendix to reply re Article 29**” contains the full text of the Redundancy Payments Scheme Redundancy Payments Acts 1967 to 2007 published in June 2009

Questions 1-3 refer –New Material continues.

[http://www.entemp.ie/employment/compliance/Redundancy%20Payments%20Act%201967%20\(as%20amended%20by%20the%20Redundancy%20Payments%20Act%202007\)](http://www.entemp.ie/employment/compliance/Redundancy%20Payments%20Act%201967%20(as%20amended%20by%20the%20Redundancy%20Payments%20Act%202007))

New information can be found on www.entemp.ie as at above

Complete details in relation to this act can also be seen www.oireachtas.ie Act number 27 of 2007

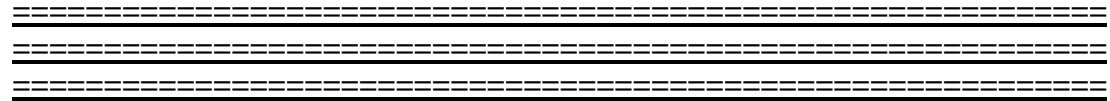
“PROTECTION OF EMPLOYMENT (EXCEPTIONAL COLLECTIVE REDUNDANCIES AND RELATED MATTERS) ACT 2007”

29.3 The **Exceptional Collective Redundancies Act 2007** amends procedures as follows

- Addresses cases of collective redundancies where specific situations apply
- Provides for the establishment of a new body – the Redundancy Panel
- Establishes roles, responsibilities and time frames for the Minister, the Labour Court and the Redundancy Panel
- Provides for situations where dismissals take place contrary to an opinion of the Redundancy Panel with particular reference to redundancy rebate entitlements and tax treatment as well as the consideration of Unfair Dismissal entitlements, penalties and appeals
- Provides protection under the Unfair Dismissals Act in cases of lockout/strike where those engaged in strike or subject to the lockout are re-engaged
- A number of other measures to up-date employment rights legislation are also included

principally the removal of the upper age limit of 66 for statutory redundancy entitlement. Employees who are made redundant at age 66 and over are now be entitled to a statutory redundancy lumpsum payment.

- This piece of legislation also allows for the implementation of the mandatory judicial notice periods required by the European Court of Justice in the ‘Junk v Kuhnel’ case of 27th January, 2005 in respect of individual employees during the 30 day notice period during which the Minister is notified of forthcoming collective redundancies and the consultation process takes place.



Article 29 – Questions asked by the Council of Europe’s European Committee of Social Rights (ECSR) in respect of Article 29 as part of our Second Report under the Revised European Social Charter, submitted to the Council of Europe on 27 May 2005.

Article 29 – Right to information and consultation in collective redundancy procedures

29.4 The Committee notes the information provided in Ireland's report.

29.5 Meaning of collective redundancy and bodies consulted

The Protection of Employment Act 1977 as amended imposes obligations on employers who are proposing to create collective redundancies. The main obligations are to:

- enter into consultations with the employees' representatives at least 30 days before the redundancies commence,
- notify the Minister for Enterprise, Trade and Employment at least 30 days before the redundancies commence, and
- delay the redundancies until 30 days after the Minister has been notified.

A collective redundancy means dismissals effected by an employer for one or more reasons not related to the individual concerned where in any period of 30 consecutive days the number of such dismissals is -

- (a) at least 5 in an establishment normally employing more than 20 and less than 50 employees,
- (b) at least ten in an establishment normally employing at least 50 but less than 100 employees,
- (c) at least ten per cent of the number of employees in an establishment normally employing at least 100 but less than 300 employees, and
- (d) at least 30 in an establishment normally employing 300 or more employees.

For the purpose of calculating the number of redundancies where the number of dismissals is at least 10 in an establishment normally employing more than 20 and less than 100 employees, terminations of a contract of employment which occur to the individual workers concerned shall be assimilated to redundancies provided there are at least 5 redundancies.

29.6 Prior consultation, Purpose and aim of the consultation

The Act provides that employers who propose to create collective redundancies must, with a view to reaching an agreement, consult the employees' representatives at the earliest opportunity and in any event at least 30 days before the first dismissal takes effect. The consultations must cover:

- a) the possibility of avoiding the proposed redundancies, reducing the number of employees affected by them or mitigating their consequences by recourse to accompanying social measures aimed, inter alia, at aid for redeploying or retraining employees made redundant.
- b) the basis for deciding which particular employees will be made redundant.

For the purpose of these consultations the employer must give all relevant information in writing to the employees' representatives, including the following:

- (1) the reasons for the proposed redundancies,
- (2) the number, and descriptions or categories, of employees whom it is proposed to make redundant,
- (3) the number of employees, and description of categories, normally employed, and
- (4) the period during which it is proposed to effect the proposed redundancies,
- (5) the criteria proposed for the selection of the workers to be made redundant, and
- (6) the method for calculating any redundancy payments other than those methods set out in the Redundancy Payments Acts, 1967 to 1991, or any other relevant enactment for the time being in force or, subject thereto, in practice.”.

Where an employer proposes to create collective redundancies, he/she must give the Minister for Enterprise, Trade and Employment written notice of his/her proposals at the earliest opportunity and, in any event, at least 30 days before the first dismissal takes effect.

The proposed collective redundancies shall not take effect before the expiry of the period of 30 days beginning on the date of the notification to the Minister.

29.7 Sanctions and preventative measures

An employee, or a trade union, staff association or excepted body on behalf of an employee, may present a complaint to a rights commissioner that an employer has contravened sections the Act of 1977 in relation to information and consultation of employees.

The Rights Commissioner, on receipt of a complaint, will send a copy of the notice of complaint to the employer. The Rights Commissioner will then give the parties an opportunity to be heard by him/her and to present any evidence relevant to the complaint. After hearing the parties, the Rights Commissioner will issue a written decision. Proceedings before a Rights Commissioner will be held in private.

The decision of the Rights Commissioner shall do one or more of the following: -

- (a) declare that the complaint was or was not well-founded,
- (b) require the employer to comply with the principal regulations and for that purpose to take a specific course of action,
- (c) order the employer to pay the employee compensation of a maximum of 4 weeks remuneration.

A party concerned may appeal to the Employment Appeals Tribunal from a decision of a Rights Commissioner. The appeal must be made within 6 weeks of the date on which the Rights Commissioner communicated the decision to the parties. A further appeal lies to the High Court on a point of law.

An offence will be committed where an employer fails

- (1) to consult the employees’ representatives 30 days before the first redundancy or to supply them with the necessary information;
- (2) to give the Minister for Enterprise, Trade and Employment 30 days prior notice in writing of the proposed collective redundancies;
- (3) to delay the collective redundancies for 30 days following the notification;
- (4) to permit an authorised officer to carry out his or her inspection duties under the Act; or
- (5) to keep the necessary records.

Offences under the Act may be prosecuted by the Minister for Enterprise, Trade and Employment. On conviction by the courts, the maximum fine for the offence at (3) above is €3,809.21 (IR£3,000). For each of the other offences, the maximum fine is €1,904.61 (IR £1,500).

29.8 Conclusion

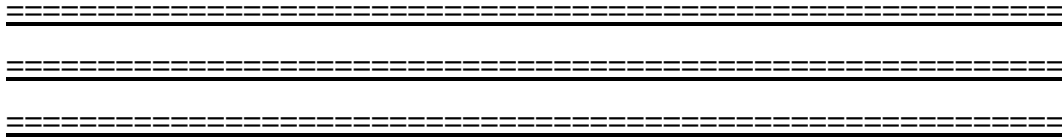
The Committee concludes that the situation in Ireland is in conformity with Article 29 of the Revised Charter.

29.9 Specific Questions Addressed to Ireland by the ECSR

None – Please see Article 29, Document No. 2.

D/ETE Guidelines on Approach to our Response to ECSR:

Not applicable in this case. Please see Article 29, Document No. 2.



29.10 Sep 2009- Start of Appendix to reply re Article 29

(This continues until the text “ End of Appendix re Article 29” appears)



**GUIDE to the
REDUNDANCY
PAYMENTS SCHEME**

Redundancy Payments Acts 1967 to 2007

Issued June 2009

Note:

This Guide is available free of charge from the National Employment Rights Authority, O'Brien Road, Carlow, Co. Carlow, in The Department of Enterprise, Trade and Employment at Social Welfare Offices and FÁS Offices. It is also on NERA's Website at www.employmentrights.ie. Forms relating to the Acts are similarly available and also available for download from www.entemp.ie

The Department of Enterprise, Trade and Employment's website at www.entemp.ie also contains a Redundancy Calculator which will enable you to calculate your statutory redundancy entitlement. Both employers and employees are strongly advised to use this facility.

The Guide does not purport to give a legal interpretation of the Redundancy Payments Acts 1967 to 2007 or of any other employment legislation.

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1. Summary

Under the Redundancy Payments Scheme all eligible employees are entitled to a statutory redundancy lump sum payment on being made redundant. A redundancy situation arises in general where an employee's job no longer exists and he/she is not replaced. An employee is entitled to **two weeks pay for every year of service, with a bonus week added on, subject to the prevailing maximum ceiling on gross weekly pay (€600 with respect to redundancies notified/declared on or after 1st January, 2005 - €507.90 before that date)**. The Department of Enterprise, Trade and Employment, which administers the Scheme, will then pay the employer a 60% rebate. Where the employer is unable or fails to pay the lump sum, the Department steps in and pays the amount from the Social Insurance Fund (SIF).

2. Employees covered - What are the requirements for being entitled to a redundancy lump sum?

- (1) _You must have at least two years continuous service (104 weeks).
- (2) _You must be in employment, which is insurable under the Social Welfare Acts. If you are a full-time employee you must be in employment, which is fully insurable for all benefits under the Social Welfare Acts; this does not apply if you are a part-time employee. [See paragraph 12(a)]. The question of insurability is decided by the Department of Social and Family Affairs in accordance with the rules and appeals procedures provided for in the Social Welfare Acts. An employee who wishes to appeal such a decision is advised to contact Scope Section of that Department. For their address and telephone number, see Appendix 11.
- (3) _You must be over the age of 16.
- (4) _You must have been made redundant as a result of a genuine redundancy situation – in general this means that the job no longer exists and the person is not replaced. The emphasis is on the job and not the person, in contrast, for example, to a situation where a person is dismissed for alleged misconduct or where a person voluntarily resigns.

3. How much statutory redundancy is an employee entitled to?

Under the Redundancy Payments Act 2003 an eligible employee is entitled to **two weeks statutory redundancy payment for every year of service, plus a bonus week**. All statutory redundancy payments are **tax-free**. For redundancy purposes, a week's payment is subject to a maximum ceiling called a statutory ceiling which is adjusted upwards every few years. The ceiling currently stands at €600 in respect of all redundancies notified/declared from 1st January, 2005 (€507.90 prior to that date). For example, a gross weekly wage of €610 is treated as €600 per week for

statutory redundancy calculation purposes, while a gross weekly wage of €590 is still calculated as €590, as it is below the ceiling.

If the total amount of reckonable service is not an exact number of years, the **“excess” days are credited as a proportion of a year** in respect of redundancies notified/declared on or after 10th April, 2005, being the date of commencement of Section 11 of the Redundancy Payments Act 2003. This simplified the method of calculating the number of “excess” days for redundancy entitlement purposes.

For example, 91 days, which almost amounts to a quarter of a year (24.93% to be exact) will therefore give the employee an extra 24.93% of a years service, on top of whatever number of full years they have worked for. Thus, the simple formula used for calculating the proportion of a year to be credited to the employee is 91 divided by 365 = .2493, or in percentage terms = 24.93%. Please note that 365 days is now used for redundancy calculation purposes rather than the figure of 364 days which was previously used.

For details of employment service, which is **non-reckonable** for redundancy calculation purposes, see **Section 13(c)** and **Appendix 5**.

PLEASE NOTE THAT non-reckonable service applies only to the **final 3 years ending with the date of termination of employment** in respect of redundancies notified/declared on or after 10th April, 2005 i.e. the date of the coming into operation of Section 12 of the Redundancy Payments Act, 2003. There is no question of non-reckonable service in respect of redundancies notified/declared **prior to this 3 year period**.

The Weekly Pay used for redundancy purposes is calculated by adding together Gross Weekly Wage, Average Regular Overtime and Benefits-in-Kind.

4. Redundancy Calculation Facility on the Website of the Department of Enterprise, Trade and Employment

You are strongly advised to avail of the Department’s Statutory Redundancy calculation facility on the Department’s Website. To make such a calculation, you can simply double click on the Redundancy Calculator on the Department’s Website at www.entemp.ie

(A) Redundancies notified on or after 10th April, 2005

Please note **that in respect of redundancies notified on or after 10th April, 2005**, the calculator will not differentiate between service under and over 41, showing total service, with two weeks statutory redundancy pay per year of service plus a bonus week being shown in the output field.

(B) Redundancies notified between 25th May, 2003 and 9th April, 2005

With respect to redundancies notified/declared between 25th May, 2003 and 9th April, 2005, the redundancy calculator functions as follows – It shows service under and over 41. **However**, the calculator aggregates all service and **two weeks** statutory redundancy pay per year of service **plus a bonus**

week is shown in the output field. So in effect, unlike the old (pre 25th May, 2003) system, the 25th May 2003 – 9th April, 2005 system amounts to **two weeks** redundancy pay for every year of service, plus the bonus week.

(C) Redundancies notified prior to 25th May, 2003 – but see time-limits below at 16 (a) and 16 (b) for making claims for statutory redundancy employer rebates or employee lump sums

Under the redundancy rates applicable to the old system prior to the enactment of the Redundancy Payments Act 2003, employees who were made redundant prior to 25th May, 2003 were entitled to half a weeks pay for every year of service under 41 and one weeks pay for every year of service over 41, together with a bonus week. The redundancy calculator functioned accordingly.

5. What exactly is a redundancy? Definitions of Redundancy

As a general rule, a redundancy situation exists where an employer requires fewer employees to do work of a particular kind, where a company goes into liquidation/receivership, where it is decided to rationalise/reorganise a company or, of course, where a company simply closes down. Other examples would include partial closing down of a company, a decrease in an employer's requirements for workers of a particular kind and skills/qualifications or an employer's requirements for fewer employees due to an economic recession. The full text of the relevant provisions in the Redundancy Payments Acts 1967 to 2007, dealing with grounds for redundancy is given in Appendix 2 at the back of this booklet.

Section 5 of the Redundancy Payments Act 2003 emphasises the objective nature of redundancy as being work related by using the phrase redundancy "for one or more reasons not related to the employee concerned". Thus, an employee who is dismissed for any reason other than redundancy (e.g. misconduct, inefficiency etc.) is not entitled to a redundancy payment. He or she may, of course, have a claim for unfair dismissal under the Unfair Dismissals Acts 1977 to 2001.

This non-entitlement to a statutory redundancy payment also applies to a situation where an employee is **directly replaced in the same job by another employee** except where he/she is replaced by one of the **employer's immediate family**.

It is up to the employer concerned in the first instance to determine whether or not there is in fact a redundancy situation. Disputes in this regard can be referred to the Employment Appeals Tribunal (EAT) for adjudication – see paragraph 24 of this booklet.

6. What is the situation regarding "Voluntary Redundancy"?

Voluntary redundancy occurs when an employer, faced with a situation where he requires a smaller work force, asks for volunteers for redundancy. The people who then volunteer for redundancy are, if they fulfil the normal conditions, eligible for statutory redundancy. Of course, there must be a genuine redundancy situation in the first place.

7. How offers or acceptance of other work affect a redundancy lump-sum entitlement

Offers of other work or of re-engagement by the employer who declares him/her redundant **may affect an employee's position in regard to a redundancy lump-sum payment.** The provisions of the Scheme which apply to the circumstances in which this may happen are as follows:

(a) An employee will **not** be taken to have been dismissed or to be eligible for a redundancy lump-sum payment if his employer renews his contract or re-engages him under a new contract, both with immediate effect, if the provisions of the renewed or new contract **do not differ from those of the previous contract** and if **the employee accepts;**

(b) an employer may give an offer in writing to an employee to have his contract renewed or to be re-engaged under a new contract on terms which differ from those of the previous contract. If the new or renewed contract **takes effect within four weeks** from the ending of the previous contract **and the employee accepts it,** he will not in these circumstances be taken to have been dismissed or be eligible for redundancy payment;

(c) if an employer gives an offer to an employee to have his contract renewed or to be re-engaged under a new contract on terms which **do not differ from those of the previous contract** and if the renewal or re-engagement would take effect on the date of dismissal and the employee **unreasonably refuses the offer,** he will not be entitled to a redundancy payment;

(d) if an employer gives an offer in writing to an employee to renew his contract or to re-engage him under a new contract and the terms of the contract as renewed or of the new contract **differ wholly or in part from those of the previous contract;** if the employer's offer constitutes an offer of **suitable employment** in relation to the employee and the new or renewed contract takes effect not later than four weeks after the date of dismissal and the employee **unreasonably refuses** the offer, he will **not** be entitled to a redundancy payment;

(e) if an employee whose job is no longer available and who is offered **alternative work** by his employer takes this work for a **trial period** of not more than four weeks and then refuses the offer, his temporary acceptance shall not prejudice any plea by him that his refusal of the offer was reasonable;

(f) if an employee **temporarily accepts a substantial reduction in his remuneration or his hours of work** and such reduction is **not** less than half his normal working hours or remuneration e.g. a 3 day week, or a 4 day week, such temporary acceptance for a period **not exceeding 52 weeks** shall not be taken to be an acceptance by him of an offer of suitable employment.

8. Lay-off

This occurs where the services of an employee are not required because of

lack of work carried out by that employee, provided of course that the employer gives notice to the employee beforehand that the break in employment is of a temporary nature. Redundancy Form RP9 may be used for this purpose. Where an employer fails to give notice of lay-off, he leaves himself open to claims for statutory redundancy payments.

9. Short-time

This exists where there is a reduction in the amount of work available, leading to a reduction in weekly earnings to less than half the normal weekly earnings or a reduction in the hours worked to less than half the normal weekly working hours. Again the employer must give notice that the short-time is of a temporary nature, with failure to do so leaving him open to claims for redundancy payment.

10. Employee's Right to a Redundancy Lump-Sum Payment by reason of Lay-off or Short-time (Form RP9)

This can arise where an employee has been **laid off** or kept on **short-time** or a **mixture** of both either for **four consecutive weeks or for a broken series of six weeks** where all six weeks occur within a **13 week** period. The employee, if he then wishes to claim redundancy payment must serve a written notice (Form RP9 is available for this purpose) stating that he intends to claim because of lay-off or short-time, or give his employer notice in writing terminating his contract of employment (Form RP9 may be used for this purpose). The employee does not have to serve either of these notices as soon as he has been laid off or kept on short-time for either of the periods mentioned above. He can wait longer, if he chooses, but if the short-time or lay-off stops and if he does decide to claim, he must serve a notice not later than four weeks after the lay-off or short-time ceases. After that, he is debarred from claiming a payment in respect of that particular period of lay-off or short-time.

An employee who claims and receives redundancy payment due to lay off or short time is deemed to have voluntarily left his or her employment and therefore not entitled to notice under the Minimum Notice and Terms of Employment Acts 1973 to 2001.

Employer's Right to give Counter Notice

In all these situations, the employer also has seven days from the service of notice to give a counter notice to the employee concerned by offering that employee **not less than thirteen weeks unbroken employment** starting within 4 weeks of the employee serving notice and therefore indicating that he will contest any claim for a redundancy payment. Again, Redundancy Form RP9 may be used for this purpose. This counter notice must be given within seven days of receipt of the employee's notice. If however, an unsatisfactory situation from the employee's point of view persists **after** the employer has given counter notice, with **four more** consecutive weeks of short-time or lay-off from his/her date of notice to claim redundancy, then that employee becomes eligible for redundancy.

11. Employees wishing to leave their employment before their notice of proposed dismissal expires (Form RP6)

Where an employee wants to leave before his/her notice expires, he should give his employer notice in writing of his wish to terminate his contract of employment on an earlier date than that specified in the Notice of Dismissal (included in comprehensive Redundancy Form RP50). Form RP6 may be used for this purpose (Part 1 of Form). It is open to the employer to give the employee a counter-notice requesting him/her to withdraw their notice of desire to leave and to continue in employment until the original date of notice expires. Again, Form RP6 may be used by the employer for this purpose (Part 2 of Form). If the employee unreasonably refuses to comply with this counter-notice, the employer can then contest liability to pay a redundancy payment. Disputes in this regard can be dealt with by the Employment Appeals Tribunal.

If the employer does in fact agree to the employee's request to leave early, he can indicate his consent by using Part 3 of Form RP6. This involves the employer giving the employee consent to alter his proposed date of termination of employment so as to bring that new date within what is referred to as "the obligatory period of notice" (Section 10 of the Redundancy Payments Act 1967 and Section 9 of the Redundancy Payments Act 1979). The date of dismissal then becomes the date on which the employee's notice expires.

The term "obligatory period of notice" means either the **statutory minimum notice** (at least two weeks and, depending on service, up to eight weeks) **or** the period of notice specified in **the contract of employment**, whichever is the **longer**. In this situation, the employer therefore agrees in writing (usually by means of Part 3 of Form RP6) for an alteration of the original termination date so as to bring that date within the obligatory period of notice as above and thereby facilitate the employee's request to leave early. This clears the way for payment of statutory redundancy based on service up to the new date of departure.

12. Important legal changes in the Redundancy Payments Scheme made in the Redundancy Payments Act 2003, regarding redundancies notified/declared from 25th May, 2003 onwards

12(a) Part-Time Workers

The Redundancy Payments Act 2003 has secured the rights of part-time workers to a statutory redundancy payment through amending insurability requirements for redundancy to bring them into line with the Social Welfare Acts and the Protection of Employees (Part-Time Work) Act 2001. This is in line with the provision of the 2001 Act that part-time employees cannot be treated in a less favorable manner than comparable full-time employees in relation to conditions of employment. In particular, there is recognition for the rights of workers to statutory redundancy in –

"casual employment" – see Paragraph 2 of Part 2 of the First Schedule to

the Social Welfare (Consolidation) Act 1993.

“**subsidiary employment**” - where a person depends on another employment for his/her livelihood – see Paragraph 4 of Part 2 of the First Schedule to the Social Welfare (Consolidation) Act 1993.

“**employment of inconsiderable extent**” i.e. very low wage – see Paragraph 5 of Part 2 of the First Schedule of the Social Welfare (Consolidation) Act 1993.

EXTRA NOTE FOR INFORMATION – CALCULATION OF WAGES OF PART-TIME WORKERS FOR REDUNDANCY ENTITLEMENT PURPOSES

(1) Treatment of Short-time Wages (i.e. working for less than half a week or earning less than half a week’s wages e.g. a 2 day week) for Redundancy calculation purposes

It has long been the view of the Employment Appeals Tribunal, even before the enactment of the Redundancy Payments Act, 2003, that when a person is put on **short-time** i.e. working less than half the number of hours they are normally expected to work in any week or earning less than half their normal weekly earnings, e.g. a 2 day week, the gross wage for the calculation of a redundancy lump sum is based on a **full week’s pay**.

(2) Treatment of Job Sharers

Where a person decides to go job-sharing, their job-sharing pay rather than their previous full-time pay is used for redundancy calculation purposes.

(3) Treatment of employees on reduced working hours

When a person is put on **reduced working hours** by their employer e.g. a three day week or a 4 day week, (as opposed to a 2 day week as per (1) above – short-time) the redundancy entitlement is calculated on the basis of a full week, provided the employee was put on reduced hours **within one year (52 weeks) before being made redundant**. If they were made redundant **after the first year** of reduced working hours and if it is clear that the employee **fully accepted** the reduced working hours as being his/her normal working week, never requesting a return to a full time week, then the employee is deemed to have accepted the reduced hours as his normal week. In this situation the gross pay for redundancy purposes **is based on the reduced working hours**.

On the other hand, if the employee never accepted the reduced working hours as his “normal” hours and was constantly seeking to be put back on full time working, he could then be deemed not to have accepted his reduced hours as normal. In these circumstances his redundancy entitlement should be calculated at his full-time rate of pay.

Where an employee himself makes a request to be placed on reduced working hours, for his own reasons, and the employer agrees, then the

redundancy entitlement is based on the reduced hours.

12(b) Workers on Fixed-Purpose Contracts

The Redundancy Payments Act 2003 safeguards the right to redundancy of a worker employed under a “fixed-purpose” contract, where the exact duration of the contract was incapable of being determined at the beginning. If the contract is not renewed following the fulfilling of the purpose, i.e. the fixed purpose contract ceases, a redundancy situation can arise.

12(c) Employment Agencies

Under the Redundancy Payments Act 2003, employees employed through Employment Agencies are covered for redundancy. Where the Employment Agency pays the wages of the employee, it is responsible for making the statutory redundancy payment.

12(d) Employees commencing work abroad

Under the Redundancy Payments Act 2003 employees who start work in a company abroad, work there for some time and are then transferred to the company or an associated company in the Republic of Ireland and work here for at least two years before being made redundant, will have *all* of their service counted in calculating their statutory redundancy entitlements. This extends to workers who commence their employment abroad and are then posted to this country **the same redundancy entitlements** which have always been enjoyed by employees **in the reverse situation** i.e. employees who start work here, are posted abroad, return to Ireland and are subsequently made redundant, with full credit being given for all their service for redundancy purposes.

12(e) Minimum Wage

The minimum rates of pay laid down in the National Minimum Wage Act 2000 as updated, should always be taken into account when calculating a statutory redundancy lump sum. The Department of Enterprise, Trade and Employment insists on evidence of payment of the full statutory redundancy entitlement to the employee, in accordance with the prevailing minimum rates of pay, before paying the 60% employer rebate. Thus, the Redundancy Payments Act 2003 ensures that the rate of pay used for redundancy calculation purposes will always be at least as high as the current National Minimum Wage.

12(f) _Maternity Leave and Additional Maternity Leave for redundancy calculation purposes

An employee cannot be given Notice of Redundancy while on maternity leave or additional maternity leave. Under the Maternity Protection Act 1994 and the Maternity Protection (Amendment) Act 2004, the date of an employee’s notice in a redundancy situation under the Redundancy Payments Acts 1967 to 2007 is deemed to be the date of her expected return to work as notified to her employer (or his/her successor) under the maternity protection legislation above. **Maternity leave, which at present is 26 weeks (from the 1st March**

2007), has always been fully reckonable for redundancy calculation purposes.

Additional maternity leave of 16 weeks (from the 1st March 2007), protective leave or natal care absence within the meaning of the Maternity Protection Act 1994 and the Maternity Protection (Amendment) 2004 are all reckonable for redundancy calculation purposes in respect of redundancies notified/declared since 10th April, 2005, being the date of the coming into operation of Section 12 of the Redundancy Payments Act 2003.

Regarding employees declared redundant on or after 10th April, 2005, there is no question of any maternity leave or additional maternity leave being non-reckonable in the period **prior to the last 3 years** of service, ending on the date of termination of employment. Thus, **all periods of absence** due to maternity or additional maternity leave arising before the last 3 years of employment are fully reckonable for such employees.

12(g) Parental Leave for redundancy calculation purposes

For statutory redundancy calculation purposes, parental leave, which at present is 14 weeks per child, is already fully reckonable under the Parental Leave Act 1998. This has been reinforced under Section 12 of the Redundancy Payments Act 2003 in respect of redundancies notified/declared since 10th April, 2005, with specific provision being made whereby parental leave and *force majeure* leave within the meaning of the Parental Leave Act 1998 are fully reckonable for statutory redundancy purposes.

For Further Information On Maternity Leave and Parental Leave etc.

Detailed enquiries concerning Maternity Leave, Parental Leave or other Equality issues can be made to the Equality Authority at 2 Clonmel Street, Dublin 2. Their telephone number is (01) 4173333, Lo-Call 1890 245545. All their publications and information on the equality legislation can be accessed at their website at www.equality.ie

13 Important further legal changes made in the Redundancy Payments Scheme with respect to redundancies notified/declared on or after 10th April, 2005.

13(a) Giving Notice of Redundancy (Section 7 of the Redundancy Payments Act, 2003) regarding redundancies notified/declared on or after 10th April, 2005

The employer must still give the employee notice of dismissal for redundancy. He/she can do so by giving **Part A (Notification of Redundancy) of Form RP50** to the employee. **The employer does not have to notify the Minister for Enterprise, Trade and Employment in advance of the date of termination of employment**, as was hitherto the case prior to 10th April, 2005. However, when claiming the rebate, the employer must complete and submit the **new Form RP50**, which incorporates the old redundancy notice form RP1, as well as the old RP2, RP3 and RP14 forms.

13(b) Calculating “excess days” (Section 11 of the Redundancy Payments Act, 2003) in respect of redundancies notified/declared as and from 10th April, 2005

As mentioned in paragraph 3, “How much statutory redundancy is an employee entitled to?” **all such** “excess” days are credited as a proportion of a year. For example, 91 days give the employee an extra 24.93% of a year’s service, on top of whatever number of full years they have worked for. The simple formula to be used in this situation for calculating the proportion of a year to be credited to the employee is 91 divided by 365 = .2493, or in percentage terms = 24.93%. It might be noted that 365 days is now used for redundancy calculation purposes rather than the figure of 364 days which was previously used.

13(c) Non-Reckonable Service (Section 12 of the Redundancy Payments Act, 2003) applicable to all redundancies notified/declared on or after 10th April, 2005.

This is the biggest single legal change in 2005, and **greatly simplifies** the method/rules for calculating statutory redundancy entitlements. The whole idea of non-reckonable service for redundancy calculation purposes in respect of all redundancies from 10th April, 2005 now applies only to the last 3 years of service. Before that, there is no such thing as non-reckonable service. The exact words used in Section 12 could not be clearer on this point – “During, and only during, the 3 year period ending with the date of termination of employment, none of the following absences shall be allowable as reckonable service -

Regarding redundancies declared from 10th April, 2005 onwards, there is no need to record any non-reckonable service outside of the 3 year period ending on the date of termination of employment. So if a person has been employed, for example, for 20 years, there will be no non-reckonable service in respect of the first 17 years – **any non-reckonable service will only be factored in/included in respect of the last 3 years.**

13(d) Adoptive Leave and Additional Adoptive Leave for redundancy calculation purposes

Since 1st March, 2007, **24 weeks** of absence due to Adoptive Leave has been fully reckonable for redundancy calculation purposes, up from 20 weeks since 1st March 2006. Additional adoptive leave of 16 weeks from 1st March 2007, up from 12 weeks is also fully reckonable for redundancy purposes. Of course, with respect to redundancies notified on or after 10th April, 2005, any adoptive leave taken **before the last 3 years** of employment will be **fully reckonable** – the 3 year rule therefore applies.

13(e) Carer’s Leave for redundancy calculation purposes

Under the Carer’s Leave Act, 2001, there is a maximum period of reckonable service of 104 weeks from the 24th March 2006 in respect of any one care-recipient. Again, regarding all redundancies notified since 10th April 2005, the 3 year rule of confining any non-reckonable service to the 3 years ending on

the date of termination also applies to Carer's Leave. Before that 3 year period, all Carer's Leave is fully reckonable.

13(f) Career Break type of leave

Under Section 12 (b) of the Redundancy Payments Act, 2003, any absences outside of the usual type of absences due to maternity leave, additional maternity leave, adoptive leave, parental leave, carer's leave etc "but authorised by the employer" is always fully reckonable, even during the last 3 years of employment. The most common form of this type of leave would be a career break. Regarding such absences occurring before 10th April, 2005, the position was that the first 13 weeks in any 52 week period were reckonable.

13(g) Strengthening of Continuity of Employment (Section 12 of the Redundancy Payments Act, 2003), as applied to redundancies notified/declared on or after 10th April, 2005

Under Schedule 3 to the Redundancy Payments Act, 1967 and Section 10(a) of the Redundancy Payments Act 1971, there has always been what is sometimes referred to a "presumption of continuity of employment". This has been greatly strengthened by Section 12 of the Redundancy Payments Act 2003 in respect of redundancies notified/declared on or after 10th April, 2005. Section 12 (a) refers to a whole range of interruptions to an employee's service due to the following - sickness, lay-off, holidays, service in the Reserve Defence Force, leave authorised by the employer, adoptive leave, additional maternity leave (maternity leave is already covered under existing maternity protection legislation), parental leave, adoptive leave, carer's leave, and lock out by an employer or participation in a strike by an employee. Section 12 (a) goes on to state that continuity of employment is not broken by the matters referred to in this list of interruptions in employment. No reference is made to any time limit on periods of sick leave absence or absence due to lay-off for continuity of employment purposes, or indeed any other absences.

14. How to actually make an application to the Department of Enterprise, Trade and Employment (Redundancy Payments Section) for an Employer's Rebate

To make a claim to the Department for a 60% rebate following payment of a statutory redundancy lump sum, an employer should, within six months of such payment, submit the comprehensive redundancy form **RP50**, incorporating Redundancy Notification (old Form RP1), Redundancy Certificate (old Form RP2), as in Paragraph 15 below in respect of each employee, and finally **Employer's Application for a Rebate** – (old Form RP3), now Part B of Form RP50. From 30th May, 2005, this form can be submitted electronically at the Department's website at: www.entemp.ie and is downloadable at that address. Although a signed hardcopy version of Form RP50 must also be submitted for verification purposes before it becomes a valid claim, it is still the case that an electronic application is by its very nature capable of being processed faster than a hardcopy-only application since an electronic application means that the required data is instantaneously transmitted onto the Department's database, with any errors being

immediately returned for electronic correction.

PLEASE NOTE: For the reasons given above, on-line applications are definitely recommended. Form RP50 is also available in hardcopy from NERA Information Services, the National Employment Rights Authority - tel. 059 917 8990 Lo-call 1890 80 80 90

Where Form RP50 indicates that the employee received less than the full statutory redundancy lump sum, the Department then requests the employer to pay the shortfall before processing the rebate form. **This delays payment of the rebate**, so an avoidance of underpayments to employees in the first instance facilitates **the more rapid paying of the rebate by the Department.** It is also **strongly recommended** that the **website calculator** on the Department's Website at www.entemp.ie be used to **calculate statutory redundancy entitlements.**

Note to Employers re Notification of redundancy – Where an employer intends making an employee with at least two years service redundant, he must give him or her notice in writing at least two weeks before the date of termination. **Form RP50 (Part A)** may be used for this purpose. Failure to comply with these requirements leaves an employer open to a fine of up to €5,000.

Where an employee accepts payment in lieu of notice, the date of termination is deemed to be the date on which notice, if it had been given, would have expired, and this date should be inserted as the termination date on RP50 (Part B).

For information on the notice requirements of the Minimum Notice and Terms of Employment Acts 1973 to 2001 and the Protection of Employment Act 1977 (as amended) see Appendices 6 and 7.

Note for employers and employees re Redundancy Certificate (incorporated in comprehensive Form RP50 – Part B)

An employer who makes an employee redundant must supply that employee with a redundancy certificate on the prescribed Form RP50 (Part B) not later than the date of termination of employment. An employee entitled to a statutory redundancy payment by reason of lay-off or short-time should also receive a Redundancy Certificate in this prescribed Form.

Form RP50 **confirms the employee's right to the correct statutory redundancy payment**, giving the necessary data e.g. gross weekly pay and length of service used in calculating that amount and containing the signatures of both employer and employee certifying that the correct statutory redundancy payment was made by the employer and received by the employee. The employee **should not sign this receipt until he or she actually receives payment**, except in the situation outlined in paragraph 15 below where the employer is unable to pay the amount due to the employee and payment is sought from the Social Insurance Fund instead, in which case the employee signs "nil" for the amount received, and the employer signs "nil"

for the amount paid.

Time-off to look for work

An employee is entitled, during the two weeks of redundancy notice period, to reasonable, paid time-off to look for new employment or to make arrangements for training for future employment. The employer may request the employee to furnish him with evidence of arrangements made for these purposes and the employee must furnish such evidence provided it is not prejudicial to the employee's interest.

15. How to actually make an application to the Department of Enterprise, Trade and Employment (Redundancy Payments Section) for a redundancy lump sum in situations where the employer is unable or fails to pay the amount due to the employee

In this situation, the Department steps in and pays the money from the Social Insurance Fund. The right of the employee to the payment must first be established either by a completed Redundancy Certificate (RP50 – Part B) or, in the absence of that, a Decision of the Employment Appeals Tribunal (EAT) following an appeal from the employee. The following comprehensive all-in-one form must be submitted to the Department, either by the Liquidator/Receiver on behalf of the employees in a liquidation/receivership situation or otherwise by the employees themselves –

RP50, incorporating –

- **Notification of Redundancy (Part A)** – this should be submitted if available.
- **Redundancy Certificate (Part B)** - with both employer (or liquidator/receiver in a liquidation/receivership situation) and employee giving written confirmation that **no** redundancy was paid, although it was owed to the employee; or, failing this, copy of an EAT Decision in the employee's favour. See **Note on Form RP77** below.
- **Employee Lump Sum Claim from the Social Insurance Fund (also in Part B)**

As mentioned in Paragraph 14 above (How to make an application to the Department for an Employer's Rebate), from 30th May, 2005, Form RP50 can be submitted electronically at the Department's website at: www.entemp.ie and is downloadable at that address.

PLEASE NOTE: Although, as with the case of an employer rebate, a signed hardcopy version of Form RP50 must also be submitted for verification purposes before it becomes a valid claim, it remains the case that an electronic application is capable of being processed faster than a hard-copy only version and is accordingly recommended to anybody making an application.

Form RP50 can also be downloaded from the Department's Website at: www.entemp.ie. It is also available in hardcopy from the NERA Information

Services, the National Employment Rights Authority, O'Brien Road, Carlow, Co Carlow, tel - 059 917 8990 Lo-call 1890 80 80 90. They can also answer general queries on redundancy matters which people may have.

Note on Form RP77: Before formally applying for a statutory redundancy lump sum, an employee should first have taken all reasonable steps short of actual legal proceedings to secure payment from the employer. This includes a written application to the employer – **Form RP77** can be used for this purpose.

This form can be accessed from NERA's website at www.employmentrights.ie and can also be downloaded from the Department's Website at: www.entemp.ie.

In the event of a dispute between the employer and the employee concerning the employee's right to a lump sum, the employee may decide to bring the matter to the Employment Appeals Tribunal (EAT) for adjudication. The Tribunal, with its headquarters at Davitt House, Adelaide Road, Dublin 2 holds sittings in various locations throughout the country and is an informal, inexpensive and efficient avenue for adjudicating on disputes regarding statutory redundancy entitlements.

If the Tribunal rules in favour of an employee, and if the employer continues to refuse to pay the amount due, the employee should then send a copy of the EAT Decision, together with the RP50 form to the Department for payment of the lump sum from the Social Insurance Fund.

16. Time Limit for the making of claims for Employer Rebates or for statutory redundancy Lump Sums

16(a) Employer's Rebate

The time limit for making an employer's rebate claim to the Department of Enterprise, Trade and Employment is six months from the date of payment of the redundancy lump sum by the employer to the employee.

16(b) Lump Sums

The time limit for making such claims is 52 weeks after the date of termination of employment. Thus there are 52 weeks for a redundancy payment to be agreed on and paid **or** for the employee to give a written claim for redundancy to his employer **or** for a referral to the Employment Appeals Tribunal

of the question of the right of the employee to a redundancy payment.

The Tribunal has discretion **to extend the 52 week time-limit to 104 weeks**, provided that it receives the necessary claim within 104 weeks of the date of dismissal and is satisfied that the delay by the employee in making his claim arose through reasonable cause. It should be stressed, however, that the period of 52 weeks is the period which will normally apply.

In very rare circumstances the following situation may apply. Where an employee is transferred from one employer to another **without realising that the transfer involves his dismissal by one employer and his re-engagement by the other**, and is subsequently made redundant, he has of

course the usual period for applying for his redundancy entitlement in respect of the period spent working for the employer who made him redundant, and in respect of his pre-transfer employment. However, the Employment Appeals Tribunal may fix the date from which the time limit shall run for applying for redundancy to his previous employer, where his failure to apply was due to his **not having received from such previous employer notice of dismissal or a redundancy certificate.**

17. Seasonal workers

In the case of workers who are laid off for an average period of more than twelve weeks per year prior to redundancy, the provisions relating to lay-off in the Scheme will not apply until the end of that average period. In the case of a seasonal worker, therefore, **there will normally be no question of redundancy until the usual commencement time of his seasonal work.** If he is not then re-employed, the question of redundancy arises, but not until then.

18. Effects of change of ownership of a business on a Redundancy Lump-Sum Payment

The provisions regarding redundancy payments in circumstances arising from a change in the ownership of a business are as follows:

(i) where there is a change in the ownership but the employee by arrangement **continues to work for the new owner with no break in employment**, the employee is not entitled to redundancy payment at the time of change of ownership but his continuity of employment is preserved for the purpose of redundancy payments in the event of his dismissal on redundancy by the new employer at any future date;

(ii) the employee is not entitled to redundancy payment if he **unreasonably refuses** an offer of employment from the new owner as follows:

(a) on the same terms as before without a break in employment,

or

(b) on different terms which would rank as **suitable employment** in relation to the employee either with or without a break, provided the break does not exceed four weeks.

The fact of change of ownership of the business will not, in itself, be regarded as a good and sufficient reason for the refusal by the employee of an offer of employment from the new owner.

(iii) if the new owner merely buys the property on which the employee was employed, this will not constitute a change of ownership of the business and the former employer will be liable to pay any redundancy lump sum which might be due to the employee for loss of his job;

(iv) where there is a transfer of an agency, franchise, tenancy, etc., if an employee of the transferor accepts before, on or within four weeks after the

transfer, an offer by the transferee of employment in the same place and on terms which are either the same as or are not materially less advantageous to him than his existing terms of employment, the employee is not entitled to a redundancy payment but his continuity of employment is preserved.

19. Death of an employer

The effects as far as redundancy lump-sum payments are concerned in various circumstances which might arise on the death of an employer are as follows:

(i) if an employee's contract is terminated by reason of his employer's death, he will **not** be regarded as having been dismissed **if his contract is renewed or if he is re-engaged** by the personal representative of the deceased employer within eight weeks after the death of the employer;

(ii) an employee will not be entitled to a redundancy lump-sum payment if he unreasonably refuses written offers of employment from the deceased employer's personal representative either

(a) **on the same terms** as before without a break in employment,

or

(b) on different terms which would rank as **suitable employment** in relation to the employee, either with or without a break, provided the break does not exceed eight weeks

(iii) if an employee has been laid off or kept on short-time immediately before his employer's death and if he is again laid off or put on short-time when re-engaged by the deceased employer's personal representative, he can count all the weeks together including any interval before the re-engagement for the purpose of claiming a payment;

(iv) if an employee has served notice of intention to claim a redundancy payment because of lay-off or short-time (Form RP9 as above) and his employer dies within four weeks after the notice is served, the employee will be entitled to claim a payment if he is laid off or kept on short-time or not re-engaged by the employer's personal representative during the four consecutive weeks following the service of notice;

(v) if an employee, who has been laid off or kept on short-time for one or more weeks during the four weeks after the service of notice of intention to claim, has his contract renewed or is re-engaged under a new contract within these four weeks by the deceased employer's personal representative and is laid off or kept on short-time for the week or for the next two or more weeks following the renewal or re-engagement, all the weeks of lay-off or short-time will be regarded as consecutive weeks for the purpose of entitlement to redundancy payment.

Any disputes which may arise in connection with these provisions will be decided by the Employment Appeals Tribunal.

20. Death of a redundant employee

Where an employee dies **before the expiration date of his dismissal notice** and before receiving a redundancy payment which is due to him **the payment will still be due** and will be based on his service up to the time of his death. Should an employee die **without** having either accepted or refused an offer of renewal or re-engagement by his employer made before the termination of his contract of employment and that offer has not been withdrawn before the employee's death, **no redundancy entitlement arises**. Neither will there be any entitlement to redundancy if an employee who has given to his employer notice of intention to claim by reason of lay-off and/or short-time (RP9 Form) dies within 7 days of giving such notice.

Any dispute concerning the liability of an employer to pay a redundancy payment to the personal representative of a deceased employee will be decided by the Employment Appeals Tribunal.

21. Apprentices - What are the rights of an apprentice to a redundancy payment?

Redundancy Payments will **not** be payable in any case where an employee is dismissed **within one month after the end of his/her apprenticeship**. If, however, an employer retains the services of an employee for more than a month after the completion of his/her apprenticeship, the period of apprenticeship will count in calculating any redundancy payments in respect of that employee in the future.

An apprentice whose employment terminates by reason of redundancy **during the period of his/her apprenticeship will qualify** for a redundancy lump sum payment if he or she meets the usual requirements for entitlement i.e. be over 16 and have at least two years service etc.

22. How are statutory redundancy lump sums and employer's rebates financed?

The Social Insurance Fund (SIF)

In the first instance it is up to the employer to pay the statutory redundancy lump sum to all eligible employees. The Social Insurance Fund (SIF) finances the 60% redundancy rebate payment to employers who pay their eligible employees their full statutory redundancy entitlements. However, where the employer is unable to pay or refuses or fails to pay, the Department steps in and makes a payment from the (SIF).

23. Recovery of sums paid from the Social Insurance Fund for statutory redundancy purposes.

Sections 42 and 43 of the Redundancy Payments Act 1967 and Section 14 of the Redundancy Payments Act 1971 and Section 14 of the Redundancy Payments Act 1979 contain specific terms of reference for the Minister for Enterprise, Trade & Employment in dealing with redundancies arising from liquidations, bankruptcies etc.

Section 14(7) of the 1971 Act defines insolvency. Where a liquidator or

receiver has been appointed and the question of insolvency does not arise, the Minister will reasonably expect a liquidator or receiver to discharge lump sum payments.

In a situation where a business concern provides the Minister with concrete evidence of its inability to pay its employees their statutory redundancy entitlements e.g. audited accounts/bank statements, the Minister will make the payment from the Social Insurance Fund and will subsequently seek repayment of the amount concerned, less the 60% rebate which the company would have been entitled to if it had been in a position to make the payment in the first place. If the business does not provide the necessary evidence then the employee will have to take a case to the Employment Appeals Tribunal and get a favorable determination before the Minister will pay out.

In the case of an employer failing to pay a redundancy lump sum, the Minister will have the payment made from the Fund and will then endeavour to recover the full amount from the employer. Under Section 43 of the Redundancy Payments Act 1967 such amounts owing to the Fund are recoverable as debts due to the State and, without prejudice to any other remedy, may be recovered by the Minister as a debt under statute in any court of competent jurisdiction.

In a **Liquidation, Receivership, Examinership or Bankruptcy** situation, the Minister is obliged to pay the correct lump sum to all eligible employees. The Minister then seeks to recover the amount from the employer concerned, less any rebate which would have been payable had the employer originally made the payment. Amounts which are recovered are then paid back into the Social Insurance Fund. For this purpose, the Minister's claim has preferential status under Section 42 of the Redundancy Payments Act 1967, which has been amended by Section 14 of the Redundancy Payments Act 1979. Under the 1979 Act, a redundancy lump sum (or part thereof) is made a priority debt under Section 285 of the Companies Act 1963, in cases of winding up, and a priority debt under Section 4 of the Preferential Payments in Bankruptcy Ireland Act 1889, in cases of a bankrupt or arranging debtor.

24. The Employment Appeals Tribunal (EAT)

The Tribunal is an independent body bound to act judicially and was set up to provide a speedy, fair, inexpensive and informal means for individuals to seek remedies for alleged infringements of their statutory rights. The Tribunal was originally set up in 1968 under Section 39 of the Redundancy Payments Act 1967 for the purpose of resolving disputes relating to redundancy matters and has since expanded to cover many other areas of employment rights legislation including unfair dismissals, minimum notice etc.

The Tribunal consists of a legally qualified Chairman, a number of vice-Chairmen and ordinary members. The ordinary members as well as the Chairman and vice-Chairmen are appointed by the Minister for Enterprise Trade & Employment - half of the ordinary members being persons nominated by the organisation representative of trade unions and half being from among persons nominated by bodies representative of employers. The Chairman

may direct that the Tribunal act by division. A division consists of either the Chairman or a Vice-Chairman and two ordinary members (of whom one shall be a trade union representative and one an employer's representative). The Tribunal may require persons to attend before it and to give evidence. It has the power to take evidence on oath. The decision of the Tribunal on any dispute is final and conclusive except that a person dissatisfied with its decision may appeal to the High Court on a question of law. Employers and employees who wish to appeal to the Tribunal should ask the Department of Enterprise, Trade & Employment, the nearest Social Welfare Office or the local FÁS Office for the necessary form (Form T1A). The following are among the redundancy matters on which disputes are referable to the Employment Appeals Tribunal:

- (a) lump-sum payments to workers and rebates to employers;
- (b) decisions given by Deciding Officers
- (c) _what constitutes continuous employment, whether dismissals were due to redundancy, or whether offers of alternative employment were reasonable;
- (d) compliance with notices required under the Act;
- (e) _matters arising from the deaths of either employees or employers.

Disputes concerning the insurability of employees

Questions relating to the insurability of employees under the Social Welfare Acts are **not** referable to the Employment Appeals Tribunal. Such questions must be decided in accordance with the decisions and appeals procedures provided for in the **Social Welfare Acts, as administered by the Department of Social and Family Affairs**. Where an employee is dissatisfied with a decision as to his insurability under these Acts he or she may **appeal this decision to the Social Welfare Appeals Board**.

The Employment Appeals Tribunal also deals with disputes relating to the Minimum Notice and Terms of Employment Acts 1973 to 2001, the Unfair Dismissals Acts 1977 to 2001, the Maternity Protection Acts 1994 to 2004, the Protection of Employees (Employers' Insolvency) Acts 1984 to 2004, the Protection of Employees (Part-Time Work) Act 2001, the Payment of Wages Act 1991, the Terms of Employment (Information) Act 1994, the Adoptive Leave Act 1995 (as amended), the Protection of Young Persons (Employment) Act 1996, the Organisation of Working Time Act 1997 (in certain circumstances), the Parental Leave Act 1998, the Protection for Persons Reporting Child Abuse Act 1998, the Carer's Leave Act 2001 and the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003.

A separate explanatory leaflet on the Employment Appeals Tribunal is available from the Department. A general "Guide to Labour Law" covering the above range of labour legislation is also available from the Department and can be accessed on our website address at

25. Offences

Under Section 13 of the Redundancy Payments Act 2003 (amended by The

Protection of Employment (Exceptional Collective Redundancies & Related Matters) Act 2007) it is an offence punishable by a fine of up to €5,000 to furnish false information on Form RP50 (incorporating Notification of Redundancy, Redundancy Certificate and Employer's Claim for a Rebate from the Social Insurance Fund).

26. Inspection of records

The Minister for Enterprise, Trade & Employment has power conferred on him/her by the Redundancy (Inspection of Records) Regulations 1968 (S.I. No. 12 of 1968) to enter premises, inspect records and procure information for the purpose of ensuring the effective operation of the Redundancy Payments Acts.

APPENDIX 1

Guide to Completing the Redundancy Form RP50

Fields marked with * are mandatory fields and must be completed before submitting to the Department.

**When do I
complete Part A?**

When you wish to notify an employee of your intention to terminate their employment for reasons as stated in the Redundancy Payments Acts.

**When do I
complete Part B?**

When the employee is leaving and receiving their lump sum payment from you.

**Why should I
apply on-line?**

Online applications are a speedier method of applying for Rebate or Lump sum payments and are processed quicker.

IMPORTANT NOTE: To establish a right to a Redundancy Payment, it may be necessary to refer to information from the Revenue Commissioners or other Government Departments. By signing this form, consent is given to the disclosure of such information for Redundancy purposes only. By signing, it is also certified that no other claim has been made in respect of the said employment details and that the claim is not awaiting a Decision from the Employment Appeals Tribunal.

OPERATION OF THE REDUNDANCY PAYMENTS

SCHEME & ENTITLEMENTS

What is Statutory Redundancy?

Statutory Redundancy is the minimum Lump Sum payment which an employer is obliged by law to pay all eligible redundant employees under the Redundancy Payments Acts 1967 to 2007.

What are the allowable Reasons for Redundancy?

Closure or relocation of Business, Rationalisation, (Fewer people required to do the work etc.), Re-organisation of business, (Fewer people required due to reduced product demand, Technological changes) Liquidation, Receivership, Bankruptcy, Death of Employer, Insolvency, End of Contract, Sale of Business. See our website at www.entemp.ie for complete list of reasons.

Who is eligible for Statutory Redundancy?

All employees must be over the age of 16 with at least two years (104 weeks) continuous service. If full time must be in fully insurable employment. A genuine redundancy situation must exist.

What Notice is required?

A minimum of two weeks notice is required. For service of between 2 and five years – two weeks notice, 5 and 10 years – 4 weeks notice, 10 and 15 years – 6 weeks notice, over 15 years – 8 weeks notice.

How are Statutory Redundancy Entitlements calculated?

Two weeks pay for every year of service, together with a bonus week. Weekly pay is subject to a ceiling which is €600. The on-line redundancy calculator can be found at:
www.entemp.ie

Who can claim a Rebate ?

Any employer who pays the correct Statutory Redundancy Lump Sum Entitlement to an eligible employee.

What steps are required to claim a Rebate?

The composite redundancy form RP50 must be fully completed, signed by the Employer and Employee, and submitted. It should cover Notice of Redundancy, Confirmation of Receipt of Statutory Redundancy Payment and Application for Employers Rebate and submitted within 6 months of the employee receiving their Lump Sum.

Rebate Claims can be submitted on-line at www.entemp.ie

Who can claim a Lump Sum?

All eligible employees as above, where the employer fails to pay.

What steps are required to claim a Lump Sum?

The composite Redundancy Form RP50 must be completed, signed by the Employer, Employee, and where appropriate, the Administrator and submitted within one year of the Redundancy.

If the Employer fails to pay, a case may be taken to the Employment Appeals Tribunal to establish entitlement to Statutory Redundancy.

Lump Sum Claims can be submitted on-line at www.entemp.ie

Where can I get more information?

From NERA Information Services,
National Employment Rights Authority,
O'Brien Road, Carlow, Co. Carlow.
Tel - 059 917 8990 Lo-call 1890 80 80 90
or our website at www.employmentrights.ie

Redundancy Payments Section, Davitt House, or the Department of Enterprise, Trade & Employment's website at www.entemp.ie for queries relating to claims that have been submitted to the Department.

APPENDIX 2

Definition of Redundancy

Extract from Section 7 of the Redundancy Payments Act 1967, as amended by Section 4 of the Redundancy Payments Act 1971 and Section 5 of the

Redundancy Payments Act 2003

“.....an employee who is dismissed shall be taken to be dismissed by reason of redundancy if for one or more reasons not related to the employee concerned the dismissal is attributable wholly or mainly to:

(a) _the fact that his employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him or has ceased or intends to cease, to carry on that business in the place where the employee was so employed, or

(b) _the fact that the requirements of that business for employees to carry out work of a particular kind in the place where he was so employed have ceased or diminished or are expected to cease or diminish, or

(c) _the fact that his employer has decided to carry on the business with fewer or no employees, whether by requiring the work for which the employee had been employed (or had been doing before his dismissal) to be done by other employees or otherwise, or

(d) _the fact that his employer has decided that the work for which the employee had been employed (or had been doing before his dismissal) should henceforward be done in a different manner for which the employee is not sufficiently qualified or trained, or

(e) _the fact that his employer has decided that the work for which the employee had been employed (or had been doing before his dismissal) should henceforward be done by a person who is also capable of doing other work for which the employee is not sufficiently qualified or trained”.

APPENDIX 3

How do you calculate a week's pay for redundancy purposes?

The basic formula is as follows –

Gross Weekly Wage **plus** Average Regular Overtime **plus** Benefits-in Kind.

The total figure is then taken to be the weekly pay for redundancy calculation purposes. There are two basic patterns of work involved i.e. **time workers** whose pay does not vary in relation to the amount of work they do and **piece workers** whose pay does depend on the amount of work they do e.g. sales persons on commissions.

(1) How is the weekly pay of a time-worker (fixed wage or salary) calculated?

This is the work pattern in most cases i.e. a fixed wage or salary. In this case, the employee's wages do not vary in relation to the amount of work he or she does e.g. if he/she is paid by an hourly time rate or by a fixed wage or salary. A week's pay means his earnings for his normal weekly working hours **at the date he was declared redundant** i.e. the date on which notice of proposed dismissal was given. This figure includes any **regular** bonus or allowance which does not vary in relation to the amount of work done. In calculating the amount of a week's pay for redundancy purposes, any benefits-in-kind normally received by the employee e.g. free accommodation, free meals etc., must be taken into account. The exact value of these "fringe-benefits" should be agreed between the employer and employee.

Where redundancy is claimed on the basis of lay-off or short-time (Form RP9), the date of termination of employment is taken to be the date that the employee applies for redundancy.

If a worker receives overtime pay for working more than a fixed number of hours, the fixed number of hours will be taken to be his normal working hours but if his contract requires him to work for more than that fixed number of hours, the higher number of hours required by the contract will be taken as his normal weekly working hours.

In the case of an employee who is normally expected to work overtime, his/her **average weekly overtime earnings** will be taken into account in determining his week's pay for redundancy purposes. The formula for calculating this amount is simply to establish the total amount of overtime earnings in the period of 26 weeks ending 13 weeks before the date he was declared redundant and dividing that amount by 26.

(2) How is the weekly pay of a piece-worker calculated?

A piece worker is defined as an employee whose pay depends on the amount of work he/she carries out i.e. he is paid wholly or partly by piece rates, bonuses or commissions etc related to his output. There is a special formula for calculating this amount, based on his normal weekly working hours, as follows –

- (a) _The total number of hours worked by the employee in the **26-week period ending 13 weeks before the date of being declared redundant** is calculated first. Weeks worked with different employers will be taken into account if the change of employer did not affect the continuity of employment. Any week or weeks during the 26-week period, in which the employee did not work will not be taken into account and the most recent week or weeks counting backwards, before the 26 week period, will be taken into account instead.
- (b) _You then add up all the pay earned in this 26-week period and adjust it to take into account **any late changes in rates of pay** which came into operation in the **13 weeks** before the employee was declared redundant.
- (c) _The employee's **average hourly rate of pay** is then calculated by simply dividing the total pay as at (b) above by the total number of hours as at (a) above. You then finally establish **the weekly pay by multiplying this average hourly rate by the number of normal weekly working hours** of the employee at the date on which he was declared redundant (i.e. date of being given notice of redundancy).

(3) Employees with no normal working hours

In a case where an employee has no normal working hours his average weekly pay will be taken to be his average weekly pay including any bonus, pay allowance or commission over the period of 52 weeks during which he was working before the date on which he was declared redundant.

(4) Shift workers

An employee who is employed on **shift-work** and whose pay varies according to the shift on which he works will be taken to be an employee who is paid wholly or partly **by piece-rates**. This also applies in the case of an employee whose pay varies in relation to the day of the week or time of the day at which he works.

NOTE (A) -

When calculating a week's pay regard should be had to the **ceiling for the time being in force** on normal weekly remuneration. Regarding redundancies **notified/declared from 1st January, 2005**, the ceiling is **€600** per week or **€31,200** per annum (€507.90 per week or €26,411 per annum prior to that date).

Account must not be taken of any sums paid to an employee by way of

recoupment of expenses necessarily incurred by him in the proper discharge of the duties of his employment.

NOTE (B) -

Treatment of *Short-time Wages, Job-sharing Wages and Reduced Working Hours* for Redundancy calculation purposes

(1) Treatment of *Short-time Wages, (working for less than half a week, or earning less than half a week's wages)* for Redundancy calculation purposes

It has been the view of the Employment Appeals Tribunal (EAT) that when a person is put on **short-time** i.e. working less than half the number of hours they are normally expected to work in any week, or earning less than half their normal weekly earnings, e.g. a 2 day week, the gross wage for the calculation of a redundancy lump sum is based on a **full week's pay**.

(2) Treatment of Job Sharers

Where a person himself/herself decides to go job-sharing, their job-sharing pay rather than their previous full-time pay is used for redundancy calculation purposes. The decision to go job-sharing in this case was taken by the employee, rather than being an employer decision in the context of, for example, a temporary reduction in work for the employee concerned.

(3) Treatment of employees on reduced working hours

When a person is put on **reduced working hours** by their employer e.g. a three day week, the redundancy entitlement is calculated on the basis of a full week, provided the employee was put on reduced hours **within one year (52 weeks) before being made redundant**. If they were made redundant **after the first year** of reduced working hours and if it is clear that the employee **fully accepted** the reduced working hours as being his/her normal working week, never requesting a return to a full time week, then the employee is deemed to have accepted the reduced hours as his normal week. In this situation the gross pay for redundancy purposes **is based on the reduced working hours**.

On the other hand, if the employee never accepted the reduced working hours as his "normal" hours and was constantly seeking to be put back on full time working, he could then be deemed not to have accepted his reduced hours as normal. In these circumstances his redundancy entitlement should be calculated at his full-time rate of pay.

Where an employee himself makes a request to be placed on reduced working hours, for his own reasons, and the employer agrees, then the redundancy entitlement is based on the reduced hours.

APPENDIX 4

How do you decide whether or not employment is continuous?

As a general rule employment will be regarded as continuous unless it has been terminated by dismissal or the employee leaves his or her employment voluntarily. The Employment Appeals Tribunal normally presumes that a person's employment was continuous unless the contrary is proved.

Where a redundant employee **receives a redundancy lump sum payment, his/her continuity of employment is broken.**

Regarding redundancies notified/declared on or after 10th April, 2005, **this presumption of continuity of employment has been further strengthened, save in obvious situations like dismissal or resignation.** It is explicitly stated that continuity of employment is preserved in all periods of

- (1) sickness,
- (2) lay-off,
- (3) holidays,
- (4) service in the Reserve Defence Forces of the State,
- (5) leave (not voluntary leaving of the employment by the employee) and not mentioned in (1) to (4) above, **but authorised by the employer (e.g. career break),**
- (6) Leave under the Adoptive Leave legislation
- (7) leave under Maternity Protection legislation,
- (8) Parental leave,
- (9) force majeure leave,
- (10) Carer's Leave,
- (11) Absence from work because of a lock-out by the employer or because of participation by the employee in a strike.

The presumption of continuity of employment is safeguarded as per the following rules for calculating continuous employment

(i) Employment will be taken to be continuous unless it has been terminated by dismissal or the employee leaves his employment voluntarily.

(ii) The Employment Appeals Tribunal, in any case which comes before it, shall presume that a person's employment was continuous unless the contrary is proved.

(iii) When a redundant employee receives a redundancy lump-sum payment, his continuity of employment is broken, except in the case referred to at (viii).

(iv) If an employee is dismissed for redundancy before attaining 104 weeks' continuous service and resumes employment with the same employer within 26 weeks, his employment will be treated as continuous.

(v) Continuity of employment will not be broken through an employee being involved in a strike or lock-out.

(vi) Where an employee is re-engaged by a company which is an associated company of the company that formerly employed him, continuity of employment will not be broken if the re-engagement takes place within four weeks of his dismissal. For the purpose of this provision, two companies shall be taken to be associated companies if one is a subsidiary of the other or both are subsidiaries of a third.

(vii) Where an employee voluntarily transfers from one employer to another and both employers and the employee agree that all the employee's service will be regarded as continuous employment with the second employer, the transfer will not break continuity. In a case of this kind, the first employer will not be liable for redundancy payment.

(viii) Continuity of service is preserved (whether or not a redundancy lump sum has been paid), where redress by way of re-instatement or re-engagement is obtained under the Unfair Dismissals Acts 1977 to 2001.

APPENDIX 5

Reckonable and Non-Reckonable Service

During, and only during the 3 year period ending with the date of termination of employment, the following are all **non-reckonable** for redundancy calculation purposes in respect of redundancies notified/declared on or after 10th April, 2005 –

NON-RECKONABLE ABSENCES WITHIN THE LAST 3 YEARS OF EMPLOYMENT (POST 10th April, 2005)

- (a) absence **in excess of 52 consecutive weeks** by reason of an occupational accident or disease within the meaning of the Social Welfare (Consolidation) Act 1993 – the first 52 weeks are therefore fully reckonable,
- (b) absence **in excess of 26 consecutive weeks** by reason of any illness not referred to in subparagraph (a) – the first 26 weeks are therefore fully reckonable,
- (c) absence by reason of lay-off by the employer,
- (d) absence from work by reason of a strike in the business or industry in which the employee concerned is employed.

PLEASE NOTE: Non-reckonable service in respect of redundancies notified/declared on or after 10th April, 2005 is applicable **only to the final 3 years of service**, ending on the date of termination of employment. Thus, if an employee was working in a company for a total of 20 years, the non-reckonable service referred to in (a) to (d) above **only applies to the last 3 years** – all such absences referred to are fully reckonable in respect of the first 17 years of employment.

This 3-year rule does not apply to redundancies notified **before the above date of 10th April, 2005**. In the case of such previous redundancies therefore, such non-reckonable periods of employment as above (a) to (d) are applicable to the entire employment history of the employee.

The following **allowable absences** are specifically referred to in Section 12 of the Redundancy Payments Act, 2003, which came into operation on 10th April 2005 with respect to redundancies notified/declared as and from that date (Maternity Leave, Adoptive Leave, Parental leave and Carer's Leave were, of course, already reckonable before that date) -

- (a) (i) absence from work while on adoptive leave under the Adoptive Leave Act 1995 (as amended) – increased to 24 weeks from 1st March, 2007.

- (ii) absence from work while on additional adoptive leave under the the Adoptive Leave Act 1995 (as amended) – increased to 16 weeks from 1st March, 2007.
- (b) absence from work while on **additional** maternity leave for 16 weeks from 1st March 2007 (**maternity leave of 26 weeks from 1st March 2007 under the Maternity Protection Act 1994 was itself already allowable in the pre-10th April, 2005 period and, of course, continues to be allowable**), protective leave or natal care absence within the meaning of the Maternity Protection Act 1994 (since amended by the Maternity Protection (Amendment) Act 2004),
- (c) absence from work while on parental leave (14 weeks) or force majeure leave within the meaning of the Parental Leave Act 1998,
- (d) absence from work while on carer's leave (subject to a minimum of 13 weeks and a maximum of 104 weeks as amended by section (7) of the Social Welfare Law Reform and Pensions Act 2006.
- (e) any absences not mentioned under (a) to (d) above but authorised by the employer e.g. a career break. In respect of redundancies notified/declared **before 10th April, 2005**, there was a **13 weeks limit** within a period of **52 weeks** in respect of such absences.

NOTE – While **lay-off** within the 3 year period referred to above (ending on the date of termination of employment), is non-reckonable, absence due to **short-time** working is **fully reckonable**. Short-time working can be defined as a situation where due to a reduced demand for work an employee's earnings are **less than half his/her normal weekly earnings or his/her hours worked are less than half his/her normal weekly working hours**.

More detailed guidelines on arrangements for reckonable and non-reckonable service

The following is always regarded as reckonable service

- (i) A week falling within a period of continuous employment during any part of which an employee is actually at work or
- (ii) absence from work due to sickness, holidays or with his employer's permission (subject to the 52 weeks and 26 weeks rule re "excess" sick leave at the start of this Appendix above) or
- (iii) absence from work because of a lock-out or
- (iv) periods of service where continuity is preserved in any case of redress by way of re-instatement or re-engagement under the Unfair Dismissals Acts 1977 to 2001.

APPENDIX 6

The Minimum Notice and Terms of Employment Acts 1973 to 2001.

The period of notice prescribed under this legislation varies **according to the length of service** as follows:

Length of Service	Minimum Notice
Thirteen weeks to two years	One week
Two years to five years	Two weeks
Five years to ten years	Four weeks
Ten years to fifteen years	Six weeks
More than fifteen years	Eight weeks

Notice under this Act need not be in writing.

A separate leaflet is available giving more exact details of the terms of the Acts.

Provisions regarding the actual giving of notice:

- (i) _Where an employer is giving notice to an employee, the notice must be given to the employee or left for him at his last-known place of residence or posted to him at that address.
- (ii) _Where an employee is giving notice to an employer the notice must be given to the employer by the employee himself or by a person authorised by him or left for the employer or a person designated by the employer, at the employee's place of employment or posted to the employer at that address.
- (iii) _Where a notice is left for a person at a particular place, it will be presumed to have been received by him on the day on which it was left there unless the contrary can be proved.

APPENDIX 7

Protection of Employment Act 1977 (as amended)

When an employer proposes to create collective redundancies he must, under the Protection of Employment Act 1977 (as amended), give the Minister for Enterprise, Trade & Employment written notice of his proposals at the earliest opportunity and at least 30 days before the first dismissal takes effect.

The Act also provides that an employer contemplating collective redundancies must, with a view to reaching an agreement, similarly consult the representatives of the employees affected.

A collective redundancy means the dismissal for redundancy reasons over any period of 30 consecutive days of at least:

- (a) _five persons in an establishment normally employing more than 20 and less than 50 employees.
- (b) _ten persons in an establishment normally employing at least 50 but less than 100 employees.
- (c) _ten per cent of the number of employees in an establishment normally employing at least 100 but less than 300 employees.
- (d) _thirty persons in an establishment normally employing 300 or more employees.

The Act was amended by the European Communities (Protection of Employment) Regulations 2000, providing for matters such as the following - consultation with employees in the absence of a trade union, staff association etc., right of complaint to a Rights Commissioner where an employer fails to consult employees.

A separate comprehensive, up to date booklet is available giving further details of the provisions of the Act. This booklet is available on the Department's website at www.entemp.ie

APPENDIX 8

Sample Redundancy Calculations

How are fractions of a year calculated for redundancy purposes? e.g. 10 years and 50 days or 20 years and 200 days

REDUNDANCY CALCULATOR

An easy-to-use calculation facility is available on the Home Page of the Department's Website at www.entemp.ie **BOTH EMPLOYERS AND EMPLOYEES ARE STRONGLY ADVISED TO USE THIS FACILITY, IN PARTICULAR TO ENSURE ACCURACY AND EASE OF CALCULATION.**

ALSO, ON-LINE CLAIMS ARE PROCESSED QUICKER AS THEY ARE AUTOMATICALLY RECORDED ON OUR SYSTEM

For the purpose of calculating a lump sum, 365 days count as one year. An extra day is given in each Leap Year (366 days).

Regarding all redundancies **notified/declared on or after 10th April, 2005** with the coming into operation of Section 11 of the Redundancy Payments Act, 2003 on that date, the following should be noted when calculating the statutory redundancy lump sum entitlement -

If the total amount of reckonable service is not an exact number of years, the "excess" days shall be credited as a proportion of a year.

For example, 91 days, which almost amount to a quarter of a year (24.93% to be exact) will therefore give the employee an extra 24.93% of a years service, on top of whatever number of full years they have worked for. Thus, the simple formula used for calculating the proportion of a year to be credited to the employee is 91 divided by 365 = .2493, or in percentage terms = 24.93%. Please note that the figure of 365 days is now used for redundancy calculation purposes rather than the figure of 364 days, which was previously used.

SAMPLE CALCULATION USING THE CURRENT RULES
(REDUNDANCIES NOTIFIED/DECLARED ON OR AFTER 10th April, 2005)

Employment Details

Date of Birth	18/01/1956
Date of Commencement of Employment	01/02/1998
Date of Notice of Redundancy	06/07/2005
Date of Termination of Employment	31/08/2005

Period of Lay Off	06/06/2005 to 10/06/2005
Gross Weekly Pay	€800
Wage ceiling prevailing at the time	€600

Calculation of Service

Years 7

Days 207

Weeks 15.14

Break in Start Date: 06/06/2005 End Date: 10/06/2005 Reason: LAY
Service 1 OFF Days Reckonable: 0 Days Non Reckonable: 5

Plus Bonus 1
Week

Total Weeks 16.14

Redundancy Entitlements

Lump Sum due to Employee $16.14 \times \text{€}600.00 = \text{€}9,684.00$

Rebate due to Employer $\text{€}9,684.00 \times 60.0\% = \text{€}5,810.40$

APPENDIX 9

Development of the Social Insurance Fund (SIF) in modern times

The redundancy payments referred to above were originally made from the Redundancy and Employers' Insolvency Fund, which was financed by redundancy contributions from employers. These contributions were pay related and were collected by the Revenue Commissioners together with PAYE by reference to the same definition of earnings and subject to the same earnings ceiling as social insurance contributions.

With effect from 1st May, 1990 the Redundancy and Employers' Insolvency Fund was amalgamated with the Occupational Injuries Fund and the Social Insurance Fund to form **an enlarged Social Insurance Fund**. With effect from 6th April, 1991 the employer's redundancy contribution was amalgamated with the employer's occupational injuries contribution and the employer's social insurance contribution to form **one overall employer's social insurance contribution**.

With effect from 25th May, 2003, there is now legislative provision under Section 2 of the Redundancy Payments Act 2003 whereby the Social Insurance Fund may cover some or all of the administration costs of the Redundancy Payments and Insolvency Payments Schemes.

APPENDIX 10

Time Table for Employers and Employees for dealing with Redundancies

When action is needed	Action to be taken by employer	Relevant Paragraph of this guide
At least 14 days before the date of dismissal	Give notice in writing of the proposed dismissal to the employee.	14
Before date of dismissal	Calculate amount of lump-sum due to each employee or Offer in writing of re-engagement on the same, or different terms. (But not less favorable)	3, 4, 7
On date of dismissal	Make lump-sum payments to employees concerned and give them Redundancy Certificate (part of Form RP50 must be used for this purpose).	13
Within 6 months after date of dismissal/payment of lump sum	Send claim for rebate, (Form RP50 is also used for this purpose) with the Redundancy Certificate (part of form RP50) bearing original signatures to the Department of Enterprise, Trade and Employment, Davitt House, 65A Adelaide Road, Dublin 2.	14, 16
When employer fails to pay lump-sum	Make a claim, in writing, to the employer for redundancy lump-sum payment (Form RP77).	15
If still unpaid after a reasonable time	(a) If the employee has got a Redundancy Certificate from his employer - see paragraph 15, complete form of application for payment of the lump-sum from the Social Insurance Fund (Form RP50 is also used for this purpose) and submit with Redundancy Certificate to the Department of Enterprise, Trade and Employment, Davit House, 65A Adelaide Road, Dublin 2.	15
When action is needed	Action to be taken by employer	Relevant Paragraph of this guide
	(b) If the employee has not got a Redundancy Certificate, submit an appeal to the Employment Appeals Tribunal (Form T1-A) to establish entitlement to a redundancy payment. All appeals to the Employment Appeals Tribunal should be sent to the Secretary of the Tribunal, Davitt House, 65A Adelaide Road, Dublin 2.	24

*Attention is drawn to the time limits referred to in paragraphs 16(a) and 16(b) of this Guide.

Appendix 11

Useful Addresses, Telephone Numbers and Website Addresses

[NERA Information Services](#) – for all general enquiries on entitlements to statutory redundancy lump sum and rebate payments, as well as other aspects of employment rights legislation

NERA Information Services,
National Employment Rights Authority,
O'Brien Road,
Carlow,
Co. Carlow.
Tel: 059 917 8990
Lo-Call: 1890 80 80 90
E-MailAddress: from www.employmentrights.ie
Website Address : www.employmentrights.ie

[Redundancy Payments Section](#) – for enquiries concerning [specific redundancy payment lump sum or rebate applications](#)

Department of Enterprise, Trade and Employment,
Davitt House,
65A Adelaide Road,
Dublin 2.
Tel: (01) 6312121 Lo-Call: 1890 220 222
Fax Number: (01) 6313217
Website Address: www.entemp.ie/employment/redundancy

[Insolvency Section](#)

Department of Enterprise, Trade and Employment,
Davitt House,
65A Adelaide Road,
Dublin 2.
Tel: (01) 6312121 Lo-Call 1890 220 222
WebsiteAddress: www.entemp.ie/employment/insolvency/index.htm

[Employment Appeals Tribunal,](#)

Davitt House,
65A Adelaide Road,
Dublin 2.
Tel: (01) 6313006 – (01) 6313009 – (01) 6313013

Lo-Call 1890 220 222
Website Address: www.eatribunal.ie

Scope Section

Department of Social & Family Affairs
Floor 3,
Oisín House,
Pearse Street,
Dublin 2.
Tel: (01) 6732585/6732558

Revenue Commissioners

Central Telephone Enquiry Office

(for telephone enquiries on taxation implications of extra statutory/ex-gratia redundancy payments – statutory redundancy payments themselves being tax-free)

-1890 60 50 90

Labour Court

Tom Johnson House,
Haddington Road,
Dublin 4.
Tel: (01) 6136666
Lo-Call: 1890 220 228
Website Address: www.labourcourt.ie

Labour Relations Commission

Tom Johnson House,
Haddington Road,
Dublin 4.
Tel: (01) 6136700
Lo-Call: 1890 220 227
Website Address: www.lrc.ie

Rights Commissioners

Tom Johnson House,
Haddington Road,
Dublin 4.
Tel: (01) 6136700
Lo-Call: 1890 220 227

Website Address: www.lrc.ie

Equality Authority

2 Clonmel Street, Dublin 2.

Tel (01) 4173333

Lo-Call 1890 24 55 45

Website Address: www.equality.ie

Appendix 12

Glossary of redundancy terms/definitions

Reckonable Service	Service to be taken into account in calculating statutory redundancy entitlement
Non-Reckonable Service	Service to be excluded in calculating statutory redundancy entitlement

Note – in respect of redundancies notified/declared on or after 10th April, 2005, non-reckonable service applies only to the last 3 years of employment. Any service before that 3 year period is fully reckonable.

Lay-off A temporary absence from employment where the services of an employee are not required because of lack of work

Short-time A temporary reduction in weekly earnings to less than half the normal weekly earnings or a reduction in the hours worked to less than half the normal weekly working hours e.g. a 2 day week

Reduced Working Hours A temporary reduction in working hours to at least half the working week e.g. a 3 day week or a 4 day week.

Employee Lump Sum The statutory redundancy lump sum owed to an employee – where the employer fails to pay, the Department pays it from the Social Insurance Fund and endeavors to recover the amount from the employer

Employer Rebate The 60% rebate due to the employer who pays the employee their correct statutory redundancy lump sum

<i>Continuity of Employment</i>	Employment must be continuous for redundancy entitlement purposes e.g. if an employee himself/herself resigns from the job, they are breaking their own service.
<i>Ex-Gratia Payment</i>	Also known as extra-statutory redundancy. This is payment above and beyond the minimum statutory redundancy lump sum entitlement. The employer is not legally bound to pay this extra-statutory amount under the Redundancy Payments Acts, 1967 to 2007.
<i>Time-Worker</i>	A worker on a fixed wage or salary. This is the work pattern in most cases.
<i>Piece-Worker</i>	A worker whose pay depends on the amount of work he or she carries out i.e. paid wholly or partly by piece rates, bonuses or commissions related to his/her output. See formula in Appendix 3 (2) (a) – (c) above for calculating the weekly wage of a piece worker for redundancy purposes.
<i>Shift-Worker</i>	A worker who is employed on shift work and whose pay varies according to the shift on which he works will be taken to be an employee who is paid wholly or partly by piece-rates – See Piece-Worker above.
<i>Employees with no normal working hours</i>	Basically, employees other than the normal working hours three categories above. Where such an employee has no normal working hours, his average weekly pay will be this pay including any bonus, pay allowance or commission over the period of 52 weeks during which he/she was working before the date of declaration of redundancy.

Overtime

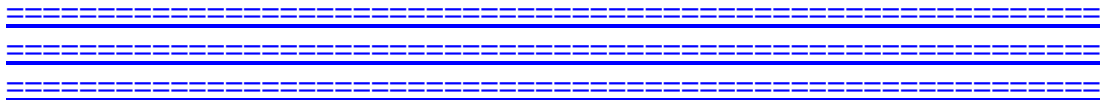
Where an employee is normally expected to work overtime, his average weekly overtime earnings will be taken into account in determining his normal weeks pay. The formula for calculating this amount is simply to establish the total amount of overtime earnings in the period of 26 weeks ending 13 weeks before the date he was declared redundant and dividing that amount by 26.

“Ceiling” on wages

The upper limit on earnings, which are taken into account for redundancy calculation purposes. The ceiling has been set at €600 per week for redundancies notified/declared on or after 1st January, 2005 (€507.90 per week before that date).

Employment Appeals Tribunal (EAT)

An independent body set up in 1968 to provide a speedy fair, inexpensive means for resolving disputes relating to redundancy matters. It has since expanded to cover many other areas of employment rights such as unfair dismissals, minimum notice etc.



Seventh Report of the Government of Ireland to the Council of Europe under the Revised European Social Charter :-

List of Useful Websites :

<http://www.deti.ie/>

(Main Department of Enterprise, Trade and Innovation Website)

<http://www.gov.ie/en/>

(General Irish Government website in the English Language)

<http://www.gov.ie/en/sites/>

(Full list of Government websites)

<http://www.irishstatutebook.ie/>

(Irish Statute Book)

<http://www.irishstatutebook.ie/home.html>

(Irish Statute Book / Home Page)

<http://www.irishstatutebook.ie/acts.html>

(Acts of the Oireachtas, 1922-2010)

<http://www.irishstatutebook.ie/statutory.html>

(Statutory Instruments, 1948-2010)

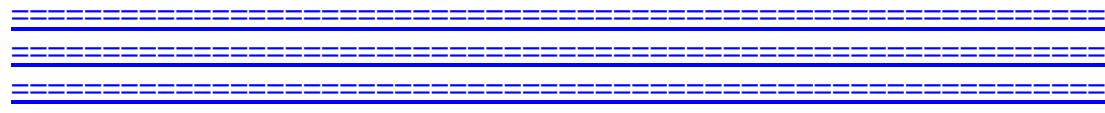
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Completed List of Material Appended to Our Seventh Report :-

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Article 2 - THE RIGHT TO JUST CONDITIONS OF WORK

No Appended Material



Article 4 – THE RIGHT TO A FAIR REMUNERATION

No Appended Material



Article 5 - The Right to Organise

THE SUPREME COURT
Appeal No. 377/2005
Murray C.J.
Denham J.
Hardiman J.
Geoghegan J.
Fennelly J.
BETWEEN:

RYANAIR LIMITED

Applicant/Appellant

and

THE LABOUR COURT

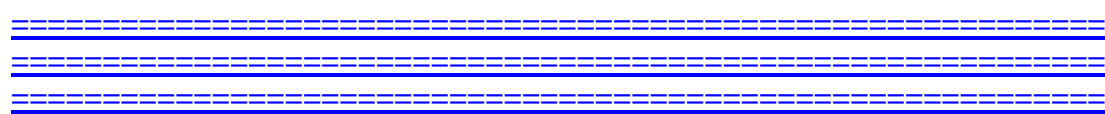
Respondent

and

**IRISH MUNICIPAL PUBLIC AND CIVIL
TRADE UNION (IMPACT)**

Notice Party/Respondent

JUDGMENT of Mr. Justice Geoghegan delivered the 1st day of February 2007



Article 6 - The Right to Bargain Collectively

No Appended Material



Article 21

ARTICLE 21: THE RIGHT TO INFORMATION AND CONSULTATION

Appendix :	Legislation	Pages
No. 1	THE EMPLOYEES (PROVISION OF INFORMATION AND CONSULTATION) ACT 2006 - Number 9 of 2006	2-22 of the Appended Document (submitted already to the Council of Europe).
No. 2	TRANSNATIONAL INFORMATION AND CONSULTATION OF EMPLOYEES ACT, 1996 (No. 20 of 1996)	22- 56 of the Appended Document
No. 3	The European Communities (European Public Limited-Liability Company) (Employee Involvement) Regulations 2006 (S.I. No. 623 of 2006)	57- 78 of the Appended Document
No. 4	The European Communities (European Cooperative Society) (Employee Involvement) Regulations 2007 (S.I. No. 259 of 2007)	78- 97 of the Appended Document
No. 5	European Communités (Cross-Border Mergers) Regulations 2008 (S.I. No. 157 of 2008)	97- 129 of the Appended Document
No. 6	The Worker Participation (State Enterprises) Act 1988	129- 192 of the Appended Document
No. 7	Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007 (No. 27/2007)	192- 199 of the Appended Document
No. 8	Regulation 8 of European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003, Statutory Instrument Number 131 of 2003	199- 222 of the Appended Document

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Article 22 - – THE RIGHT TO TAKE PART IN THE DETERMINATION AND
IMPROVEMENT OF THE WORKING CONDITIONS AND
WORKING ENVIRONMENT

No Appended Material

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Article 26 – THE RIGHT TO DIGNITY AT WORK

No Appended Material

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Article28 - THE RIGHT OF WORKERS’ REPRESENTATIVES TO
PROTECTION IN THE UNDERTAKING AND FACILITIES TO
BE ACCORDED TO THEM

No Appended Material

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Article 29 - THE RIGHT TO INFORMATION AND CONSULTATION IN
COLLECTIVE REDUNDANCY PROCEDURES

GUIDE TO THE REDUNDANCY PAYMENTS SCHEME

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Críoch / End