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EUROPEAN SOCIAL CHARTER

19th National Report on the implementation of
the European Social Charter
submitted by

THE GOVERNMENT OF IRELAND

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Rialtas na hÉireann
Government of Ireland

IRELAND'S 2021 NATIONAL REPORT ON THE IMPLEMENTATION OF THE REVISED EUROPEAN SOCIAL CHARTER

31 December 2021

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This is Ireland's National Report under the revised European Social Charter (Charter) for 2021 relating to the provisions of Thematic Group 3 - Labour rights, comprising Articles 2 (right to just conditions of work), 4 (right to fair remuneration), 5 (right to organise), 6 (right to bargain collectively), 22 (right of workers to take part in the determination and improvement of working conditions and working environment), 26 (right to dignity at work), 28 (right of workers' representatives to protection in the undertaking and facilities to be accorded to them) and 29 (right to information and consultation in collective redundancy procedures).

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Article 2 – 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:

Article 2.1: *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.*

Question A

a) Please provide updated information on the legal framework to ensure reasonable working hours (weekly, daily, rest periods, ...) and exceptions (including legal basis and justification). Please provide detailed information on enforcement measures and monitoring arrangements, in particular as regards the activities of labour inspectorates (statistics on inspections and their prevalence by sector of economic activity, sanctions imposed, etc.).

Response

The Organisation of Working Time Act 1997, which is transposed from the European Working Time Directive (2003/88/EC), sets out maximum weekly working hours and minimum daily rest periods in Ireland.

Generally, employees are entitled to;

- A daily rest period of 11 consecutive hours per 24 hour period
- A weekly rest period of 24 consecutive hours per seven days, following a daily rest period
- A 15-minute break where more than 4½ hours have been worked
- A 30-minute break where more than 6 hours have been worked, which may include the first break
- the maximum number of hours that an employee may work in an average working week is 48 hours. This average is calculated over a reference period which depending on the circumstances, the reference period may be for four, six or twelve months. See table below.

Reference period	Employees whose average hours are calculated this way:
4 Months	Most Employees
6 months	For employees where work is subject to seasonality, a foreseeable surge in activity, or where employees are directly involved in ensuring continuity of service or production
12 months	Employees who have agreed this with their employer (this must be approved by the Labour Court).

Section 11 of the Organisation of Working Time Act provides that an employee is entitled to a rest period of not less than 11 consecutive hours in each period of 24hrs which he or she works.

Section 13 of the Act provides that an employee shall, in each period of 7 days, be granted a rest period of at least 24 consecutive hours and that that period is immediately preceded by a daily rest period. Section 13 further provides that an employer may, in lieu of granting an employee in any period of 7 days the first-mentioned rest period, grant to the employee, in the next following period of 7 days, 2 rest periods each of which shall be a period of at least 24 consecutive hours.

Section 15 of the Act provides that an employer shall not permit an employee to work, in each period of 7 days, more than an average of 48hrs that is to say an average of 48hrs calculated over a reference period (depending on the circumstances the reference period may be for four, six or twelve months).

Enforcement and Inspection

Generally, enforcement of the minimum rest periods and intervals at work and the maximum average weekly working hours is a matter for the Workplace Relations Commission (WRC) Inspectorate which is authorised by the Director General of the Commission with the consent of the Minister for Enterprise Trade and Employment.

Other sector specific working time regimes mandated by sector specific Directives and Regulations are enforced by delegated State agencies whose remit encompasses the broader aspects of the sector in question as outlined below:

Enforcement of Working time issues for workers in:

- Road Transport activities is within the remit of the Road Safety Authority (RSA)
- Civil Aviation activities is within the remit of the Irish Aviation Authority (IAA)
- Sea going Fishing activities and Merchant Shipping is within the remit of the Marine Survey Office (MSO)

Issues of non-compliance with these statutory obligations (by an employer within the WRC remit) is with dealt in the first instance by issuing a Contravention Notice outlining the breaches detected and the actions required to rectify the breaches.

Where the breaches are not rectified within a given timeframe, a Compliance Notice is issued directing remedial action within 42 days. Ultimately, the sanction which may be imposed for non-compliance with the Compliance Notice is criminal prosecution in the District Court:

A person guilty of an offence may

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both, or
- (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 3 years or both.

In the last full year of WRC inspection activity (2020), 7,687 inspections were carried out (in which working time statutory obligations were investigated as part of the

inspection process) and 41 Compliance Notices were issued. The inspections in question were ultimately closed when the breaches detected were rectified.

WRC inspectors visit places of employment and carry out investigations on behalf of the Workplace Relations Commission in order to ensure compliance with equality and employment-related legislation. In certain circumstances, the Labour Court may request that an inspector carry out investigations on its behalf. Such investigations involve, but are not confined to, examining books, records and documents related to the employment, and conducting interviews with current and former employees and employers.

A detailed breakdown of inspections carried out by the Workplace Relations Commission inspectors, covering the periods 2017 to 2020 and by economic sector, is contained in Annex 1.

Contraventions of Article 2.1

The prevalence by sector of breaches detected (Article 2.1 issues - daily and weekly working hours) for 2019 and 2020 for cases recorded is shown in the table below;

2019

Sector	Employers Inspected	Employers in Breach of Article 2.1 issues	Rest Periods and Breaks at work	Excessive Hours
Agriculture	19	1		1
Construction	142	1		1
Food Service Activities	1,394	6	5	1
Hair & Beauty	344	1	1	
Manufacturing	53	2		2
Mining & Quarrying	2	1		1
Transport	35	3	3	1
Wholesale & Retail Trade	955	4	2	2

2020

Sector	Employers Inspected	Employers in Breach of Article 2.1 issues	Rest Periods and Breaks at work	Excessive Hours
Arts, Entertainment & Recreation	70	1	1	
Construction	150	1		1
Education	29	1	1	
Equine	13	1		1
Food Service Activities	1,536	14	10	4
Hair & Beauty	466	1	1	
Hotels	139	6	6	1
Human Health & Social Work	132	1	1	
Professional Services	85	1		1
Security	31	2	1	1
Wholesale & Retail Trade	3,942	10	9	1

Corresponding figures for 2017, 2018 and cases concluded are not available.

Question B

b) The Committee would welcome specific information on proactive action taken by the authorities (whether national, regional, local and sectoral, including national human rights institutions and equality bodies, as well as labour inspectorate activity, and on the outcomes of cases brought before the courts) to ensure the respect of reasonable working hours; please provide information on findings (e.g. results of labour inspection activities or determination of complaints by domestic tribunals and courts) and remedial action taken in respect of specific sectors of activity, such as the health sector, the catering industry, the hospitality industry, agriculture, domestic and care work.

Response

Sectoral Campaigns

Annual sectoral inspection campaigns are a recurring feature of Workplace Relations Commission (WRC) Inspection activity. Sector focused campaign activity in recent

years included agriculture, the hospitality and food catering sectors, the fishing sector and meat processing undertakings.

The WRC Inspectorate pro-actively engages with sectors with a view to raising awareness of employers' statutory employment law obligations and promoting compliance and best practice methodologies.

Sectors targeted in recent years included the equine sector, the hospitality sector and employers of domestic workers in the home.

Results of Specific Cases

There were two cases reported on in the 2020 annual report relating to the Organisation of Working Time Act (OWTA) - details of which are outlined below.

WRC annual reports provide case summaries of notable WRC Adjudication Decisions (as a result of inspection activities).

Links to the annual reports for the reference period is available [here](#).

A Facilities Coordinator v A Bakery [ADJ-00019188] (11/06/20)

This was a claim for compensation which had accrued as a result of annual leave under the Organisation of Working Time Act 1997. The Adjudication Officer adopted a conformity reading of the EU law- based provisions and awarded the complainant cesser pay. The complainant relied upon EU law to succeed.

The Adjudication Officer found that the complainant was able to claim 20/24ths of this outstanding leave, as this was the measure of his statutory and Directive entitlement.

The complainant was awarded €6,000, made up of €5,215 as cesser pay (as arrears of pay) and €785 for breach of a statutory right and which did not constitute arrears of pay.

Security Worker v Security Company [ADJ-00029014] (17/12/20)

This was a complaint under the Organisation of Working Time Act 1997 concerning a failure by the respondent to provide work or payments to the complainant except on occasion during a specified period. The Adjudication Officer found in favour of the complainant.

Based on the uncontested evidence, the Adjudication Officer found in favour of the complainant, that they had established an entitlement to payment for the period between April to May 2020 in accordance with the OMTA. The complainant was awarded €1,572.75.

Question C

c) Please provide information on law and practice as regards on-call time and service (including as regards zero-hours contracts), and how are inactive on-call periods treated in terms of work and rest time as well as remuneration.

Response

On Call Time

The Organisation of working Time Act 1997 defines “working time” as any time that the employee is:

- a) At his or her place of work or at his or her employer’s disposal, and
- b) Carrying on or performing the activities or duties of his or her work

The definition encompasses all hours of work including normal contracted hours, night work, overtime, shift work, casual work and any additional or unforeseen hours that may arise.

Ultimately an employer must be cognisant of all the hours worked by an employee (including hours worked for another employer) in ensuring that the provisions of the OWTA are not infringed.

Recent rulings of the ECJ have established that stand-by time must be regarded as working time in its entirety when the constraints imposed on the person during stand-by time significantly affect that person's ability to freely manage his time during which his professional services are not required. In the absence of such constraints, only the working time when actual work is performed must be classified as working time.

Ultimately whether on call/standby time is considered 'working time' is dependent on the particular employee's employment situation and the constraints imposed upon them.

Zero Hours

The Employment (Miscellaneous Provisions) Act 2018 which came into effect on the 4th March 2018 delivered on the Programme for Government's commitment to address the challenges of increased casualisation of work and to strengthen the regulation of precarious employment.

The Act amended Section 18 of the Organisation of Working Time Act 1997 (OWTA) to prohibit zero-hour contracts except in the following circumstances:

- Where the work is of a casual nature;
- Where the work is done in emergency circumstances; or
- Short-term relief work to cover routine absences for the employer.

The new Act also amends Section 18 of the OWTA to introduce a new minimum payment entitlement, in certain circumstances.

This new minimum payment will be payable on each occasion an employee, to whom section 18 applies, is called in to work and does not receive the expected hours of work.

The minimum payment on each occasion above, will be three times the national minimum hourly rate of pay or three times the minimum hourly rate of pay set out in an Employment Regulation Order (if one exists for that sector and for as long as it remains in force).

The 2018 Act introduced a new right for employees whose contract of employment does not reflect the reality of the hours they habitually work. Such employees are entitled to request to be placed in a band of hours that better reflects the hours they have worked over a 12-month reference period.

An employee makes a request in writing to their employer to be placed in the relevant band of hours. The employer has four weeks to consider the request. The section provides reasonable defences for employers to refuse an employee's request for any one of the following reasons:

- a) the facts do not support the employee's claim,
- b) significant adverse changes have impacted on the business (e.g. loss of an important contract),
- c) emergency circumstances (e.g. business has had to close due to flooding), or
- d) where the hours worked by the employee were due to a genuinely temporary situation (e.g. cover for another employee on maternity leave).

Where the claim is disputed or refused the employee can refer it to the Workplace Relations Commission (WRC) for mediation or adjudication. If the Adjudication Officer finds in the employee's favour the redress will be that they are placed in the appropriate band of hours.

Question D

d) *Please provide information on the impact of the COVID-19 crisis on the right to just conditions of work and on general measures taken to mitigate adverse impact.*

As regards more specifically working time during the pandemic, please provide information on the enjoyment of the right to reasonable working time in the following sectors: health care and social work (nurses, doctors and other health workers, workers in residential care facilities and social workers, as well as support workers, such as laundry and cleaning staff); law enforcement, defence and other essential public services; education; transport (including long-haul, public transport and delivery services).

Response

Organisation of Working Time Act

In accordance with the Organisation of Working Time Act 1997 (OWTA), for most employees their maximum average working week cannot exceed 48 hours. This does not mean that an employee can never work more than 48 hours in a week, but that the average weekly hours over the relevant reference period should not exceed 48.

Currently members of the Defence Forces and the Garda Síochána are excluded from the terms of the Act but work is underway to bring them within scope.

In addition, there are special regulations for:

- Trainee doctors ([S.I. 494/2004](#)) and ([S.I. 553 of 2010](#))
- Civil Protection Services ([S.I. 52 of 1998](#)) and ([S.I. 478 of 2009](#)) - Ireland is aware that this legislation requires amendment to ensure that the Working Time of Civil Protection Services in Ireland is in line with the terms of the Working Time Directive - work is progressing on this matter.
- Employees working in mobile road transport activities ([S.I. 36/2012](#))
- Employees working at sea ([S.I. 245/2014](#))
- Civil Aviation staff ([S.I. 507 of 2006](#))

There were no changes to the OWTA as result of COVID.

Maritime Sector

Workers in the maritime sector are not governed by the general working time arrangements as set out in the Organisation of Working Time Act, 1997 as it is recognised such legislation does not take the specific working and living conditions in the shipping sector sufficiently into account and therefore more specific rules are necessary.

In this regard, the legislation governing working time in the shipping area is provided for in the European Communities (Merchant Shipping) (Organisation of Working Time) Regulations 2003 [S.I. No. 532/2003](#) as amended by the the European Communities (Merchant Shipping) (Organisation of Working Time) (Amendment) Regulations 2014 [S.I. No. 245/2014](#).

These regulations set out the maximum hours of work/minimum hours of rest which applies to workers in the shipping sector and implements both EU legislation and the requirements of the Maritime Labour Convention.

No special arrangements to deviate from these requirements were provided for during Covid-19. Some flexibility was provided to allow for a seafarer to extend their Seafarer's Work Agreement by 6 months from the date of expiry where the Agreement had expired, the seafarer had reached the maximum period of service and/or repatriation of the seafarer was proving difficult due to travel restrictions.

This extension was only with the express written permission of the seafarer with all of the terms and conditions of the original Agreement continuing to apply. However, this did not impact on the requirement to adhere to the working time regulations.

Aviation Sector

Air crew flight time limitations are set by EU regulation, namely the air operations regulations. This is under continuous review at European level. As the competent authority, the Irish Aviation Authority (IAA) is engaged in this process with the European Union Aviation Safety Agency.

Operators are not operating at their full capacity due to the impact of the COVID crisis and are therefore not operating to previous levels of productivity.

Right to Disconnect

The Code of Practice on the Right to Disconnect came into effect on 1 April 2021. The Code was not intended as a direct response to Covid but should be seen as part of a wider suite of moves intended as a response to the changing work environment generally. Thus, the Code has broader and more long-term significance.

Notwithstanding, the Code will have served as a useful tool to workers and employers in responding to the challenges presented in the workplace during the Covid crisis.

The Right to Disconnect has three main elements:

- I. The right of an employee to not routinely perform work outside normal working hours.
- II. The right to not be penalised for refusing to attend to work matters outside of normal working hours.
- III. The duty to respect another person's right to disconnect (e.g., by not routinely emailing or calling outside normal working hours).

Question E

e) *The Committee would welcome additional general information on measures put in place in response to the COVID-19 pandemic intended to facilitate the enjoyment of the right to reasonable working time (e.g. flexible working hours, teleworking, other measures for working parents when schools and nurseries are closed, etc.). Please include information on the legal instruments used to establish them and the duration of such measures.*

Response

The Government has asked employers to be as flexible as possible during COVID-19. Keeping childcare and childminding services open during COVID-19 is a Government priority in line with public health advice.

To facilitate reasonable working time in Ireland, the Government launched a [National Strategy for Remote Work](#).

The National Remote Work Strategy was published on 15 January 2021. The objective of the Strategy is to ensure that remote work is a permanent feature in the Irish workplace in a way that maximises economic, social and environmental benefits. The Strategy contains 15 actions all with deadlines over the course of 2021.

One of the Strategy's pillars is focussed on creating a conducive environment for remote work. Under this pillar the Strategy outlines the actions of developing a Code of Practice on the Right to Disconnect and the development of legislation to provide employees the right to request remote work.

The [Code of practice on the right to disconnect](#) is effective since 1 April 2021 and applies to all employees, including people working from home. It provides guidance on an employee's right to disengage from work outside normal working hours.

The Health and Safety Authority (HSA) has also issued a guidance on working from home for employees. The [Guidance on Working from Home for Employers and Employees](#) enables employers and employees to understand the requirements when working from home. The guidance also contains a homeworking risk

assessment/checklist to help employers and their employees to carry out an assessment of the home working environment as an online fillable form contained within the guidance document.

Question F - Non-conformity Article 2.1

In its 2014 Conclusions, the Committee found that Ireland was not in conformity with Article 2§1 of the Charter on the ground that the working hours in the merchant shipping sector are allowed to go up to 72 hours per week. It also requested some additional information.

Please see our response below.

Response

Merchant Shipping Working Hours

Ireland's working time legislation as it relates to the Merchant Shipping sector is set out in the European Communities (Merchant Shipping) (Organisation of Working Time) Regulations 2003 [S.I. 532/2003](#) as amended by the European Communities (Merchant Shipping) (Organisation of Working Time) (Amendment) Regulations 2014 [S.I. 245/2014](#), which sets out the minimum hours of rest as no less than 10 hours in a 24 hours period and 77 hours in any 7 day period.

These regulations implement and fully comply with Clause 5 to the Annex of the European Council Directive [1999/63/EC](#) as amended as well as implementing and complying with Standard A2.3.5 of the [Maritime Labour Convention](#).

Ireland is satisfied that we comply with EU and international law and our legislation is in line with best international practice.

Maximum permitted weekly working hours in Ireland

In its 2014 Conclusions, the Committee asked what the maximum permitted weekly working hours are, including overtime, for doctors in training, as well as persons working in civil protection services. Please see our response below.

The working time of Civil Protection Services in Ireland is covered by [S.I. 52 of 1998](#) – Organisation of Working Time (Exemption of Civil Protection Services) Regulations 1998 which is transposed from Article 17 of the Working Time Directive and [SI 478 of 2009](#).

However, Ireland is aware that this requires amendment to ensure that the Working Time of Civil Protection Services in Ireland is in line with the terms of the Working Time Directive, work is progressing on this matter.

In relation to Doctors in Training, the maximum average weekly working hours is 48 hours per week and has been in place since 1 August 2009. [S.I. 553 of 2010](#) further amended [S.I. 494 of 2004](#) and provided for derogations from the break and rest provisions where equivalent periods of compensatory rest are provided,

Ireland (through the Health Service Executive) continues to monitor compliance with the key provisions of the European Working Time Directive in respect of Non-Consultant Hospital Doctors, average working week, daily/weekly rest breaks etc., through the collection of monthly data across all sites where they are employed. It is also acknowledged that the COVID-19 pandemic has resulted in particular work pressures on all medical staff.

On Call Service/ Inactive Periods

In addition, the Committee asked what rules apply to on-call service and whether inactive periods of on-call duty are considered as a rest period in their entirety or in part. Please see our response below:

As already mentioned, the Organisation of Working Time Act 1997 defines “working time” as any time that the employee is:

- a) At his or her place of work or at his or her employer's disposal, and
- b) Carrying on or performing the activities or duties of his or her work

The definition encompasses all hours of work including normal contracted hours, night work, overtime, shift work, casual work and any additional or unforeseen hours that may arise.

Ultimately an employer must be cognisant of all the hours worked by an employee (including hours worked for another employer) in ensuring that the provisions of the OWTA are not infringed.

Recent rulings of the ECJ have established that stand-by time must be regarded as working time in its entirety when the constraints imposed on the person during stand-by time significantly affect that person's ability to freely manage his time during which his professional services are not required.

In the absence of such constraints, only the working time when actual work is performed must be classified as working time.

Ultimately whether on call/standby time is considered 'working time' is dependent on the particular employee's employment situation and the constraints imposed upon them.

The Labour Court Recommendation (LCR 20837) effectively clarifies that time spent by workers at work on call (but not actually working) should be acknowledged as constituting working time.

The Workplace Relations Commission Inspectorate, in carrying out inspection activities, generally regards time at work, where an employee is at the disposal of an employer and required by an employer to be available for work as working time. This is broadly in line with ECJ decisions on working time.

Article 2.2: *to provide for public holidays with pay.*

Information Requested: *As the ECSR found that Ireland was in conformity in relation to Art 2.2, no information is requested on this provision, **except** insofar as it concerns special arrangements related to the pandemic or changes to work arrangements following the pandemic.*

Response

The Organisation of Working Time Act (the OWTA) provides for public holidays. This Act provides that certain days may be prescribed as public holidays. At present, in Ireland, there are nine public holidays which are listed under section 2 of the second schedule of the OWTA.

Provision for an extra public holiday is currently under review following the pandemic as a reward for front line workers and to boost the economy.

Article 2.3: *to provide for a minimum of four weeks' annual holiday with pay*

Information Requested: *As the ECSR found that Ireland was in conformity in relation to Art 2.3 no information is requested on this provision, **except** insofar as it concerns special arrangements related to the pandemic or changes to work arrangements following the pandemic*

Response

No changes to an employee's annual leave entitlement have been introduced as a result of the Covid-19 pandemic. The Organisation of Working Time Act 1997 continues to provide for a minimum four weeks annual leave.

Article 2.4: *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.*

Information Requested: *the ECSR has requested information on this article, concerning any special arrangements related to the pandemic or changes to work arrangements following the pandemic.*

Response

Special arrangements related to the pandemic and changes in work arrangements are set out in the national [Work Safely Protocol](#). The guidance applies to all work sectors.

Question re Non-conformity Article 2.4

In its 2014 conclusions, the Committee found that Ireland was not in conformity with Article 2§4 of the Charter, on the ground that it has not been established that workers exposed to occupational health risks, despite the existing risk elimination policy, are entitled to appropriate compensation measures.

Please find our response below.

Response

In Ireland, occupational safety and health legislation does not venture into the area of compensation for acceptance of exposure to risk.

As stated in our previous report, 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, as set down 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.

Article 2.5: *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;*

In its 2014 conclusion, the Committee found that the situation in Ireland is not in conformity with Article 2.5 of the Charter, on the ground that there are inadequate safeguards to prevent that workers may work for more than twelve consecutive days without a rest period.

Please see our response below.

Response

The Organisation of Working Time Act 1997, which is transposed from the European Working Time Directive sets out the conditions around weekly rest periods for employers and employees in Ireland. Section 13 of the Act states that:

(2) Subject to subsection (3), an employee shall, in each period of 7 days, be granted a rest period of at least 24 consecutive hours; subject to subsections (4) and (6), the time at which that rest period commences shall be such that that period is immediately preceded by a daily rest period.

(3) An employer may, in lieu of granting to an employee in any period of 7 days the first-mentioned rest period in subsection (2), grant to him or her, in the next following period of 7 days, 2 rest periods each of which shall be a period of at least 24 consecutive hours...

The terms of the OWTA are therefore fully in line with the Directive and require that an employee be granted two rest periods of 24 hrs within a 14 day reference period.

This is in line with Article 5 “Weekly rest periods” of the Directive and Article 16 “Reference Periods” which permits a 14 day reference period for Article 5.

Article 18 of the Directive - “*Derogation by Collective Agreement*” - permits derogation from Article 5 by way of collective agreement. It is under this provision that the [Code of Practice on Compensatory Rest](#) was established (subject to the provisions of Section 35 of the OWTA).

The Code of Practice was developed by the Labour Relations Commission and the Social Partners.

The proposed amendment of the Code, as mentioned in previous reports, did not take place as the Code was judged to be in line with the European Working Time Directive which permits derogations from Articles 5 and 16.

Article 2.6: *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.*

Information Requested: *As the ECSR found that Ireland was in conformity in relation to Art 2.6 no information is requested on this provision, **except** insofar as it concerns special arrangements related to the pandemic or changes to work arrangements following the pandemic.*

Response

The Employment (Miscellaneous Provisions) Act 2018 introduced provisions into the Terms of Employment (Information) Act 1994 that the employer must notify the employee in writing, within five days of commencement of employment, of the following core terms of employment:

1. the full names of the employer and the employee;
2. the address of the employer;
3. the expected duration of the contract, in the case of a temporary contract, or the end date if the contract is a fixed-term contract;
4. the rate or method of calculation of the employee's pay;
5. the number of hours the employer reasonably expects the employee to work per normal working day and per normal working week.

The other terms of employment required to be given to the employee under the Terms of Employment (Information) Act 1994 will continue to be required within the existing two month period.

New offences

Two new offences are being introduced.

- (i) An employer who, without reasonable cause, fails to provide an employee with the Day 5 statement within one month of commencement of employment will be guilty of an offence.

- (ii) An employer who deliberately or recklessly provides false or misleading information as part of the Day 5 statement will be guilty of an offence.

Claims to the Workplace Relations Commission (WRC)

Employees who do not receive statements of their core terms of employment within time can bring a claim to the WRC and be awarded up to four weeks' remuneration. An employee must have one month's continuous service with that employer before they are entitled to bring the claim.

Protection against penalisation

The Employment (Miscellaneous Provisions) Act 2018 introduces new provisions (a new section 6C in the 1994 Act) to protect employees against penalisation for invoking their rights under the 1994 Act. Currently there is no penalisation provision under the 1994 Act.

The new provisions provide that an employer shall not penalise or threaten penalisation for

- (i) Invoking any right under the Act
- (ii) Opposing in good faith an action that is unlawful under this Act (e.g. refusing to conspire in falsifying contracts of employment)
- (iii) Giving evidence in any proceedings under this Act (e.g. being a witness for somebody else pursuing a case under the Act in the WRC or Labour Court)
- (iv) Giving notice of the intention of doing any of the above.

It is presumed unless the contrary is proved that the employee pursuing a penalisation case to the WRC or Labour court has acted reasonably and in good faith.

Penalisation is defined broadly in the new legislation to mean any detriment to the employee's terms and conditions of employment including:

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

An employee who believes they have been penalised for invoking a right under the 1994 Act (as amended) may pursue a case to the WRC. The maximum redress that a WRC Adjudication Officer can award under this provision is four weeks' remuneration.

Article 2.7: *to ensure that workers performing night work benefit from measures which take account of the special nature of the work*

Information Requested: *As the ECSR found that Ireland was in conformity in relation to Art 2.7 no information is requested on this provision, **except** insofar as it concerns special arrangements related to the pandemic or changes to work arrangements following the pandemic.*

Response

There have been no amendments made to Section 16 “Nightly Working Hours” of the Organisation of Working Time Act 1997 as a result of Covid-19.

The special arrangements related to the pandemic and changes in work arrangements as set out in the Work Safely Protocol apply equally to night workers.

Article 4 – The right to a fair remuneration

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

Article 4.1: *to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living.*

Question A

a) Please provide information on gross and net minimum wages and their evolution over the reference period, including about exceptions and detailed statistics about the number (or proportion) of workers concerned by minimum or below minimum wage.

Please provide specific information about furlough schemes during the pandemic, including as regards rates of pay and duration. Provide statistics both on those covered by these arrangements and also on categories of workers who were not included

Response

The Low Pay Commission makes recommendations to the Minister for Enterprise, Trade and Employment designed to set a minimum wage that is fair and sustainable.

Since the establishment of the Low Pay Commission in 2015, National Minimum Wage rates have changed as follows:

Year (with effect from)	Minimum hourly rate of pay
1 January 2016	€9.15
1 January 2017	€9.25
1 January 2018	€9.55
1 January 2019	€9.80
1 February 2020	€10.10
1 January 2021	€10.20
1 January 2022	€10.50

The National Minimum Wage (NMW) is the lowest average hourly rate that can be paid by an employer to an employee. There are a number of exceptions to the requirement to pay NMW and these are set out below.

Exemptions

The National Minimum Wage Act 2000 does not apply to:

- (a) a person who is a close relative of the employer (i.e., the spouse, civil partner, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, step-son, step-daughter, grandson, grand-daughter, brother, sister, half-brother or half-sister of an employer),
- (b) a person taking part in a statutory apprenticeship (e.g., an apprentice printer, plumber, carpenter/joiner, electrician), or to
- (c) Non-commercial activity or work engaged in by prisoners under the supervision of the governor or person in charge of the prison concerned.

Sub Minima Rates

The Low Pay Commission undertook a review of the Sub-Minima rates as part of its work programme and recommended, in 2017, abolishing the training rates and simplifying the youth rates by moving to age related as opposed to experience-based rates.

The Commission's recommendations were accepted by Government and were introduced as part of the Employment (Miscellaneous Provisions) Act 2018. The Low Pay Commission commissioned research by the Economic and Social Research Institute (ESRI) and consulted widely on this matter before making its recommendations.

The following age-based rates will apply from the 1 January 2022:

Current Rates of the National Minimum Wage (NMW)

	Category of Worker	Effective from 1 Jan 2022	% of minimum wage
Adult Rate	Adult worker	€10.50	100 %
Age-based Rates	Aged under 18	€7.35	70 %
	Aged 18	€8.40	80 %
	Aged 19	€9.45	90 %

Board and Lodgings

If an employee receives food (known as board) and accommodation (known as lodgings), from an employer, this may be taken into account in the minimum wage calculation. The maximum rates (which will come into effect on the 1 January 2022) which may be taken into account are as follows:

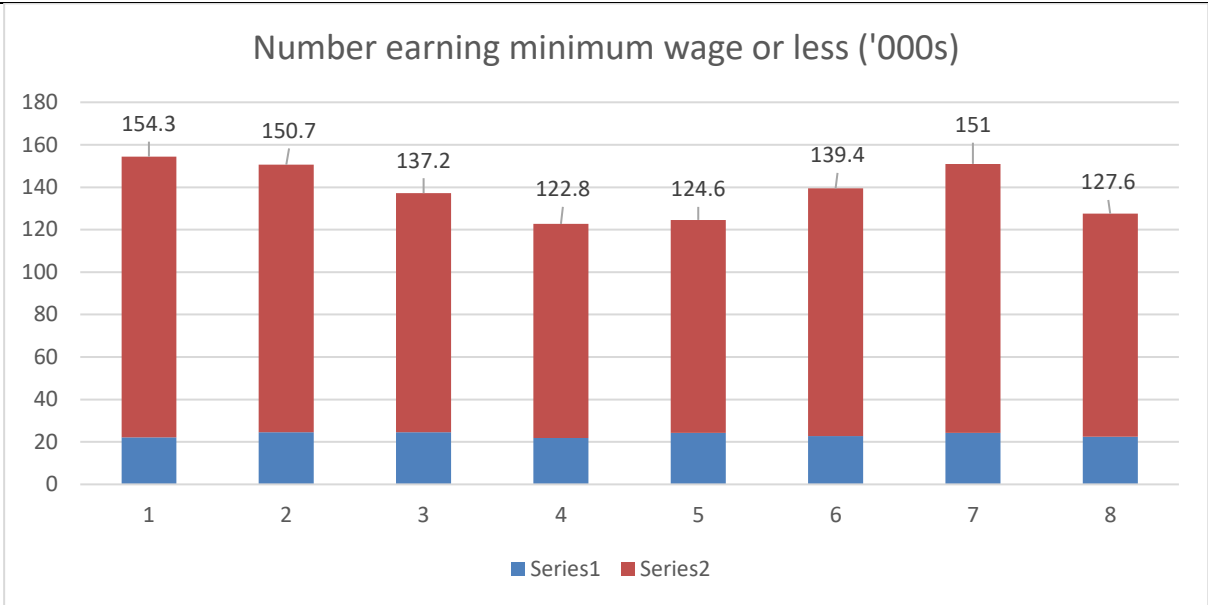
- €0.94 per hour worked for board only,
- €24.81 for lodgings only per week, or €3.55 per day

These rates are reviewed annually in the context of recommendations on the national minimum wage rate.

Numbers of workers earning the national minimum wage

The below figure shows that the numbers of workers earning the minimum wage or less, has declined from 154,300 in Q4, 2016 to 127,600 in Q4, 2020. The share of workers on the minimum wage or less as a percentage of the total labour force has reduced from 9.3% in Q4, 2016 to 6.8% in Q4, 2020.

Over the last year both the share of workers and the absolute number on or below the minimum wage has stayed more or less stable despite the coronavirus, with relatively little change between Q4, 2019 and Q4, 2020.



Share of Employees Classified by National Minimum Wage Earnings Status

Furlough Schemes

Temporary Wage Subsidy Scheme (TWSS)

The Office of the Revenue Commissioners operated the Temporary Wage Subsidy Scheme (TWSS) from 26 March 2020 to 31 August 2020. The TWSS replaced the Employer COVID-19 Refund Scheme which operated for the previous two weeks.

TWSS enabled employers affected by the pandemic to give significant supports directly to their employees and keep their employees on the payroll throughout the pandemic. This meant employers could retain links with employees for when business picked up after the crisis.

Employers who were able to do so could make an additional payment with each wage subsidy to employees, provided the additional payment together with the subsidy did not exceed their January/February 2020 average net weekly pay.

The Office of the Revenue Commissioners reimbursed the employer for the wage subsidy they paid to employees after receipt of the payroll submission.

To qualify an employer must have been:

- experiencing significant negative economic disruption due to COVID-19
- able to demonstrate, to the satisfaction of the Office of the Revenue Commissioners, a minimum of a 25% decline in turnover or customer orders in quarter 2 2020 versus quarter 1 2020 or quarter 2 2019
- unable to fully pay normal wages and normal outgoings
- retaining their employees on the payroll, some of whom may have been:
 - temporarily not working
 - on reduced hours
 - on reduced pay

The TWSS was initially confined to employees:

- who were on the employer's payroll as at 29 February 2020, and
- for whom a payroll submission was made to the Office of the Revenue Commissioners in the period from 1 February to 15 March 2020. This latter date was extended to 1 April for claims for pay dates from 24 April 2020.

The Office of the Revenue Commissioners implemented changes to the TWSS which accommodated a distinct cohort of employees returning to work who were not on their employer's payroll on 29 February 2020 and were returning to work:

- following a period of Maternity, Adoptive, Paternity, Parental or related unpaid leave
- having been in receipt of, for the month of February 2020, a payment by the Department of Social Protection (DSP) for:
 - Health and Safety Benefit
 - Parent's Benefit

- Illness Benefit

Employers could include apprentices who were:

- on an apprenticeship education and training programme run by the State training agency SOLAS; and
- not on their main employer's payroll in February 2020

An employee who was claiming the Pandemic Unemployment Payment (PUP) from the Department of Social Protection (DSP) could not be paid a subsidy by the employer. If an employee had been previously laid off and re-hired, the employee qualified for the TWSS once their PUP ceased.

Any employer that had registered with the Office of the Revenue Commissioners for the Employer COVID-19 Refund Scheme was automatically registered for the scheme. Other employers or their agents could register for the TWSS through myEnquiries in Revenue Online Service (ROS). myEnquiries is a secure online service that allows users to send, receive and track correspondence to and from the Office of the Revenue Commissioners.

Employers were required to make a self-declaration for eligibility. The declaration by the employer was not a declaration of insolvency but simply a declaration which stated that, based on reasonable projections, there will be, as a result of disruption to the business caused or to be caused by the Covid-19 pandemic, a decline of at least 25% in the future turnover of, or customer orders for, the business for the duration of the pandemic and that as a result, the employer cannot pay normal wages and outgoings fully but nonetheless wants to retain its employees on the payroll.

The TWSS operated in two phases:

1. Transitional phase (26 March to 3 May 2020)

The TWSS initially refunded employers €410 per each qualifying employee per week, regardless of the employee's income. The employer then calculated the

subsidy due to the employee and retained the excess funds for future recoupment by the Office of the Revenue Commissioners.

The maximum wage subsidy was calculated using the:

- employee's Average Revenue Net Weekly Pay (ARNWP) for January and February 2020
- additional gross, 'top-up', payment from the employer.

The employer was to 'taper' the subsidy payment to ensure that the net-weekly pay (additional payment and wage subsidy) of the employee did not exceed their ARNWP or €960 per week.

When an employer ran their payroll for each employee they needed to:

- set Pay Related Social Insurance (PRSI) Class to J9 (nil employee PRSI and 0.5% employer PRSI)
- enter a non-taxable amount up to 70% of the employee's ARNWP to either a maximum of:
 - €410 per week where the average net weekly pay was less than or equal to €586
 - €350 per week where the average net weekly pay was greater than €586 and less than or equal to €960
- include in Gross Pay the amount of:
 - €0.01 if they were not making any additional gross payment
 - the additional payment
 - include pay frequency

From 16 April 2020, employers could claim a subsidy for employees with an ARNWP greater than €960 whose current pay was less than €960 where their earnings had been reduced by:

- less than 20%, no subsidy was payable

- between 20% and 39%, a subsidy of up to €205 was payable
- 40% or more, a subsidy of up to €350 was payable

2. Operational phase (4 May to 31 August 2020)

New rates were applied to payrolls submitted after 4 May, with a pay date on or after that date. There was no backdating of the new rates. The new arrangements were subject to the tiering and tapering rules.

For employees whose pre-COVID average net-weekly pay:

- did not exceed €412 per week, an 85% subsidy to a maximum of €350, was payable
- was more than €412 per week but not more than €500, a flat-rate subsidy of €350 was payable
- more than €500 per week but not more than €586, a 70% subsidy was payable, up to the maximum cap of €410
- more than €586 per week but not more than €960 and the additional payment by the employer equated to an amount:
 - up to 60% of the employee's net-weekly earnings, a subsidy of €350 was payable
 - more than 60% but not more than 80% of the employee's net-weekly earnings, a subsidy of €205 was payable
 - that was more than 80% of the employee's net-weekly earnings, no subsidy was payable

Where employees previously earned more than €586 net per week, tapering of the subsidy applied where the additional gross payment and wage subsidy exceeded the ARNWP.

This was calculated by subtracting the additional gross payment from the ARNWP. The tapering ensured no employee was better off under the TWSS. In some cases, an employer paid an additional gross payment, which when added to the weekly

wage subsidy did not exceed the ARNWP per week and in these cases, tapering of the wage subsidy was not applied.

The Office of the Revenue Commissioners provided employers a Maximum Weekly Wage Subsidy (MWWS) for each qualifying employee. This was based on the employee's ARNWP in January/February 2020. Where an individual had more than one employment, Revenue provided the MWWS to each employer.

The Office of the Revenue Commissioners credited employers with the TWSS paid to each employee based on:

- the information provided in payroll submissions
- adherence to the maximum limits.

Income Tax (IT) and Universal Social Charge (USC) were not applied to the wage subsidy made through the payroll. However, these payments were liable to IT and USC by way of an end of year review on the employee.

The payment was not liable to Employee Pay Related Social Insurance (PRSI). The Office of the Revenue Commissioners placed all employees that received payments under the TWSS on a week 1 rather than a cumulative basis to mitigate the possible impact on the employee's End of Year review. Notifications to employers to operate the Week 1 basis were available in ROS from 21 June 2020.

In an End of the Year Review an employee's tax liability may be reduced or covered by:

- any unused tax credits
- additional tax credits they can claim, for example health expenses
- Employer's PRSI did not apply to the wage subsidy and was reduced from 11.05% to 0.5% on any additional payment

There are penalties for:

- self-declaring incorrectly

- not providing funds to employees
- non-adherence to the Office of the Revenue Commissioners and any other relevant guidelines

After taking part in the TWSS an employer might have reviewed their position and the economic impact of the pandemic. If after this review they considered that they did not meet the qualifying criteria they should have immediately ceased claiming the subsidy.

The Office of the Revenue Commissioners conducted compliance checks on all employers who availed of the TWSS. The Office of the Revenue Commissioners contacted all employers to confirm that:

- they met the qualifying criteria
- their employees received the correct amount of subsidy
- they correctly recorded the subsidy amount in employee payslips

Letters issued to employers and their agents, where relevant, mainly through their ROS Inbox. The compliance programme also:

- addressed any identified issues about the operation of Real Time PAYE by employers over 2019 and 2020
- provided an opportunity for employers to address any other outstanding tax issues
- The Office of the Revenue Commissioners required evidence of the assumptions supporting the original self-assessment of eligibility. If the basis of the assumption was:
 - reasonable, the Office of the Revenue Commissioners did not seek to claw-back the subsidy refunded for the original period
 - not reasonable, the subsidy was repayable and the payment was liable to PRSI

A list of the names and addresses of those who participated in TWSS has been published on [revenue.ie](https://www.revenue.ie).

In 2020, subsidies totalling €2.8 billion (gross) were paid to 66,370 employers in respect of approximately 678,000 employees. This represents an average payment of approximately €4,100 per employee.

Employment Wage Subsidy Scheme (EWSS)

The Employment Wage Subsidy Scheme (EWSS) replaced the Temporary Wage Subsidy Scheme (TWSS) from 1 September 2020. The EWSS will run until 30 April 2022.

The EWSS is an economy wide scheme which provided a subsidy to eligible employers for the payment of wages to eligible employees. The introduction of the scheme was provided for in the Financial Provisions (COVID-19) (No.2) Act 2020 (Act No. 8 of 2020), which was signed into law on 1 August 2020.

The Office of the Revenue Commissioners publish guidance on the operation of the EWSS regularly. Flat rate subsidies, whose rates were changed over the term of the scheme, are paid based on an employee's gross wages as follows:

1 September 2020 to 19 October 2020

Gross pay per week	Subsidy Rate
< € 151.50	Nil
€ 151.50 to € 202.99	€151.50
€ 203 to € 1,462	€203
> € 1,462	Nil

20 October 2020 to 30 September 2021

Gross pay per week	Subsidy Rate
< € 151.50	Nil
€ 151.50 to € 202.99	€ 203
€ 203 to € 299.99	€ 250
€ 300 to € 399.99	€ 300
€ 400 to € 1,462	€ 350
> € 1,462	Nil

The scheme also allows for the application of an employer PRSI rate of 0.5% (normal rates are 8.8% or 11.05%) on wages where a subsidy is being paid.

To be eligible an employer was required to:

- have 'Tax Clearance' - a status granted where all tax filings and payments are up-to-date, on registration and while subsidies are being claimed
- be able to demonstrate that it will experience a 30% reduction in the value of turnover or customer orders between period 1 and period 2 as a result of Covid.

Employees are eligible for EWSS if they are in receipt of weekly gross wages between €151.50 and €1,462 excluding:

- Proprietary directors (those who own more than 15% of the share capital) who were not employed and paid wages between 1 July 2019 and 30 June 2020;
- Proprietary directors of more than one eligible company – only one company can claim;
- Connected parties (brothers, sisters, linear ancestors, linear descendants, aunts, uncles, nieces or nephews of an individual or their spouse) who were not employed by and paid wages between 1 July 2019 and 30 June 2020;

- Employees working in a business division or related entity not expected to suffer a 30% reduction; or
- Persons employed other than for business purposes e.g. Domestic employees

Statistics

Live Register figures for the different COVID-19 Pandemic support schemes can be accessed and downloaded on Ireland's Central Statistics Office (CSO) website.

The following links provide details of persons on the Live Register in receipt of the Pandemic Unemployment Payment (PUP) and supported by the Temporary Wage Subsidy Scheme (TWSS) or Employment Wage Subsidy Scheme (EWSS), classified in a number of ways such as by gender, age group, county and nationality.

<https://data.cso.ie/table/LRM20>

<https://data.cso.ie/table/LRW13>

<https://data.cso.ie/table/LRW14>

<https://data.cso.ie/table/LRW15>

[Note: Click on the links followed by the “View” button. The full tables can also be downloaded by clicking the “Download” button.]

The Live Register is compiled from returns from each of the Department of Social Protection's Local Offices. It comprises of persons up to 65 years of age in the following classes:

- All claimants for Jobseeker's Benefit (JB) excluding systematic short-time workers.
- Applicants for Jobseeker's Allowance excluding small holders/ farm assists and other self-employed persons.

- Other Registrants including applicants for credited Social Welfare contributions but excluding those directly involved in an industrial dispute.

The Live Register is not designed to measure unemployment. It includes part-time workers (those who work up to three days per week), seasonal workers and casual workers entitled to Jobseeker's Benefit or Allowance.

Question B

b) The Committee also requests information on measures taken to ensure fair remuneration (above the 60% threshold, or 50% with the proposed explanations or justification) sufficient for a decent standard of living, for workers in atypical jobs, those employed in the gig or platform economy, and workers with zero hours contracts.

Please also provide information on fair remuneration requirements and enforcement activities (e.g. by labour inspectorates or other relevant bodies) as well as on their outcomes (legal action, sanctions imposed) as regards circumvention of minimum wage requirements (e.g. through schemes such as sub-contracting, service contracts, including cross-border service contracts, platform-managed work arrangements, resorting to false self-employment, with special reference to areas where workers are at risk of or vulnerable to exploitation, for example agricultural seasonal workers, hospitality industry, domestic work and care work, temporary work, etc.).

Response

Fair Remuneration / Adequacy of minimum wages

While the Low Pay Commission considers the adequacy of the national minimum wage as part of its annual deliberations, there are two initiatives underway that specifically consider the issues of fair remuneration / adequacy of minimum wages.

Living Wage

The current Programme for Government makes the commitment to “*progress to a living wage over the lifetime of the Government*”. The Low Pay Commission has been asked to begin examining the issues around this commitment and to make recommendations on the best approach to achieving it within the lifetime of the Government, as part of its work programme for 2021.

The report will consider the policy, social and economic implications of a move to a living wage and the process by which Ireland could progress towards a living wage.

It will do this by looking at international evidence on living wages, examining different calculation methods, and examining the policy implications of moving to a living wage in Ireland.

The recommendations in the Commission's report will inform the Government on the best practical approach to progress to a living wage in Ireland. While the living wage initiative is being considered, the Government will continue to be guided by the recommendations of the Low Pay Commission with regard to any future changes in the minimum wage.

Terms of Reference for Living Wage Study

The Low Pay Commission understands that a living wage may be defined as the minimum income necessary for a single adult worker in full time employment, with no dependents, to meet his or her basic needs and afford a minimum acceptable standard of living.

The Low Pay Commission has decided to commission a study in order to inform their recommendations to Government on the best approach to achieving the Programme for Government commitment. This study will examine the design of a living wage in an Irish context and consider the policy, social and economic implications of a move to a 'living wage' and the process by which Ireland could progress towards a 'living wage'.

1. National and International Experience of a Living Wage

Review the national and international experience and research around a living wage, including the objectives of a living wage, for example, to ensure a socially acceptable standard of living while protecting employment. Outline the approach, design and implementation process experienced in other countries, similar to Ireland, and assess their economic and social impacts.

2. A Living Wage in Ireland

Examine how a living wage could be calculated in the Irish context and provide the rates implied from the different methods of calculation. The study should examine the following:

- a living wage as a percentage of the country's median wage, taking into consideration any possible distorting effect of Multi-National Companies (MNC's) on the median wage in Ireland versus other countries
- a living wage based on the cost of achieving a minimum standard of living
- a combination of methods, such as a median wage target with periodic reviews to assess in-work poverty and income adequacy for living wage workers
- consider whether a living wage should be related to the age of a worker
- consider the option of having a different regional or sub national rates, for example the possibility of a Dublin rate
- consider the impact of Covid 19 on the data sets that are being relied upon for the research and the appropriateness of same. For example, will the use of the data lead to an artificial skewing of the outcome

3. Policy Implications of Moving to a Living Wage

Examine the policy implications of a move to a living wage in Ireland, including:

- review the national and international evidence on the impact of the introduction of a living wage at the levels implied at point 2, on employment, hours of worked, consumer prices, and other relevant margins of adjustment
- consider how a living wage at each of the rates implied would be expected to change the overall wage distribution and the wages of different groups of employees
- consider the impact of a living wage at each of the rates implied on in-work poverty
- consider how a living wage at each of the rates implied would be expected to change labour costs and total costs at an economy wide level and across sectors

- consider over what length of time should a living wage be introduced in Ireland and how changes in the living wage (as measured in 2) in the intervening period be dealt with
- examine possible interactions between a living wage and other policy instruments, such as tax rates, social insurance rates, social policy and (if calculated on a cost-of-living basis) health, education, and housing policy
- examine the potential impact that a living wage would have on other fiscal and social policy instruments. For example, the possibility of lower supplementary welfare payments if a living wage lowered in-work poverty, higher revenues if a living wage increased productivity, consumer demand, purchasing power

4. Moving Towards a Living Wage in Ireland

Informed by national and international evidence, outline a process, method, or forum by which Ireland could progress towards achieving a living wage, including the following:

- consider over what length of time a living wage should be introduced in Ireland
- consider whether there should be a provision for slowing down / pausing wage increases during recession and speeding them up during expansions, such that the target could be met over the business cycle
- consider if there should be a provision for a periodic evaluation of the impact of a living wage
- consider whether a living wage should be statutory or non-statutory

Proposal for a Directive on Adequate Minimum Wages

Ireland continues to contribute positively to discussions on the Proposal for a Directive on Adequate Minimum Wages in the European Union (COM (2020) 682 final).

The proposal seeks to establish a framework to improve the adequacy of minimum wage and would require Member States to put in place the conditions for minimum wages to be set at adequate levels.

At EPSCO on 6th December 2021, the Council agreed its [position](#) on this proposal to begin negotiations with the European Parliament.

Enforcement Activities

The Workplace Relations Commission (WRC) Inspections Service carry out inspections at employers' workplaces to check compliance with employment legislation in areas such as in national minimum wage, working time and rest breaks. They also have powers to investigate compliance with Employment permit obligations. (See Annex 1 for details of inspection activity for the reference period).

Zero Hours and False Self-Employment

In Ireland, zero hours contracts are prohibited in most circumstances under Employment Miscellaneous Provisions Act 2018. Please see our response to Article 4.2 Question A further below for more detail.

False Self-Employment in Ireland is addressed in our response to Article 4.1 Question C.

There are different statutory bodies in place that make determinations on the employment status of a person for the purpose of PRSI, tax and employment rights.

These bodies are:

- the Department of Social Protection, which determines employment status with a view to deciding the appropriate class of PRSI for an individual,
- The Office of the Revenue Commissioners, where employment status determines tax treatment,
- The adjudication service of the WRC, which determines employment status as a preliminary issue when adjudicating on employment rights complaints.

Cases of suspected bogus sub-contracting, service contracts including cross-border service contracts, platform-managed work arrangements and false self-employment,

encountered by the WRC Inspectorate are referred to Department of Social Protection and the Office of the Revenue Commissioners.

Question C

c) Please also provide information on the nature of the measures taken to ensure that this right is effectively upheld as regards the categories of workers referred to in the previous question (b) or in other areas of activity where workers are at risk of or vulnerable to exploitation, making in particular reference to regulatory action and to promotion of unionisation, collective bargaining or other means appropriate to national conditions.

Zero Hours

In Ireland, zero hours contracts are prohibited in most circumstances under Employment Miscellaneous Provisions Act 2018. Please see our response to Article 4.2 Question A for more detail.

False self-employment

In Ireland, there is a wide range of ways to work and to operate a business. Specific legislative protections for workers apply to each type, including self-employment, full-time employment, part-time employment, temporary agency work and fixed-term contracts.

The employment and social protections available to a worker generally depend on the individual's employment status. Currently in Ireland, a binary system exists in relation to employment status, whereby an individual is either self-employed or an employee. No 'middle ground' status exists for platform workers or any other category of worker.

The status affects the company/platform and the worker in three key ways:

- **Social Security:** The social security rate for self-employed workers is the same as that contributed by an employee (4%); however, the

company/platform benefits in the former case by avoiding the obligation to pay the employer rate (currently 8.8-11.05%)

- **Tax:** self-employed individuals are treated on a self-assessment basis by the tax authorities
- **Labour law:** Generally, employees are covered by the full range of labour law protections. Self-employed are generally only covered by health & safety legislation (when related to company premises/customers etc), equality/equal status legislation with minimum access to labour law protections.

Decisions in relation to employment status are made by three different organisations in Ireland. The Department of Social Protection decides employment status for the purposes of social security contributions, the Office of the Revenue Commissioners decides in relation to tax status and the Workplace Relations Commission (WRC) Adjudication Service decides in relation to labour law.

To improve awareness of the differences between employee and self-employed status, a working group consisting of the Department of Social Protection, the Office of the Revenue Commissioners and the WRC updated the existing Code of Practice on determining employment status. The revised Code was published in July 2021 - [Code of Practice on Determining Employment Status](#).

The Department of Social Protection has brought a new focus to investigating employment status and has established a unit specialising in this area. The Department of Social Protection, the Office of the Revenue Commissioners and the WRC commenced discussions with a view to assessing how the three decision-making bodies could streamline their work in the area of employment status, in order to improve the service for workers and employers.

The misclassification of a worker as being self-employed when their terms and conditions mean that they are, in reality, employees, is a matter of concern. Misclassification reduces contributions to the Social Insurance Fund and excludes

workers from full Pay Related Social Insurance (PRSI) and employment rights protections.

It is also a criminal offence under Section 252 of the Social Welfare Consolidation Act 2005 for an employer to knowingly and falsely classify a person as being self-employed, subject to a penalty on conviction of up to three years' imprisonment.

In order to address concerns relating to a false self-employment the Department of Social Protection has established a dedicated team of Social Welfare Inspectors to investigate employment arrangements across all sectors.

Where misclassification occurs, PRSI and tax must be paid for the full period concerned. As there are no limits on the amount of retrospective PRSI or tax that may be due, the amounts owed can be substantial.

The Code acknowledges the existence and significant value to the economy of genuine self-employment. Currently there are over 300,000 self-employed workers in the Irish economy. The Code is not intended to bring genuinely independent contractors into the employee category.

Regarding the employment status of platform workers there may be instances where an individual believes they are being deprived of employment rights applicable to employees. In these cases they may refer a complaint to the Workplace Relations Commission (WRC) where the matter can be dealt with by way of mediation or adjudication leading to a decision that is enforceable through the Court system. WRC inspectors can also be asked to investigate certain breaches.

The Competition (Amendment Act) 2017 was the first time that a statutory definition of what constitutes 'false' or 'fully dependent' self-employment has been laid down in Irish law and also included amendments to allow certain categories of self-employed workers the right to collective bargain. More detail below.

The Competition (Amendment Act) 2017

The Competition (Amendment Act) 2017 amended Section 4 of the Competition Act 2002 to provide a specific exemption for three named categories of self-employed workers (listed below) to allow these workers the right to bargain collectively with employers in relation to working conditions and terms of employment, including pay rates:

- Voiceover Actors;
- Session musicians; and
- Freelance Journalists

The 2017 Act also provides a mechanism which could, in strictly defined circumstances, allow other groups of self-employed workers to bargain collectively in the future.

In addition, two 'relevant categories' of self-employed workers are defined in the 2017 Act: false self-employed workers and fully dependent self-employed workers.

This is the first time that a statutory definition of what constitutes 'false' or 'fully dependent' self-employment has been laid down in Irish law. While these definitions do not extend beyond the 2017 Act, they will likely be relied on in future disputes over whether a worker is actually an employee rather than an independent contractor.

The definition of false self-employed worker under the 2017 Act follows closely ECJ case law in the Dutch Musicians case (C-413/13 FNV Kunsten Informatie en Media v Staat der Nederlanden, 4 December 2014).

A 'false self-employed worker' is defined as an individual who— (a) performs for a person ('other person'), under a contract (whether express or implied and if express, whether orally or in writing), the same activity or service as an employee of the other person, (b) has a relationship of subordination in relation to the other person for the duration of the contractual relationship, (c) is required to follow the instructions of the

other person regarding the time, place and content of his or her work, (d) does not share in the other person's commercial risk, (e) has no independence as regards the determination of the time schedule, place and manner of performing the tasks assigned to him or her, and (f) for the duration of the contractual relationship, forms an integral part of the other person's undertaking.

The definition of a fully dependent self-employed worker under the 2017 Act follows International Labour Organisation (ILO) deliberations. A 'fully dependent self-employed worker' is defined as an individual— (a) who performs services for another person (whether or not the person for whom the service is being performed is also an employer of employees) under a contract (whether express or implied, and if express, whether orally or in writing), and (b) whose main income in respect of the performance of such services under contract is derived from not more than 2 persons.

The 2017 Act provides that trade unions may apply to the Minister for Enterprise, Trade and Employment to permit groups of self-employed workers who fall within the above definitions to act collectively.

The onus is on the Trade Union making the application to show that the self-employed workers they represent fall within the above definitions and that the prescribing of such a class of workers is in line with the 2017 Act. The provision has not been used by any trade union representing the specified groups since the legislation came into force in 2017.

***Sectoral Employment Orders (SEO), Employment Regulation Order (ERO),
Joint Labour Committees***

More generally, Sectoral Employment Orders (SEOs) are a wage setting mechanism provided for in the Industrial Relations (Amendment) Act 2015.

Employers and Unions that are substantially representative of a Sector can jointly or separately ask the Labour Court to review terms and conditions in a Sector. Such a review involves a public consultation process.

The Industrial Relations (Amendment) Act 2015 sets out principles and policies which the Labour Court must have regard to when making its recommendation. SEOs are legally binding on the Sectors to which they apply and their provisions are enforceable by the Workplace Relations Commission.

There are currently SEOs in place for the Construction Sector and the Mechanical Engineering Building Services Contracting Sector.

Joint Labour Committees (JLCs) are bodies established under the Industrial Relations Acts to provide a process for fixing statutory minimum rates of pay and conditions of employment for particular employees in particular sectors.

JLCs operate in areas where collective bargaining is not well established and wages tend to be low.

An Employment Regulation Order (ERO) is an instrument drawn up by a Joint Labour Committee (JLC). The ERO fixes minimum rates of pay and conditions of employment for workers in specified business sectors: employers in those sectors are then obliged to pay wage rates and provide conditions of employment not less favourable than those prescribed.

Where an ERO applies, a prescribed notice must be posted up in the place of employment setting out particulars of the statutory rates of pay and conditions of employment for the sector.

Any breaches of an Employment Regulation Order may be referred to the Workplace Relations Commission for appropriate action.

There are currently JLCs in place for the following sectors, Agricultural Workers, Catering, Contract Cleaning, Hairdressing, Hotels, Retail Grocery & Allied Trades, Security Industry, English language Schools and Early Years' Service and there are ERO's in place for the Contract Cleaning and Security Industry.

Question D - Non-conformity Article 4.1

In its 2014 Conclusions the committee found that Ireland was not in conformity with Article 4§1 of the Charter on the ground that the reduced national minimum wage applicable to adult workers on their first employment or following a course of studies is not sufficient to ensure a decent standard of living as well as requesting some additional information. Please see our response below.

National Minimum Wage Acts – Sub-minimum Rates

Legislation governing the national minimum wage is set down in the National Minimum Wage Act 2000 and the National Minimum Wage (Low Pay Commission) Act 2015. These Acts provide for the setting of a national minimum wage (NMW) and also provide that in specified circumstances, such as younger workers and trainees, a reduced, sub-minimum rate may be applied.

In September 2015, the Minister for Enterprise, Trade and Employment requested the Low Pay Commission to examine the appropriateness of the sub-minimum rates as provided for in the National Minimum Wage Act 2000 with regard; in particular, to their impact on youth unemployment rates and participation in education.

The Commission undertook a consultation process on this subject in line with its evidence-based approach to making recommendations to Government. The consultation process was advertised nationally 4th December 2015 seeking submissions from interested parties. The Commission received 15 submissions in total.

The Commission's report considered the abolition of youth rates but concluded that the rates would then no longer reflect any recognition of the difference between a young inexperienced worker and a more experienced colleague, which could lead to employers no longer seeing a value in hiring young people (and potentially impact on youth employment rates).

The Commission also concluded that abolishing youth rates could potentially act as an incentive for young people to leave education and take up employment, which could have a negative impact on their long-term prospects.

The Commission's final report was published on 20 February 2018 and recommended the abolition of trainee rates.

As part of its consultation process, the LPC examined all available evidence and submissions, and considered a range of options. Ultimately, the Commission recommended the abolition of training rates. The Commission had heard evidence in submissions of the training rates being paid in order to reduce wage costs rather than as part of a structured training programme.

The Commission found that the lack of clear definitions around training rates left them open to abuse. In light of these considerations and the low usage of the training rates the Commission was of the view that training rates should be abolished. The Commission encouraged sectors to register for state approved apprenticeship programmes, which are under the remit of the Department of Education and Skills, if they felt that a period of structured training was required.

In its report the Commission also recommended simplifying the rates of minimum wage for those aged under 18 to 20 as follows:

- Employees under 18 would receive a minimum of 70% of the NMW
- Employees aged 18 would receive a minimum of 80% of the NMW
- Employees aged 19 would receive a minimum of 90% of the NMW
- Employees aged 20 and over would receive the full NMW.

These recommendations were accepted by Government and the amendments to make the necessary legislative changes to the National Minimum Wage Act 2000 were implemented via the Employment (Miscellaneous Provisions) Act 2018. The changes came into effect on 4 March 2019.

Section 41 National Minimum Wage Act - Exemptions

In its 2014 conclusions regarding Section 41 of the National Minimum Wage Act the Committee asked that the next report contained information on the practical application of exemptions and reserved its position.

In its conclusions the Committee stated that the Labour Court may grant an exemption regarding the payment of the minimum wage “*despite the objection of the majority of the employees concerned or of their representatives.*”. Please see our response below.

It is important to note that the Section 41 of the Act specifies that before granting an exemption, the Labour Court must be satisfied that the employer has entered into an agreement with the majority of employees whereby they consent to:

1. the application for exemption being made and
2. to abide by any decision the Labour Court may make in the matter.

Therefore, in order to obtain an exemption, the employer must be able to show that there is an agreement in place between it and the majority of employees consenting to the application being made and agreeing to be bound by the Court’s decision.

It is not correct to say that that Labour Court may grant an exemption “*despite the objection of the majority of the employees concerned or of their representatives.*” as the Committee stated in its 2014 conclusions.

The Labour Court has not heard any applications looking for an exemption to employers under Section 41 of the National Minimum Wage Act 2000 since its enactment.

Civil Servants and Public Sector Workers

In its 2014 conclusions, the Committee noted that the NMW is applicable in all branches of the private sector and asked that the next report provide information on the remuneration of civil servants, employees and workers in the public sector.

Please see our response below.

Any adjustments to the salaries of civil and public servants are set out in [BUILDING MOMENTUM - A new public service agreement, 2021-2022](#).

The Department of Public Expenditure's (DPER) Circular 12/2020 sets out the adjustments to the pay of certain civil servants on 1 October 2020 as provided for under the Public Service Pay and Pensions Act 2017 and is available [here](#).

All adjustments to Civil/Public Service salary scales comply with the national minimum wage.

Article 4.2: *to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases.*

Question A

a) *Please provide up to date information on the rules applied to on-call service, zero-hour contracts, including on whether inactive periods of on-call duty are considered as time worked or as a period of rest and how these periods are remunerated.*

Response

On Call Time

The Organisation of working Time Act 1997 defines "working time" as any time that the employee is:

(a) At his or her place of work or at his or her employer's disposal, and

(b) Carrying on or performing the activities or duties of his or her work

The definition encompasses all hours of work including normal contracted hours, night work, overtime, shift work, casual work and any additional or unforeseen hours that may arise.

Ultimately an employer must be cognisant of all the hours worked by an employee (including hours worked for another employer) in ensuring that the provisions of the OWTA are not infringed.

Recent rulings of the ECJ have established that stand-by time must be regarded as working time in its entirety when the constraints imposed on the person during stand-by time significantly affect that person's ability to freely manage his time during which his professional services are not required.

In the absence of such constraints, only the working time when actual work is performed must be classified as working time. Ultimately whether on call/standby time is considered 'working time' is dependent on the particular employee's employment situation and the constraints imposed upon them.

Zero Hours

The Employment (Miscellaneous Provisions) Act 2018 amended Section 18 of the Organisation of Working Time Act 1997 (OWTA) to prohibit zero-hour contracts except in the following circumstances:

- Where the work is of a casual nature;
- Where the work is done in emergency circumstances; or
- Short-term relief work to cover routine absences for the employer.

The 2018 Act amended Section 18 of the OWTA to provide that the existing compensation payment will be subject to a new minimum payment of three times the national minimum hourly rate of pay or three times the minimum hourly rate of pay

set out in an Employment Regulation Order (if one exists and for as long as it remains in force). This new minimum payment is payable on each occasion an employee, to whom section 18 applies, is called in to work but does not receive the expected hours of work.

The 2018 Act introduced a new right for employees whose contract of employment does not reflect the reality of the hours they habitually work. Such employees are entitled to request to be placed in a band of hours that better reflects the hours they have worked over a 12 month reference period.

An employee requests in writing to be placed in the relevant band of hours. The employer has four weeks to consider the request. The section provides reasonable defences for employers to refuse an employee's request for any one of the following reasons:

- a) the facts do not support the employee's claim,
- b) significant adverse changes have impacted on the business (e.g. loss of an important contract),
- c) emergency circumstances (e.g. business has had to close due to flooding), or
- d) where the hours worked by the employee were due to a genuinely temporary situation (e.g. cover for another employee on maternity leave).

Where the claim is disputed or refused the employee can refer it to the Workplace Relations Commission (WRC) for mediation or adjudication. If the Adjudication Officer finds in the employee's favour the redress will be that they are placed in the appropriate band of hours.

Question B

b) Please explain the impact of the COVID-19 crisis on the right to a fair remuneration as regards overtime and provide information on measures taken to protect and fulfil this right. Please include specific information on the enjoyment of the right to a fair remuneration/compensation for overtime for medical staff during the pandemic and explain how the matter of overtime and working hours was addressed in respect of teleworking (regulation, monitoring, remuneration, increased compensation).

Response

In general employment rights legislation does not provide for overtime. While the Organisation of Working Act 1997 regulates rest breaks and maximum weekly working hours it does not cover overtime payment.

Employees do not have a statutory entitlement to overtime pay. Policy in relation to overtime pay may be decided by the employer and agreed as part of the employee's terms and conditions of employment or through collective agreements negotiated between employers and employee representatives.

A number of employment sectors may have pay and conditions of employment that are regulated by means of Employment Regulation Orders (EROs) or Registered Employment Agreements (REAs), that are legally binding on employers in the sectors to which they apply. A small number of individual firms may also have binding REAs. Some of the EROs/REAs may regulate overtime pay. See more detail in our response to Question C, Article 4.1.

Overtime means work done outside your normal working hours.

There is no legal right to pay for working extra hours and there are no statutory levels of overtime pay. However, many employers pay employees higher rates of pay for overtime.

Employees should check your contract of employment for:

- Whether they are required to work overtime
- The rates of pay for overtime (if any)

Written statement of terms of employment: The "Day 5" statement:

The Employment (Miscellaneous Provisions) Act 2018 provided that from 4 March 2019, an employer must notify each new employee, in writing, within five days of commencement of employment, of the following core terms of employment:

1. the full names of the employer and the employee;
2. the address of the employer;
3. the expected duration of the contract, in the case of a temporary contract, or the end date if the contract is a fixed-term contract;
4. the rate or method of calculation of the employee's pay;
5. the number of hours the employer reasonably expects the employee to work per normal working day and per normal working week.

Full written terms of employment, required to be given to the employee under the Terms of Employment (Information) Act 1994, continue to be required and must be given within the two months from the commencement of employment.

Medical Staff

Health workers were entitled to overtime pay in accordance with the terms of their contracts and national pay policy from the onset of the Covid-19 pandemic.

Special arrangements allowing the payment of overtime were also introduced for certain grades (such as public and community health doctors, specialist registrars in occupational and public health medicine, and GP registrars) that historically did not undertake overtime but have done so in response to the pandemic.

Circulars which were issued by Health Service Executive (HSE) and the Department of Health provided for restoration of Overtime rates to pre FEMPI (Financial Emergency Measures in the Public Interest) levels with effect from 1 July 2021.

Question C

c) The Committee would welcome information on any other measures put in place intended to have effects after the pandemic which affect overtime regulation and its remuneration/compensation. Provide information on their intended duration and the time frame for them to be lifted.

Response

Overtime means work done outside your normal working hours. There is no legal right to pay for working extra hours and there are no statutory levels of overtime pay. However, many employers pay employees higher rates of pay for overtime.

Employees should check their contract of employment for:

- Whether they are required to work overtime
- The rates of pay for overtime (if any)

Certain sectors of employment have higher rates of pay for overtime than for normal hours. This is covered by Employment Regulation Orders and Registered Employment Agreements.

Question D re Non-conformity Article 4.2

In its 2014 and 2016 conclusions, the Committee concluded that the situation in Ireland is not in conformity with Article 4§2 of the Charter on the ground that it has not been established that the right to an increased remuneration for overtime work is guaranteed to all workers as well as requesting additional information. Please see our response below.

Response

As mentioned in our responses above, premia paid for overtime working 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.

The exceptions are those industries/activities, which were covered by Employment Regulation Orders (EROs) or a small number of sector-wide Registered Employment Agreements (REAs), which set down premium rates for overtime working. Most collective agreements contain provisions in relation to remuneration for overtime working.

Supreme Court Decision May 2013

In its judgment delivered in May 2013, (*in McGowan and others v The Labour Court, Ireland and the Attorney General*), the Supreme Court held that Part III of the Industrial Relations Act 1946 was invalid having regard to Article 15.2.1 of the Constitution.

The effect of that decision was to invalidate the registration of employment agreements (REA) previously registered under Part III of the 1946 Act. In consequence the Labour Court no longer had jurisdiction to enforce, interpret or otherwise apply these agreements.

A REA is a collective agreement made either between a trade union or unions and an individual employer, group of employers or employers' organisation, relating to the remuneration or the conditions of employment of workers of any class, type or group. It is binding only on the parties to the agreement in respect of the workers of that class, type or group.

Existing contractual rights of workers in sectors covered by REAs were unaffected by the ruling. Contractual rights can be altered only by agreement between the parties involved.

However, the striking down of the REAs meant that new employees into the Sectors previously covered by REAs could be hired at any rate agreeable between workers and their employers, subject only to the provisions of the National Minimum Wage Acts.

The Industrial Relations Act 2015 attempted to remedy the issues around the 'old' REA process that was struck down as being contrary to the provisions of Article 15.2.1 of the Constitution through the introduction of a mechanism for sectoral wage setting known as Sectoral Employment Orders (SEOs).

The current SEO system was designed to correct the flaws identified by the Supreme Court ruling of McGowan.

An SEO may set out minimum pay rates as well as pension and sick pay schemes for an economic sector. This wage setting mechanism applies across a given economic sector and replaced the previous REA system.

The intent behind the current legislative framework governing the SEO's is to establish minimum rates of pay that reflect the qualifications, skills or knowledge of the workers of a class, type or group (including apprentices); provision for sick leave and pension to apply a sector.

The SEO contains a dispute resolution procedure to apply if a dispute occurs between workers to whom the SEO relates and their employers.

The new framework provides a mechanism whereby, at the request, separately or jointly from organisations substantially representative of employers and/or of workers, the Labour Court can initiate a review of the pay, pension and sick pay entitlements of workers in a sector and, if it deems it appropriate, make a recommendation to the Minister on the matter.

The Court engages in a consultation process inviting submission from any interested parties which it will consider in determining whether to make a recommendation to the Minister.

If the Minister is satisfied that the process provided for in the 2015 Act has been complied with by the Labour Court, s/he shall make the Order but not before the Order is confirmed by both Houses of the Oireachtas. Where such an order is made

it will be binding across the sector to which it relates and will be enforceable by the adjudication service of the WRC.

Where the Minister has made an order in relation to a particular economic sector, the Court cannot consider a request in relation to the same class, type or group of workers in that sector, until at least 12 months after the date of the order, unless the Court is satisfied that exceptional circumstances exist which justify consideration of an earlier request.

Constitutionality of the SEO System

The High Court issued a ruling on June 23 2020 which struck out the part of the 2015 Industrial Relations Act that provides the legal basis for Sectoral Employment Orders, which set minimum pay and conditions for whole sectors of the economy, following investigation by the Labour Court and approval by the Minister and the Oireachtas.

Following an appeal by the Department of Enterprise, Trade and Employment, the Supreme Court in July 2021 upheld the constitutionality of the Sectoral Employment Order wage-setting system, setting aside the High Court Decision.

Since the Supreme Court confirmed that the SEO system is constitutionally robust, two SEOs – one for the Construction Sector and one for the Electrical Contracting Sector – have been approved and signed into law.

Joint Labour Committees

Joint Labour Committees (JLCs) are bodies established under the Industrial Relations Acts to provide machinery for fixing statutory minimum rates of pay and conditions of employment for employees in various sectors.

They may be set up by the Labour Court on the application of (i) the Minister for Business, Enterprise and Innovation or (ii) a trade union or (iii) any organisation claiming to be representative of the workers or employers involved.

A Joint Labour Committee (JLC) is composed of equal numbers of representatives of employers and workers in an employment sector.

The Committee meets under an independent chairman, an Industrial Relations Officer of the Workplace Relations Commission, appointed by the Minister, to discuss and agree proposals for terms and conditions to apply to specified grades or categories of workers in the sector concerned.

If agreement is reached on terms and conditions, the JLC publishes the details and invites submissions from interested parties. If, after consideration of any submissions received, the Committee accepts the proposals it will submit them to the Labour Court for consideration. The Labour Court will then make a recommendation on the adoption of the proposals.

The Court will then forward their recommendation to the Minister and if it is considered appropriate to do so, an order giving effect to such proposals will be made by the Minister. These Orders are known as Employment Regulation Orders (EROs).

The process for setting up a Joint Labour Committee (JLC) requires the co-operation of both sides of industry.

There are currently 8 JLCs in existence covering the following sectors: Agriculture, Catering, Contract Cleaning, Hairdressing, Hotels, Retail Grocery and Allied Trades, English Language Schools, and Security. An establishment order for a ninth JLC was signed by Minister English recently and will come into effect from 1 July 2021.

Of the 8 JLC's only 3 are currently active in the Contract Cleaning, Hairdressing and Security sectors. While the Hairdressing JLC has not yet agreed proposals for an ERO, both the Contract Cleaning and Security JLCs have agreed proposals which were made into Employment Regulation Orders for those sectors.

However, the Security ERO is currently subject to a Stay in the Courts preventing the Minister from giving effect to its provisions, therefore pay rates and terms and conditions in that sector remain unchanged.

The most recently established JLCs are those for the English Language School sector where a Chairperson was appointed on 11 February 2020 and the Early Years sector where an establishment order was signed by Minister English and will come into effect on 1 July 2021.

The process for making an ERO rests on similar policy considerations to those which underpin the SEO process.

With regard to remuneration for overtime work, an Employment Regulation Order (as highlighted above) is an instrument drawn up by a Joint Labour Committee (JLC). The ERO fixes minimum rates of pay and conditions of employment for workers in specified business sectors: employers in those sectors are then obliged to pay wage rates and provide conditions of employment not less favourable than those prescribed.

Where an ERO applies, a prescribed notice must be posted up in the place of employment setting out particulars of the statutory rates of pay and conditions of employment for the sector. Any breaches of an Employment Regulation Order may be referred to the Workplace Relations Commission for appropriate action.

In addition, the Workplace Relations Commission has a [Code of Practice on Sunday working for the Retail Sector](#) which is designed to assist employers, employees and their representatives in observing the 1997 Act as regards Sunday working in the retail trade. The Code contains Guidelines on Compensatory Arrangements for Sunday Working

Article 4.3: *to recognise the right of men and women workers to equal pay for work of equal value*

Question A

a) *Please provide information on the impact of COVID-19 and the pandemic on the right of men and women workers to equal pay for work of equal value, with particular reference and data related to the extent and modalities of application of furlough schemes to women workers.*

Response

For gender, based on Revenue Commissioners data, of the 653,300 employees who availed of EWSS to date, 54% are male and 46% female. Of 664,000 employees who received a subsidy through the TWSS, 58% were male and 42% female.

Statistics regarding remuneration for overtime are gathered by the Irish Central Statistics Office – www.cso.ie. The most recently published data can be found here:

[EHA05 - Average Annual Earnings and Other Labour Costs \(cso.ie\)](#)

The Government made amendments to the Temporary Wage Subsidy Scheme (TWSS) in May 2020 to accommodate the salaries of employees who returned to work after a period of maternity or adoptive leave, and who had not been included in the scheme as initially introduced in March 2020.

Information Requested: *the ECSR found that Ireland was in conformity in relation to Art 4.3 but in its 2014 Conclusions asked if the next report could include information on what the adjusted pay gap is for work of equal value.*

Response

Analysis of the gender pay gap in Ireland

Ireland had an unadjusted gender pay gap of 11.3% in 2018, under the EU unadjusted gender pay gap metric, which is presented as the percentage difference between the average gross hourly earnings of female and male employees as a proportion of men's earnings. This was a reduction on 14.4% in 2017.

Analysis of the 2018 gender pay gap information was published by Eurostat in November 2021 in its report 'Gender Pay Gaps in the European Union – a statistical analysis'.

For Ireland in 2018, characteristics which were found to contribute to widening the gender pay gap were age (+0.4%), job experience (+0.1%), type of employment contract (+0.2%), sector of economic activity (+2.7%), and enterprise control (+0.1%).

The positive gaps in regard to age and job experience means the age and experience level of male employees is on average higher than for women, and more senior and experienced workers tend to get higher pay. The positive gap in regard to sector of economic activity reflects the greater tendency of men to be employed in better-paid sectors than women.

Characteristics contributing to narrowing the gender pay gap were education (-1.7%), occupation (-1.9%), working time (-2.1%), and enterprise size (-1.1%). The negative gaps in regard to education and occupation illustrate the impact of self-selection in the labour market, whereby women who engage in the labour market tender to have a higher education level and take better-paid occupations than men.

The negative gap in regard to enterprise size reflects the tendency of women on average to work in better-paying enterprises of larger sizes. Geographic location had a neutral impact.

After accounting for the above factors, the *unexplained* gender pay gap (which is a different measure to the unadjusted pay gap mentioned earlier) was 14.9%. The unexplained gender pay gap is the proportion of the raw wage gap that remains unexplained by the variation in observable characteristics between males and females.

Eurostat advises that the unexplained gender pay gap is not a measure of pay discrimination, as additional factors not currently measured, such as total working experience and the employee's household situation, are not taken into account. This suggests that other factors in addition to those mentioned above have a strong impact on the size of the gender pay gap in Ireland.

Pay transparency

In line with a Programme for Government commitment to increase pay transparency with a view to reducing the gender pay gap, the Gender Pay Gap Information Act 2021 was signed into law on 13 July 2021.

The Act provides for the Minister for Children, Equality, Disability, Integration and Youth to make Regulations, requiring employers to publish the following:

- the mean and median hourly wage gap, the former reflecting the entire pay range in an organisation and the latter excluding the impact of unusually high earners;
- data on bonus pay;
- the mean and median pay gaps for part-time employees and for employees on temporary contracts, which is relevant as women work part-time to a greater extent than men;
- the proportions of male and female employees in the lower, lower middle, upper middle and upper quartile pay bands, which will show the extent to which men and women are represented at the various pay levels in the firm.

The requirement will initially apply to organisations with 250 or more employees but will extend over time to organisations with 50 or more employees. Organisations will be required to indicate the reasons for any gender pay differentials that are reported. Work on the regulations necessary to give effect to the provisions of the Act has commenced.

Article 4.4: *to recognise the right of all workers to a reasonable period of notice for termination of employment*

Question A

- a) *Please provide information on the right of all workers to a reasonable period of notice for termination of employment (legal framework and practice), including any specific arrangements made in response to the COVID-19 crisis and the pandemic*

Response

Minimum Notice

Under the terms of the Minimum Notice and Terms of Employment Acts, 1973-2001, an employee or employer who intends to terminate a contract of employment must provide the other party with specified minimum notice.

Employees who have been in continuous employment for at least 13 weeks are obliged to provide their employer with one week's notice of termination of employment. If a greater amount of notice is specified in the employee's contract of employment, then this notice must be given.

Employers must give employees, who have been in continuous service, notice dependent on the length of the employee's service, as follows -

Required Notice

Length of Service	Minimum Notice
Thirteen weeks to two years	One week
Two to five years	Two weeks
Five to ten years	Four weeks
Ten to fifteen years	Six weeks
More than fifteen years	Eight weeks

Continuous Service

An employee's service is considered 'continuous' unless he/she is either dismissed or voluntarily leaves his/her job. Continuity of service is not normally affected by strikes, lay-offs or lock-outs, nor by dismissal followed by immediate re-employment.

The transfer of a trade or business from one person to another (a Transfer of Undertakings) does not break continuity of service, and in such cases an employee's service with the new owner includes service with the previous owner. For the purpose of these Acts, an employee who claims and receives redundancy payment in respect of lay-off or short-time is considered to have left his/her employment voluntarily.

Calculation of Service

Periods of absence from the employment due to service with the Reserve Defence Forces are deemed to be periods of service. Absence of up to 26 weeks between consecutive periods of employment count as periods of service if due to lay-offs, sickness or injury, or when taken by agreement with the employer.

A week, or part of a week, when an employee was locked out by his/her employer, or when the employee was absent from work due to a trade dispute in another business, also counts when calculating periods of service. However, any period during which the employee has been absent from work because he/she was taking part in a strike relating to the business in which the employee is employed does not count.

Waiving Right to Notice or Accepting Pay in Lieu

Any provision in a contract of employment for shorter periods of notice than the minimum periods stipulated in the Acts has no effect. The Acts do not, however, prevent an employer or employee from waiving his/her right to notice or accepting payment in lieu of notice. If the employer does not require the employee to work out any part of their notice, the employer is obliged to pay the employee for that period.

Misconduct

The Acts do not affect the right of an employer or an employee to terminate a contract of employment without notice due to the misconduct of the other party.

Making a Complaint

Where an employee considers that their employer or former employer has contravened a provision of the above Acts, they may present a complaint to the Workplace Relations Commission for resolution.

Complaints may be submitted using the Online Workplace Relations Complaint Form, available on the Refer a Dispute/Make a Complaint page. Complaints will be considered and may be referred to a Mediation Officer (subject to the agreement of both parties), who will attempt to reach agreement without engaging in a formal hearing process, or referred to an Adjudication Officer for Hearing.

Appeals arising from an Adjudication Officer's decision, may be appealed to the Labour Court.

Workers continue to have the same general employment rights during COVID-19 including the right of workers to a reasonable period of notice of termination.

Question re Non-conformity Article 4.4

In its previous conclusions the Committee in Ireland is not in conformity with Article 4§4 of the Charter on the ground that the periods of notice applicable to employees and civil servants are inadequate as well requesting some additional information. Please see our response below.

Response

Gross Misconduct

Section 8 of the Minimum Notice and Terms of Employment Act 1973 provides:

8.— Nothing in this Act shall affect the right of any employer or employee to terminate a contract of employment without notice because of misconduct by the other party.

“Gross Misconduct” is not defined by statute, rather it has been defined by case law and its evolution over time both nationally and with reference to the CJEU. The case law definition is “*Where the misconduct is such that it breaches the bond of trust that must exist between employer and employee, to such an extent that it effectively ends the relationship and warrants dismissal without notice*”.

An employer must still follow correct procedure in dismissal however if the outcome leads to dismissal owing to gross misconduct then no notice period is required.

The following is not an exhaustive list and it comes with the warning that every case is different. Even when an employer believes that the employee may be guilty of an act of gross misconduct similar to one of the examples below, they still have to follow the correct procedures before dismissing them.

- Sexual harassment
- Deliberate fraud
- Sleeping at work
- Fighting, physical assault, abuse
- Unable to carry out work tasks due to the consumption of drugs or intoxicants

- Possession of illicit drugs, or their supply or use
- Making a false allegation of injury in the workplace
- Deliberate refusal to carry out legitimate instructions
- Deliberate damage to company property
- Deliberately poor work performance
- Breach of company confidentiality policy by sharing sensitive information with competitors.
- Stealing
- Inappropriate behaviour towards clients
- Use of company property without obtaining prior approval
- Bullying, harassment, victimisation, breach of anti-discrimination policy
- Accepting or offering bribes
- Indecent behaviour
- Major breaches of health and safety rules
- Viewing or downloading pornographic material
- Uploading or downloading software which may pose a threat to the company computer system.

The evolution of case law has established that there are steps which an employer must follow, before dismissing someone for gross misconduct. They must hold a fair hearing and investigate the facts.

This involves holding a fair hearing and affording the accused an opportunity to respond. They must make them aware of the substance of the gross conduct allegations in advance of the hearing.

They must carry out a thorough investigation. This may involve taking statements from witnesses as well as from the accused employee. If there is a potential risk to the business and strong evidence of the alleged misconduct, then an employer should consider suspending the employee on full pay pending the outcome of the enquiry.

Any disciplinary process must follow the rules of natural justice. The Code of Practice on Grievance and Disciplinary Procedures (S. I. 146 of 2000) sets out the principles of fair procedures for employers and employees. While not legally binding, employers should conduct the hearing in accordance with its recommendations.

Any employee dismissed for gross misconduct can challenge the dismissal under the Unfair Dismissals Act 1977. Where the employer has not followed procedure the case will likely to be won by the employee.

Employees working fewer than 18 Hours

In so far as it relates to minimum notice, the Protection of Employees (Part Time Work) Act 2001 and the Terms of Employment Acts 1973, shall be construed together as one and may be cited together as the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Section 8 of the 2001 Act states:

“Each relevant enactment shall apply to a part-time employee in the same manner, and subject to the like exceptions not inconsistent with this section, as it applies, other than by virtue of this Act, to an employee to whom that enactment relates.”

Evolution of the Act

1991: the limitation imposed by subsection (1)(a) of the 1973 Act was reduced from 18 hours to 8 hours under certain circumstances by the Worker Protection (Regular Part-Time Employees) Act 1991 (No.5/1991), section 1(1)(b) and other definitions. The Act was commenced by S.I. No. 75 of 1991.

2001: the 1991 Act was repealed by the Protection of Employees (Part-Time Work) Act 2001 (No. 45/1991), section 5. The Act was commenced by S.I. No. 636 of 2001.

The 1973 Act originally excluded anyone working habitually less than 18 hours from getting notice.

This was reduced to anyone working habitually less than 8 hours by the Worker Protection (Regular Part-Time Employees) Act 1991 (No.5/1991). This meant anyone working 8-18 hours were entitled to the same notice period as an equivalent full time worker.

When the Protection of Employees (Part-Time Work) Act 2001 came into effect it removed the exclusion on anyone working less than 8 hours.

The commencement of the 2001 Act means that any worker is entitled to the same minimum notice period based on their length of service regardless of the hours worked i.e. since 2001 there is no distinction in the treatment of part time workers and equivalent full time workers vis-a-vis notice requirements.

Exclusions

The Terms of Employment Acts 1973 do not apply to the following categories of workers, as provided for in section 3 (1) of that Act:

- employment by an employer of an employee who is the father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother or half-sister of the employer and who is a member of the employer's household and whose place of employment is a private dwelling house or a farm in or on which both the employee and the employer reside;
- employment as a member of the Permanent Defence Forces (other than a temporary member of the Army Nursing Service);
- employment as a member of the Garda Síochána;
- employment under an employment agreement pursuant to Part II or Part IV of the Merchant Shipping Act, 1894.

These cohorts of workers have no statutory entitlement to minimum notice, however all may have such provision under contract law provided for by their contract of employment/service.

No periods of notice have been amended by Order of the Minister for Enterprise, Trade and Employment (section 4, paragraph 4 of the Act).

Probation

Any employee who has been in continuous service for a period of thirteen weeks or more shall have an entitlement to minimum notice applicable to their service as set out in section 4 (2) of the Act of 1973.

There is no exclusion for workers on probation. Civil Servants were brought within the scope of the 1973 act by Civil Service Regulation (Amendment) Act 2005 (No.18/2005), section 26(a).

Employees who have their employment terminated for any reason other than dismissal such as change in ownership of an enterprise, merger or division, temporary incapacity for work; substantial changes in working conditions; bankruptcy or winding up of the employer; and death of the employer will receive an entitlement to the minimum notice applicable to their service as set out in section 4 (2) of the Act of 1973.

There is no mandatory military or national service in Ireland, so there is no applicable provision under this Act. An employee would qualify based on service as above.

Conditions in which workers affected by redundancy or short-term lay-offs are entitled to compensation

The Redundancy Payments Act 1967 (as amended) sets out the obligations and rights of employers and employees in situations where an employee is made redundant.

In order to qualify for a statutory redundancy payment an employee must have 2 years continuous employment with the employer, be in employment which is insurable for all benefits under the Social Welfare Acts and be over the age of 16.

Section 17 of the Act provides that an employer who proposes to dismiss an employee by reason of redundancy must give the employee notice of the redundancy at least 2 weeks before the date of dismissal. Employees may also be entitled to longer periods of notice under the Minimum Notice and Terms of Employment Act 1973, depending on their length of service.

Furthermore the 1973 Act provides that if an employee is made redundant and they are not required to work out the notice or there is no work available, they are entitled to payment in lieu of notice. This is in addition to, not in substitution for, an eligible employee's right to a lump sum redundancy payment.

Section 12 of the Act also provides for the right of an employee to claim redundancy from an employer if they have been placed on layoff or short-time work for four or more consecutive weeks, or for a series of six or more weeks within a period of thirteen weeks of which not more than three were consecutive. The employer has the right to offer a counter-notice to the redundancy claim if they are in a position to offer the employee not less than thirteen weeks unbroken employment.

The employee also has the right to reasonable paid time off to look for new employment within the notice period.

An eligible employee is entitled to two weeks statutory redundancy payment for every year of service, plus a bonus week. The redundancy lump sum calculation is based on the worker's length of reckonable service and weekly remuneration, which is subject to a ceiling of €600 per week.

Reckonable service is service that is to be taken into account when calculating a redundancy lump sum payment. Schedule 3 of the Redundancy Payments Act 1967 provides that a week falling within a period of continuous employment during which an employee was either at work or absent from work for various reasons such as holidays or sick leave, is allowable as reckonable service.

The Act also provides that certain absences in the final three years of employment before redundancy, for example layoff periods, are not allowable as reckonable service. Absences outside the final three years of employment are fully reckonable.

If the reckonable service of an employee is not an exact number of years, the “excess” days are credited as a proportion of a year.

It is the employer’s legal obligation to pay statutory redundancy payments to eligible employees. However, the State provides a safety net for employees to ensure they receive their statutory entitlements in situations where the employer cannot pay statutory redundancy due to financial difficulties or in situations of insolvency. Payments can be made on the employer’s behalf from the Social Insurance Fund and recovery of the debt is sought from the employer.

Article 4.5: *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 these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.*

Question re Non-conformity Article 4.5

In its 2014 Conclusions, the Committee found that Ireland was not in conformity with Article 4.5 and also asked for some additional information. Please see our response below.

Response

An employer is allowed to make the following deductions from an employee’s wage:

- Any deduction required or authorised by law (e.g. PAYE or PRSI)
- Any deduction authorised by the term of an employee's contract (e.g. pension contributions, or particular till shortages)

- Any deduction agreed to in writing in advance by the employee (e.g. health insurance subscription, sports and social club membership subscription)

Special restrictions are placed on employers in relation to deductions (or the receipt of payments) from wages, which -

- a. arise from any act or omission of the employee (e.g. till shortages, bad workmanship, breakages), or
- b. are in respect of the supply to the employee by the employer of goods or services which are necessary to the employment (e.g. the provision or cleaning of uniforms).

Any deduction (or payment) from wages of the kinds described at a. or b. above must satisfy the following conditions -

- i. the deduction (or payment to the employer) must be provided for in the contract of employment in a term whether express or implied and, if express, whether oral or in writing,
- ii. the amount of the deduction (or payment to the employer) from wages must be fair and reasonable having regard to all the circumstances including the amount of the wages of the employee,
- iii. the employee must be given at some time prior to the act or omission, or the provision of the goods or services, written details of the terms in the contract of employment governing the deduction (or payment to the employer) from wages. When a written contract exists, a copy of the term of the contract which provides for the deduction or payment must be given to the employee. In any other case, the employee must be given written notice of the existence and effect of the term.

Any deduction (or payment to the employer) arising from any act or omission of an employee, in addition to meeting the requirements set out at (i) to (iii) above, must satisfy the following conditions:

- iv. the employee must be given particulars in writing of the act or omission and the amount of the deduction (or payment) at least one week before the deduction (or payment) is made,
- v. the deduction (or payment) must be made no later than 6 months after the act or omission became known to the employer. However, if a series of deductions (or payments) are to be made in respect of a particular act or omission, the first deduction (or payment) in the series must be made within the 6 month period.

Where an employer makes a deduction from wages (or receives a payment from the employee) to compensate for loss or damage arising from any act or omission of the employee, the deduction must comply with the conditions set down at (i) to (v) above. In addition, the deduction (or payment):

- vi. must be of an amount not exceeding the loss or damage sustained by the employer,

A disciplinary fine, where provision for such is made in the contract, may be deducted as well as a deduction for loss or damages. Any such fine would, of course, be subject to the conditions set down at (i) to (v)

Any deduction (or payment to the employer) from wages for the supply to the employee of goods or services which are necessary to the employment must meet with the requirements set out at (i) to (iii) above. In addition, any such deduction (or payment) must comply with the following conditions:

- vii. the deduction (or payment) must not exceed the cost to the employer of providing the goods or services. In other words, the employer should not stand to profit by the sale of the goods or services to the employee,
- viii. the deduction (or payment) must be made no later than 6 months after the supply of the goods or services to the employee. However, if a series of

deductions (or payments) are to be made in respect of the supply of a particular good or service, the first deduction (or payment) in the series must be made within the 6 month period.

Non-payment of wages or any deficiency in the amount of wages properly payable by an employer to an employee on any occasion will be regarded as an unlawful deduction from wages unless the deficiency or non-payment is attributable to an error of computation.

Attachment

There is no statutory provision concerning the portion of wages protected from attachment in cases where multiple deductions are to be made on competing grounds. However an adjudicator in deciding on a claim under the payment of wages would be mindful of the full facts of the individual case and would take the totality of the deductions into consideration.

In addition, many contracts of employment and collective agreements would contain provisions concerning the suitable amounts of attachment permissible for one pay period.

Furthermore, if the permitted deduction is a revenue recoupment or court order then there would have been consideration of reasonableness of the proposed deductions by the Office of the Revenue Commissioners or the Courts as appropriate.

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 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.

Question A

- a) *Please provide data on trade union membership prevalence across the country and across sectors of activity, as well as information on public or private sector activities in which workers are excluded from forming organisations for the protection of their economic and social interests or from joining such organisations.*

Also provide information on recent legal developments in these respects and measures taken to promote unionisation and membership (with specific reference to areas of activity with low level of unionisation, such as knowledge workers, agricultural and seasonal workers, domestic workers, catering industry and workers employed through service outsourcing, including cross border service contracts).

Response

Data on trade union membership

At the end of 2020 there were approximately 558,300 trade union members in Ireland which is spread across all sectors. Union membership numbers in Ireland is approximately 54% in the private sector and 46% in the public sector.

Please see Annex 2 for table breakdown of trade union membership.

According to Ireland's Central Statistics Office (CSO), in the six-year period to Q1 2020, the number of persons in employment has increased 20.6% to 2,353,500.

However, COVID-19 began to impact the Labour Market towards the end of Q1 2020.

At the end of December 2020, the COVID-19 Adjusted Measure of Employment was estimated to have been 1,970,609.

Collective bargaining

The Industrial Relations (Amendment) Act 2015 provides a clear and balanced mechanism for workers who seek to improve their terms and conditions in companies where collective bargaining is not recognised by their employer.

The Act ensures that such workers, aided by a trade union, can advance claims about remuneration, terms and conditions and have these determined by the Labour Court based on comparisons with similar companies and also provides for any collective agreement to be enforced through the Irish Court system, should an employer refuse to do so.

The Act also explicitly prohibits the use of inducements by employers to persuade employees to forego collective bargaining representation and provides strong protections for workers who invoke the provisions of the 2001/2004 Industrial Relations Acts or who have acted as a witness or a comparator for the purposes of those Acts.

The legislation ensures the retention of Ireland's voluntary system of industrial relations, but it also means that where an employer chooses not to engage in collective bargaining either with a trade union or an internal 'excepted body', and where the number of employees on whose behalf the matter is being pursued is not insignificant, the 2001 Act has been remediated to ensure that an effective framework exists that allows a trade union to have the remuneration and terms and conditions of its members in that employment assessed against relevant comparators and determined by the Labour Court, if necessary.

It ensures that where an employer is engaged in collective bargaining with an internal 'excepted body', as opposed to a trade union, that body must satisfy the Labour Court as to its independence of the employer.

Irish Police Force

The Industrial Relations (Amendment) Act 2019 which entered into force on 1 February 2020 provides the Garda (Irish police force) representative associations with access to the State industrial relations institutions – the Workplace Relations Commission (WRC) and the Labour Court - to avail of the services including mediation, conciliation & arbitration.

It also allows matters relating to industrial relations disputes to be brought before the Labour Court.

In parallel, the new internal Garda dispute resolution mechanisms have been implemented and are supporting ongoing engagement between Garda management and the representative associations on relevant industrial relations issues. Engagement also continues in relation to ongoing appointment and training of specialist staff and the role of the WRC in the Garda internal Industrial Relations forums.

The management of industrial relations in the Garda Síochána now comes under the direct remit of the Garda Commissioner. This is in keeping with the recommendations of the Report of the [Commission on the Future of Policing in Ireland](#) and contained within its Implementation Plan, 'A Policing Service for Our Future'.

The Garda representative bodies continue to have full and equal access to national public service pay negotiations.

In the case of European Confederation of Police (EuroCOP) v. Ireland [Complaint No. 83/2012] the European Committee of Social Rights concluded by 10 votes to 1,

that there was no violation of Article 5 of the Charter on grounds of the prohibition against the police from establishing trade unions.

Defence Forces

Members of the Permanent Defence Force cannot become members of a trade union and are prohibited from taking industrial action.

To compensate for these limitations there are a range of statutory redress mechanisms available to serving members, including a redress of wrongs scheme, a Defence Forces Ombudsman and a Conciliation and Arbitration scheme for members of the Permanent Defence Force.

The Conciliation and Arbitration scheme provides a formal mechanism for the Permanent Defence Force Representative Associations (PDFORRA), to engage with the Official side.

Having regard to commitments made under pay agreements, members of the Permanent Defence Force can make representations in relation to their pay and conditions of service through their representative bodies.

A review of the Conciliation and Arbitration (C&A) scheme for members of the Permanent Defence Force was conducted in 2018. The terms of reference for the review included consideration of the findings of the European Committee of Social Rights in the case of the European Organisation of Military Associations (Euromil) v Ireland.

One of the recommendations from that review was that the official side should, with the consent of the Minister, engage in discussions with the Irish Congress of Trade Unions (ICTU) to explore the practicalities of a Permanent Defence Forces Representative Associations (PDFORRA) forming an association/affiliation with the ICTU, while giving due consideration to any likely conflict that might arise between such an arrangement and the obligations of military service.

Defence management (civil and military) engaged in discussions with the Permanent Defence Force representative associations (Representative Association of Commissioned Officers (RACO) and PDFORRA) and ICTU regarding the practicalities of a representative association forming association/affiliation with ICTU.

PDFORRA terminated the discussions by initiating legal proceedings on this matter on 26 June 2020. The matter is now subject to litigation in the Irish Courts.

Recent legal developments

A serving member of the Irish Permanent Defence Forces, and PDFORRA as the representative body for enlisted personnel in the Defence Forces, served a Plenary Summons on the Minister for Defence in June 2020.

They seek various declarations relating to the Defence (Amendment) Act 1990 which prohibits PDFORRA from affiliating with any trade union, without the consent of the Minister and prohibits members of the Defence Forces from being trade union members.

Declarations are also sought within the litigation case in respect of the Industrial Relations Act 1990 which excludes members of the Defence Forces from the definition of "worker", depriving them of access to the Workplace Relations Commission (WRC), Labour Court and dispute resolution machinery, and from protections and immunities afforded to workers under Part 2 of the Industrial Relations Act.

Whilst it would be inappropriate to expound on a litigation strategy or legal opinion, given that this case is ongoing and therefore legally privileged, the Minister for Defence remains open to continued engagement with all parties, on this matter, subject to the constraints of the current legal process.

Measures taken to promote unionisation

In Ireland, Government support to the Irish Congress of Trade Unions has existed for over 50 years and has applied in its current format since 1975. In 1975 this grant

was re-organised into a grant for the Education, Training and Advisory Service (ETAS).

The current value of this annual grant is €900,000. Its objective is to support the creation of a stable institutional framework for industrial relations, enabling the trade union movement to develop a centralised policy formulation, training and technical support role.

The underlying rationale for ETAS is that improved industrial relations are a key factor in enterprise development and that greater expertise and professionalism in the industrial relations arena contributes to more efficient use of the State's industrial relations and dispute resolution machinery and contributes to industrial peace.

The grant is paid to assist ICTU in meeting the cost of providing its education, training and advisory service in the area of policy development, the provision of education and training supports to union officials and members, and advice to affiliated unions on particular issues.

The grant may be used in promotional, informational events or campaigns which aid Trade Union viability and therefore will impact unionisation and membership levels.

Areas covered by the Fund include:

- Industrial, Regulatory and Collective Bargaining Issues;
- Industrial Restructuring;
- Workplace Learning and Partnership Projects;
- Equal Opportunities and Active Inclusion;
- Engagement in EU Social Dialogue
- ILOs Decent Work Agenda.

In relation to the areas covered by the Fund, approved activities include:

- Conferences, Seminars, Workshops;
- Education and Training Programmes;
- Research;

- Promotional, Informational Events or Campaigns;
- Contributions to the salary costs of persons engaged in promoting and managing any of the above.

The Fund is a cash-limited grant scheme and the amount paid by the Department to meet costs incurred by ICTU in the operation of ETAS may cover up to 80% of total expenditure on the programme.

Question B

- b) Also provide information on measures taken or considered to proactively promote or ensure social dialogue, with participation of trade unions and workers organisations, in order to take stock of the COVID-19 crisis and pandemic and their fallout, and with a view to preserving or, as the case may be, restoring the rights protected under the Charter after the crisis is over.*

Response

The Government recognises the importance of regular and open engagement with all sectors of society, and the particular importance of this as we steer our way out of the pandemic, rebuild our economy and support communities that have been severely impacted by COVID-19.

The Programme for Government commits to strengthening social dialogue including through new models of sectoral engagement as well as strengthening existing mechanisms such as the National Economic Dialogue and the Labour Employer Economic Forum (LEEF), while strengthening the overall approach to social dialogue being undertaken by Government.

A Social Dialogue Unit has been established in the Department of the Taoiseach, which works to coordinate and support the Government's overall approach to social dialogue. The work of the Unit involves supporting engagement with the social

partners through a variety of mechanisms, including the Labour Employer Economic Forum (LEEF), which deals with labour market issues.

The Labour Employer Economic Forum brings together representatives of Employers and Trade Unions with Government to discuss economic and employment issues as they affect the Labour Market. The Forum is non-binding and consultative in nature. Both Trade Unions and employers are each represented by four delegates through the Irish Congress of Trade Unions (ICTU) and Irish Business and Employers Confederation (Ibec).

The LEEF meets regularly in plenary format, chaired by the Taoiseach, to facilitate discussions between Government, Trade Unions and Employers, on issues related to the COVID-19 pandemic and our economic recovery. Under the auspices of LEEF, there has been significant progress on other issues such as the introduction of statutory sick pay, remote working, and establishment of a High Level Review of Collective Bargaining. There are also LEEF Subgroups dealing with issues including aviation and childcare.

Social dialogue through the LEEF process has also played a crucial role in ensuring workplaces are safe during the COVID-19 pandemic, and a subgroup of LEEF was responsible for preparing, updating and overseeing a [Work Safely Protocol](#) which has provided guidance to employers and workers on the steps they need to take collectively to ensure workplaces are safe during the pandemic.

Social dialogue, between Government, Trade Unions and other representative groups also takes place through structures like the National Economic Dialogue, the National Economic and Social Council, and many sectoral groups. There is also regular dialogue between the Minister for Public Expenditure and Reform and public service trade unions.

Question C - Non-conformity Article 5

In its 2014 conclusions the Committee found that Ireland was not in conformity with Article 5 on the grounds that

- certain closed shop practices are authorised by law;
- the national legislation does not protect all workers against dismissal on grounds of membership of a trade union or involvement in trade union activities;
- police representative associations are prohibited from joining national employees' organisations

The Committee also requested some additional information. Please see our response below.

Response

In April 2003, the Minister for Enterprise, Trade and Employment requested under the Industrial Relations Act 1990 that an updated draft Code of Practice on Victimisation be prepared to provide for the further development of employee representation, and measures setting out the different types of practice which would constitute victimisation arising from an employee's membership or activity on behalf of a trade union or a manager discharging his or her managerial functions, or other employees.

These measures were put in place in the [Code of Practice on Victimisation \(Declaration\) Order \(S.I. No. 139 of 2004\)](#).

In 2015, the Department of Jobs, Enterprise and Innovation, in accordance with section 42(6) of the Industrial Relations Act 1990, and after consulting with the Workplace Relations Commission further amended the Code to make explicit that any adverse effect arising from an employee refusing an inducement (financial or otherwise) designed specifically to have the employee forego collective representation by a trade union is a form of victimisation under the Code.

The major objective of the Code is the setting out of the different types of practice which would constitute victimisation arising from an employee's membership or activity on behalf of a trade union or a manager discharging his or her managerial functions, or other employees.

With regard to the Committee's conclusion that Ireland is not in conformity with Article 5 on the grounds that police representative associations are prohibited from joining national employees' organisations, as already mentioned above in our response to Question A - the Industrial Relations (Amendment) Act 2019 which entered into force on 1 February 2020 provides the Garda (Irish police force) representative associations with access to the State industrial relations institutions. Please see our response above to Question A for more detail.

Collective Complaint No 83/2012 EuroCOP v Ireland

In its 2014 conclusions the Committee asked to be kept informed of developments or measures taken to remedy in relation to Collective Complaint No 83/2012 EUROCOPI v Ireland. Please see our response below.

In the case of European Confederation of Police (EuroCOP) v. Ireland [Complaint No. 83/2012] the European Committee of Social Rights (ECSR) concluded unanimously that there was a violation of Article 5 of the Charter on grounds of the prohibition against police representative associations from joining national employees' organisations

Following the conclusion of the ECSR, a cross-Departmental Working Group was set up in early 2017 with a remit to examine industrial relations structures for the Garda Síochána (the Irish police service). The report of the Working Group was presented to Government in September 2017. The recommendations of the report included that the unique requirements of the Garda Síochána would not be served by reconstituting the Garda Associations as trade unions.

The Garda Associations are statutory bodies established by legislation to bargain

collectively on behalf of their members. It is worth noting, in this context, that the ECSR concluded that there was no prohibition in Ireland against the establishment of trade unions by members of the Garda Síochána on the basis that “the police representative associations enjoy the basic trade union rights within the meaning of article 5 of the charter”.

The Irish Congress of Trade Unions (ICTU) was the only national employee organisation to be referenced in relation to this complaint. The view had been expressed that trade unions which are members of ICTU have an authority and a standing to engage in collective bargaining with regard to national pay agreements which is not reflected in the status of the Garda Associations.

This disparity has been addressed in that Government gave a commitment that the staff representative associations of the Garda Síochána would have full access to future national public service pay negotiations.

In accordance with this commitment the Garda Associations, facilitated by the Workplace Relations Commission and the Department of Justice and Equality, were fully included in the collective bargaining processes relating to the conclusion of the national pay agreements from 2018 to 2020, and subsequently from 2021-2022, on an equal standing with public service trade unions who were members of ICTU.

In general terms, adopting a status as a trade union affiliated to ICTU gives rise to obligations and responsibilities to the broader trade union movement. National employee organisations may also have strong political stances in relation to employment conditions and labour market stability and can engage in political campaigns in support of improving social condition and social justice. This activism would be at odds with the non-political role of the Garda Síochána.

The role of the Garda Síochána in supporting and enforcing public authority and in implementing public authority decisions cannot be separated from its role in the delivery of essential policing services.

The conflicting requirements entailed by the holding of trade union status and/or affiliation with ICTU could potentially give rise to difficulties for individual members of the police service and for the organisation as a whole in responding to public order issues and/or carrying out instructions relating to the exercise of public authority.

ILO Committee recommendations on Freedom of Association

In its 2014 conclusions the Committee stated that it wished to be informed of any developments on the implementation of ILO Committee recommendations on Freedom of Association.

Please see our response below.

In relation to the above a complaint was lodged in 2010 from the Irish Air Line Pilots' Association (IALPA) concerning Ryanair to the Committee on Freedom of Association and was closed in June 2017, as reported in the 382nd Report by the Committee on the Freedom of Association [wcms_558777.pdf \(ilo.org\)](#). (Case No 2780 (Ireland) - Complaint date: 04-MAY-10 – Closed [FOA case text \(ilo.org\)](#))

The complainant alleged acts of anti-union discrimination and the refusal to engage in good faith collective bargaining on the part of Ryanair, as well as inadequate provisions in legislation to protect against such acts of anti-union discrimination and to promote collective bargaining.

In its 2017 report, the ILO Committee on the Freedom of Association concluded the following:

“In this respect, the Committee notes with interest the information provided by the Government, within the framework of the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), in relation to the new Industrial Relations Act 2015, which strengthens the statutory code on victimization to explicitly prohibit inducements to forgo trade union representation.

The Act further provides for the reinstatement of collective bargaining registered employment agreements at the enterprise level and for new sectoral employment orders.

The Committee further notes with interest the information provided concerning the adoption of the Workplace Relations Act in 2015, which streamlined five workplace relations bodies into two, greatly simplifying the system and facilitating access for those seeking to vindicate their rights.

The Committee welcomes this information and considers that this case requires no further examination”

Article 6 – The right to bargain collectively

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

Article 6.2: *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.*

Question re Non-conformity Article 6.2

Response

In its 2014 Conclusions, the Committee found that Ireland was not in conformity with Article 6§2 on the ground that the legislation and practice fail to ensure the sufficient access of police representative associations into pay agreement discussions. The Committee also requested some additional information.

Please see our response below.

As already mentioned above in our response to Article 5 Question A - the Industrial Relations (Amendment) Act 2019 which entered into force on 1 February 2020 provides the Garda Síochána (Irish police force) representative associations with access to the State industrial relations institutions.

Please see our response above to Question A Article 5 for more detail.

EuroCOP

In the case of European Confederation of Police (EuroCOP) v. Ireland [Complaint No. 83/2012] the European Committee of Social Rights concluded unanimously that there was a violation of Article 6§2 of the Charter on grounds of restricted access of police representative associations into pay agreement discussions;

Following the conclusion of the ECSR, the Government gave a commitment that the staff representative associations of the Garda Síochána (the Irish police service) would have full access to future national public service pay negotiations.

In accordance with this commitment the Garda Associations, facilitated by the Workplace Relations Commission and the relevant Government Departments, were fully included in 2017 in the collective bargaining process relating to the continuation of the Public Service Stability (Lansdowne Road) Agreement from 2018 to 2020, and subsequently included in the collective bargaining process for the continuation of this Agreement from 2021 to 2022.

The Garda Associations took part in these negotiations on an equal basis with other public service representative bodies, and the Government commitment to continue this process has been reaffirmed.

Union Negotiation Licences

In its 2014 conclusions, the Committee requested that the next report provide an elaboration of the underlying rationale of the rules in question. 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.

Please see our response below.

The rationale for the introduction of the requirement by a union to make a deposit with the High Court for the purpose of getting a negotiating licence was designed to restrict if not prevent the unnecessary duplication of trade unions or the formation of what are called splinter unions. The scale of the deposit equates to the number of trade union members.

The rationale for the eighteen-month period was to discourage small groups sometimes for trivial reasons, breaking away from established trade unions and setting up rival unions. The provision for a waiting period of 18 months it was

hoped would stall this kind of action and allow time for groups who may be contemplating going it alone to consider this course of action fully.

In relation to the Interdepartmental group that was established 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 Charter, the Committee in its 2014 conclusions asked what the results of the Group's deliberations were.

Please see our response below.

The Group concluded its work in 2005 and whilst it did not publish its recommendations in the form of a final report, the issues it considered informed the subsequent legislative amendments., including the 2015 Industrial Relations (Amendment) Act.

Article 6.4: *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.*

Question A

a) *Please provide information on specific measures taken during the pandemic to ensure the right to strike (Article 6§4). As regards minimum or essential services, please provide information on any measures introduced in connection with the COVID-19 crisis or during the pandemic to restrict the right of workers and employers to take industrial action.*

Response

Irish statute law does not provide a positive right to strike. Instead, Trade Unions, their officials and members who are engaged in industrial action are granted immunity from criminal and civil liability in certain defined circumstances.

Part 2 of the Industrial Relations Act 1990 provides workers, who are taking part in peaceful industrial action, the following immunities from:

1. Criminal or civil proceedings for conspiracy to do a particular act if the action taken by a person acting alone would not be punishable as a crime. Even if you are not a member of a trade union, you benefit from this immunity.
2. Prosecution when taking part in peaceful picketing. Only members and officials of an authorised trade union get the benefit of this immunity.
3. Prosecution for inducements to break or threats to break contracts of employment. Again, only members and officials of an authorised trade union get the benefit of this immunity.

There were no specific measures introduced in connection with the Covid-19 crisis to restrict the right of workers and employers to take industrial action. The protections outlined above prevailed during Covid.

Question B - Non-conformity Article 6.4

In its 2014 Conclusions, the Committee found that Ireland was not in conformity with Article 6§4 on the grounds that:

- only authorised trade unions, which are 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 absolute prohibition of the right to strike of police forces goes beyond the conditions established by Article G of the Charter.

The Committee also requested some additional information. Please see our response below.

Response

Under Irish law there is no positive right to strike, picket or engage in other industrial action. Instead, Irish law confers immunity or protection on participants in lawful industrial action from civil suits against them.

Members of a trade union who participate in lawfully balloted strike action are given immunity under the Industrial Relations 1990 Act from certain actions and wrongs (torts) committed, provided certain conditions are met. Immunity is only given to acts done in contemplation or furtherance of a trade dispute. To qualify as a trade dispute, a dispute must be between workers and employers and relate to employment or non-employment and/or terms and conditions of employment.

Where a dispute relates to the terms or conditions, or the employment of an individual worker, and there are agreed procedures for the resolution of individual grievances, the immunities granted under the 1990 Act will only apply only where those procedures have been exhausted.

Non-union members who participate in a strike have an individual right to withdraw labour. However, individuals who do not belong to an authorised trade union do not enjoy immunity from suit, except from criminal prosecution for conspiracy.

Right to strike of police forces (EuroCOP)

In its 2014 Conclusions, the Committee asked that the next report provide information on any developments and measures taken by Ireland in the context of the follow-up/the implementation of the Committee's decision on Complaint 83/2012 (EuroCOP).

Please see our response below.

In the case of European Confederation of Police (EuroCOP) v Ireland [Complaint No. 83/2012] the European Committee of Social Rights concluded by 6 votes to 5, that there is a violation of Article 6§4 of the Charter on grounds of the prohibition against the right to strike of members of the police.

Industrial relations legislation in Ireland does not extend to the granting of, or the abolition of, a right to strike to any workers or groups of workers. The unique position of the Garda Síochána is such that the withdrawing of labour in any strike action is likely to impact on policing, the security of the State or the maintenance of public authority.

It is recognised that this places a particular obligation to ensure that the dispute resolution processes in place for the Garda Síochána are robust and effective, and that the members of the Garda Síochána are not disadvantaged as a result.

Following on from the ECSR conclusion of non-conformity, agreed changes to the internal Garda dispute resolution mechanisms have been implemented. These changes are the subject of a formal agreement on Dispute Resolutions Processes (DRP) reached between Garda management and the Garda staff representative associations, with the assistance of the Workplace Relations Commission (WRC).

The DRP procedures allow for the resolution of collective disputes and support ongoing engagement between Garda management and the representative associations on relevant industrial relations issues.

They also underpin formal access to the WRC and the Labour Court for disputes which cannot be resolved internally. In implementing the new internal dispute resolution mechanisms in the Garda Síochána every effort has been made to identify and agree processes that eliminate the need to have recourse to industrial action and reduce the impact of any industrial action on the most essential services provided by the Garda Síochána.

Unfair Dismissals

In its 2014 conclusions, the Committee found the situation in Ireland was not in conformity on the grounds that under the Unfair Dismissals Act, an employer may dismiss all employees for taking part in a strike.

Please see our response below.

In Ireland workers have a constitutional right to join a trade union, and also have the right to join the union of their choice and the right to leave a union.

In employment law there is no right to take industrial action but there are protections for certain workers who do this by, for example, going on strike. Part 2 of the Industrial Relations Act 1990 provides workers, who are taking part in peaceful industrial action, the following immunities from:

1. Criminal or civil proceedings for conspiracy to do a particular act if the action taken by a person acting alone would not be punishable as a crime. Even if you are not a member of a trade union, you benefit from this immunity.
2. Prosecution when taking part in peaceful picketing. Only members and officials of an authorised trade union get the benefit of this immunity
3. Prosecution for inducements to break or threats to break contracts of employment. Again, only members and officials of an authorised trade union get the benefit of this immunity.

The Unfair Dismissals Acts provide significant protections for workers availing of their right to strike.

Under [Section 5](#) of the Unfair Dismissals Act 1977 the dismissal of an employee for taking part in a strike or other industrial action is unfair if:

- One or more of the other employees taking part in the action were not dismissed or
- One or more of the other employees who were dismissed, were later reinstated or re-engaged and the employee was not.

This was amended by [Section 4](#) of the Unfair Dismissals (Amendment) Act 1993 which extends this definition of unfair dismissal to include less favourable treatment after reinstatement or re-engagement after a strike or a lockout.

Lockout is where an employer excludes the employees from work or suspends work or terminates their employment.

In unfair dismissals legislation, a lockout is considered a dismissal. Again, under [Section 5](#) of the Unfair Dismissals Act 1977, it is considered an unfair dismissal if an employee is not reinstated or re-engaged after a lockout and one or more of the other employees are.

Dismissal for trade union activity or membership is automatically unfair under [Section 6](#) of the Unfair Dismissals Act 1977 (unless having regard to all the circumstances, there were substantial grounds justifying the dismissal).

An employee dismissed in such circumstances does not require any particular length of service in the job in order to enforce their rights. The definition of trade union activity is activity carried out with the employer's consent or outside working hours. Strikes or other industrial action are not covered by this definition.

Victimisation

The Workplace Relations Commission's [Code of Practice on Victimisation](#) refers to victimisation arising from an employee's membership or non-membership, activity or non-activity for a trade union or a manager discharging their managerial functions or any other employees. It applies to situations where there are no negotiating arrangements and where collective bargaining has not taken place.

The term victimisation is used to describe unfair treatment of an employee (including a manager). It does not include dismissal – our response regarding Unfair dismissal above.

Complaints regarding victimisation are made to the Workplace Relations Commission under the Industrial Relations (Miscellaneous Provisions) Act 2004.

Article 22 – The right to take part in the determination and improvement of the working conditions and working environment

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.*

Question A

a) Please provide information on specific measures taken during the pandemic to ensure the respect of the right to take part in the determination and improvement of the working conditions and working environment. Please make specific reference to the situation and arrangements in the sectors of activity hit worst by the crisis whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services.

Response

From the outset of Covid-19, many employers have taken the initiative, in line with subsequent requests from the Government, to be as flexible as possible in allowing staff to manage their family responsibilities and implementing remote working options to aid public health measures while carrying on business.

In January the Tánaiste and Minister for Enterprise Trade and Employment, Leo Varadkar published [“Making Remote Work”](#) Ireland’s National Remote Work Strategy and sets out the path to making remote working a more permanent option in workplaces across Ireland after the COVID-19 pandemic has passed.

The Strategy is built on three fundamental pillars:

1. Create a Conducive Environment
2. Develop and Leverage Remote Work Infrastructure
3. Build a Remote Work Policy and Guidance Framework

Its actions have been progressed over the course of 2021 including commitments to legislate for the right to request remote working and to develop a new code of practice to allow employees the right to disconnect. The [Code on the Right to Disconnect](#) was introduced in April 2021 (see further below).

Commitment to Legislate

In the context of Pillar 1 (Create a Conducive Environment for the adoption of remote work) a commitment was made to legislate to provide employees with the right to request remote.

In order to provide an opportunity for all interested parties to make their views on this matter known, Government launched a Public Consultation on 1 April 2021. The consultation process ran for five weeks until 7 May 2021 and the [results](#) were published on the 20th August.

Engagement with the process was significant and a total of 175 submissions were received from a diverse range of stakeholders including trade unions, employer representative bodies, individual employers and employees and political parties.

The questions posed in the consultation covered topics such as:

- timeframe for replying to requests to work remotely
- the length of service, if any, an employee should have before being entitled to work remotely
- health and safety and equipment required for remote working
- reasonable grounds of refusal of a request to work remotely
- how to manage changes in any arrangement agreed between workers and employers

The submissions received will inform the deliberative process in drafting the proposed legislation. In addition, a review of International best practice is being undertaken.

The “Right to Request Remote Working” Bill will set out a clear framework to facilitate an employee requesting remote and blended work options, in so far as possible. It will ensure that when an employer declines a request, there are stated reasons for doing so and will allow for referral of a dispute to the Workplace Relations Commission to decide on the reasonableness of the employer’s refusal of such a request.

It is recognised that not all occupations, or particular roles within an enterprise, will be suitable for remote working. The Government has committed to take a balanced approach with the new legislation

The Covid pandemic has brought remote working centre stage and work on this legislation is well advanced. The drafting of the General Scheme of the Bill of the Right to Request Remote Work is at an advanced stage. The Tánaiste will be in a position to seek Cabinet approval for the drafting of Heads of a bill in January, with the bill to be progressed through the Parliamentary process as quickly as possible thereafter

Code of Practice on the Right to Disconnect

The [Code of Practice on the Right to Disconnect](#) came into effect in Ireland on 1 April 2021.

The Code was not intended as a direct response to Covid but should be seen as part of a wider suite of moves intended as a response to the changing work environment generally. Thus, the Code has broader and more long-term significance.

Notwithstanding, the Code will have served as a useful tool to workers and employers in responding to the challenges presented in the workplace during the Covid crisis.

In brief, the Right to Disconnect has three main elements:

1. The right of an employee to not routinely perform work outside normal working hours.
2. The right to not be penalised for refusing to attend to work matters outside of normal working hours.
3. The duty to respect another person's right to disconnect (e.g., by not routinely emailing or calling outside normal working hours).

The Code of Practice on the Right to Disconnect aims to:

- Complement and support employers' and employees' rights and obligations under the Organisation of Working Time Act, 1997 (OWTA 1997), the Safety, Health and Welfare at Work Act, 2005 (SHWWA 2005), the Employment (Miscellaneous Provisions) Act 2018 and the Terms of Employment (Information) Act 1994 – 2014;
- Assist employers and employees in navigating an increasingly digital and changed working landscape which often involves remote and flexible working;
- Provide assistance to those employees who feel obligated to routinely work longer hours than those agreed in their terms and conditions of employment;
- Assist employers in developing and implementing procedures and policies to facilitate the Right to Disconnect;
- Provide guidance for the resolution of workplace issues arising from the Right to Disconnect both informally and formally, as appropriate.

The Right to Disconnect refers to an employee's right to be able to disengage from work and refrain from engaging in work-related electronic communications, such as emails, telephone calls or other messages, outside normal working hours.

Working environment

The [Work Safely Protocol](#) was prepared and updated following discussion and agreement at the Labour Employer Economic Forum (LEEF), which is the forum for high level dialogue between Government, Trade Union and Employer representatives on matters related to the labour force. All workers, regardless of the sector of the economy in which they work, are covered by the provisions of the Work Safely Protocol.

The Protocol provides for the appointment of a Lead Worker Representative (LWR). Each workplace will appoint at least one LWR charged with ensuring that COVID-19 measures are strictly adhered to in their place of work.

The Health and Safety Authority (HSA) engages with the LWR on inspections to check adherence to the Protocol measures. Employers will also communicate with safety representatives selected or appointed under Occupational Health and Safety legislation and consult with workers on safety measures to be implemented in the workplace.

The HSA has also provided its contact centre for handling complaints and information requests. The HSA has also provided guidance and online learning on its website:

https://www.hsa.ie/eng/topics/covid-19_coronavirus_information_and_resources/

The HSA has reassigned significant policy and inspection activities to support the Government's implementation of public health recommendations and specific COVID response teams to cover sectors such as healthcare, food sector, manufacturing and construction.

Question B - Non-conformity Article 22

In its 2014 conclusions, the Committee stated that Ireland's previous report did not provide enough relevant information to assess the situation under Article 22 (a) and reserved its position. It requested that the next report contains information as regards the right of workers to take part in the determination and improvement of working conditions, work organisation and working environment.

Please see our reply below.

Response

The following legislation provides for Employee involvement in the workplace:

1. Directive 2009/38/EC of the European Parliament and of the Council on 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 has been transposed into Irish law by the European Communities (Transnational Information and Consultation of Employees Act 1996) (Amendment) Regulations 2011 (S.I. No. 380 of 2011). The Regulations were signed into effect on 13th July 2011.
2. The Employees (Provision of Information and Consultation) Act 2006 transposes EU Directive 2002/14/EC. The purpose of the Act, which came into operation from 24th July 2006, is to provide 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.

The 2006 Act provides that representatives should be reasonably facilitated in carrying out their roles as employees' representatives promptly and effectively.

Typically, this would include the following:

- Paid time off to prepare for and attend information and consultation meetings;

- Provision of telephone, photocopying and e-mail facilities including facilities to allow for informing and consulting with employees;
- Reasonable facilities, including paid time off, to attend training courses appropriate to functioning effectively as an information and consultation employee representative.

The 2006 Act provides that an employer should not penalise representatives for performing their functions under the Act (for example, by dismissal or other prejudicial treatment such as unfavourable changes in conditions of employment). The Act provides that a grievance arising in this regard can be referred to a Rights Commissioner and that a decision of a Rights Commissioner can be appealed to the Labour Court.

The Department of Enterprise, Trade and Employment published an [Explanatory Booklet](#) which complements a S.I. No 132 of 2008 Industrial Relations Act 1990 (Code Of Practice On Information And Consultation) (Declaration) Order 2008, which provides employers and employees with user-friendly and practical information on the provisions of the Act.

3. Safety, Health and Welfare at Work Act - Safety Representatives

Employers must consult with their employees on safety, health and welfare matters and they can use a safety representative or safety committee as a means to do so.

Under Section 25 of the 2005 Safety, Health and Welfare at Work Act, all employees are entitled to select a safety representative to represent them on safety and health matters with their employer. Section 26 of this Act requires the employer to consult with employees to ensure cooperation with preventing accidents and ill health and in turn the workers can consult with their employer.

Section 26 sets out the arrangements for this consultation on a range of safety and health issues. Where a safety committee is already in existence, it can be used for this consultation process.

In addition, under Regulation 23 of the 2013 Construction Regulations (where more than 20 persons are employed at any one time on a construction site, the project supervisor for the construction stage must facilitate the appointment of a safety representative.

Where a safety representative is appointed, an employer must ensure that such appointees know and understand their role as a safety representative or as a member of the safety committee. Employers must provide safety representatives with the training to carry out the role successfully.

While the law does not put a management responsibility on workers to ensure better safety and health, it does allow those workers who get involved, the opportunity to promote better safety and health performance in their workplace.

Section 27 of the 2005 Act provides protection for Safety representatives against penalisation in relation to:

- suspension, lay-off or dismissal or the threat of suspension, lay-off or dismissal,
- demotion or loss of opportunity for promotion,
- transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- imposition of any discipline, reprimand or other penalty (including a financial penalty), and
- coercion or intimidation

as a result of their role as a safety representative.

4. Worker Participation (State Enterprises) Acts 1977 and 1988

The purpose of the [Worker Participation \(State Enterprises\) Act, 1977](#) – No.6 of 1977, is to provide board level participation of workers in certain enterprises through the election of employees for appointment to the board of directors.

The purpose of the [Worker Participation \(State Enterprises\) Act, 1988](#) – No.13 of 1988, is to facilitate the introduction of sub board participative arrangements in a broad range of State enterprise, by agreement between the enterprise and the employee interests.

The above Acts are, give employee representatives a right to seats on the board of state-owned enterprises and agencies.

The representatives are normally known as worker directors. As well as public bodies, such the Courts Service, there are a number of state-owned businesses with employee representatives at board level. They include: the national postal service, An Post; Dublin airport, DAA; the national transport group, CIE; the peat processing company Bord na Móna; the Electricity Supply Board; Dublin Port; the gas and water company, Ervia; the Shannon Group (including Shannon airport); and the forestry company, Coillte.

Industrial Relations Acts

In addition to the above, the Industrial Relations Acts provides the framework for workers looking to improve their terms and conditions of employment.

The [Industrial Relations \(Amendment\) Act 2015](#) provides a framework for workers looking to improve their terms and conditions of employment, *where collective bargaining is not recognised* by their employer.

The 2015 Act also provides for [Registered Employment Agreements \(REAs\) and Sectoral Employment Orders \(SEOs\)](#).

Code of Practice for Employee Representatives

The [Code of Practice on Duties and Responsibilities of Employee Representatives](#) was first introduced in 1993 under the Industrial Relations Act, 1990.

The main purpose of the Code of Practice is to set out for employers, employees and trade unions the duties and responsibilities of employee representatives (frequently referred to in trade union rule books and employer/trade union agreements as shop stewards). It also sets out 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.

This Code is specifically aimed at Union Representatives, however, it can be referred to for guidance on matters that cross over with regard to the Employee Representatives that are appointed under the Information and Consultation legislation.

Protection of Employee Representatives

Section 5 of the Code regarding the protection of Employee Representatives, sets out that Employee representatives who carry out their duties and responsibilities in accordance with the Code should not:

- a) be dismissed or suffer any unfavourable change in their conditions of employment or unfair treatment, including selection for redundancy, because of their status or activities as employee representatives, or
- b) suffer any action prejudicial to their employment because of their status or activities as employee representatives, without prior consultation taking place between the management and the relevant trade union.

Section 6 of the Code regarding facilities for Employee Representatives sets out, amongst other conditions, that:

1. Employee representatives should be afforded such reasonable facilities as will enable them to carry out their functions as employee representatives promptly and efficiently.

2. Such facilities should have a regard to the needs, size and capabilities of the undertaking or establishment concerned and should not impair the efficient operation of the undertaking or establishment.
3. Employee representatives should be afforded necessary time off for carrying out their representative functions in the undertaking or establishment in which they work.
4. Employee representatives in the undertaking or establishment should be granted reasonable access to all workplaces and access, without undue delay, to management at the appropriate level on matters relating to their representative functions and responsibilities.

Article 26 – The right to dignity at work

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.*

Question A

- a) Please provide information on the regulatory framework and any recent changes in order to combat harassment and sexual abuse in the framework of work or employment relations. The Committee would welcome information on awareness raising and prevention campaigns as well as on action to ensure that the right to dignity at work is fully respected in practice.*

Response

Legislation is in place in Ireland for the purpose of promoting and protecting the principles of equality and freedom from discrimination. The major pieces of legislation enacted include the Employment Equality Acts 1998 to 2015 and the Equal Status Acts 2000 to 2018.

This legislation prohibits both direct and indirect discrimination in the areas of employment and access to goods and services, including housing, healthcare and education, on nine grounds; gender, civil status, family status, sexual orientation, religion, age, disability, race and membership of the Traveller community.

The legislation also outlaws harassment, sexual harassment, and victimisation, i.e. discrimination against an individual because he or she has taken a case or is

giving evidence under the equality legislation or has opposed by lawful means discrimination which is prohibited under this legislation.

These Acts established the necessary institutional structures to ensure effective implementation of the legislation, now provided by the Irish Human Rights and Equality Commission (IHREC) and the Workplace Relations Commission.

Review of Equality legislation in Ireland

The Irish Government has, in its current Programme for Government, committed to examining the introduction of a new ground of discrimination based on socio-economic disadvantaged status to the Employment Equality and Equal Status Acts.

The Department of Children, Equality, Disability, Integration and Youth has commissioned research on this matter and following receipt of this, it is hoped to undertake a wider public consultation on potentially amending the Equality Acts to include a new specific socio-economic ground for discrimination.

More broadly, in July 2021, the Minister for Children, Equality, Disability, Integration and Youth launched a public consultation process as part of a review of the Equality Acts to examine the functioning of the Acts and their effectiveness in combatting discrimination and promoting equality. The deadline for submissions to the Review is December 2021.

Proposed Domestic Violence Leave

In line with a commitment in its Programme for Government, the Government is examining the feasibility of establishing a statutory entitlement to paid domestic violence leave from work for victims.

A targeted consultation process took place with relevant stakeholders and social partners to examine how a scheme of paid leave should operate to address the needs of victims most effectively, the findings of which will inform a report that will be brought to Government.

Views were sought from the Monitoring Committee of the Second National Strategy on Domestic, Sexual and Gender Based Violence (DSGBV), stakeholders of the National Equality Strategy Committees, employers' groups and trade unions. Policy proposals are currently being finalised for consideration by Government and both international models of domestic violence leave and best practice have been examined in this regard.

Sexual Harassment and Harassment in the Workplace

The Employment Equality Acts 1998-2015 define harassment as unwanted conduct which is related to any of the 9 discriminatory grounds. Sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature.

In both cases it is defined as conduct which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person and it is prohibited under the Acts.

Harassment is defined in section 14A(7) of the Acts as any form of unwanted conduct related to any of the discriminatory grounds which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

A [Code of Practice on Sexual Harassment and Harassment](#) was published in 2012. The Code seeks to promote the development and implementation of policies and procedures which establish working environments free of sexual harassment and harassment and in which the dignity of everyone is respected. The provisions of the code are admissible in evidence and if relevant may be taken into account in any criminal or other proceedings before a court.

The Code states that employers should adopt, implement and monitor a comprehensive, effective and accessible policy on sexual harassment and harassment. The policy should be devised in consultation with employees and trade unions and should set out what constitutes sexual harassment and

harassment; who is responsible for implementing the policy; and how complaints will be dealt with.

The Code of Practice has recently been revised by the Irish Human Rights and Equality Commission and is awaiting Ministerial approval.

Awareness Raising Campaigns

The Department of Justice is nearing the completion of a 6 year, two part, national awareness campaign - an action that is covered under the Second National Strategy to combat Domestic, Sexual and Gender-Based Violence. The first campaign 2016 -2018 focused on domestic violence. The campaign changed its focus to sexual harassment and sexual violence in 2019 when 'No Excuses' was launched.

The 'No Excuses' campaign aims:

- To increase the awareness sexual violence;
- To bring about a change in long established societal behaviours and attitudes and;
- To activate bystanders with the aim of decreasing and preventing this violence.

The campaign recognises that women and men are victims of sexual harassment. The adverts cover a number of scenarios which includes sexual harassment in the workplace.

The ads highlight and help people recognise the many precursors to sexual harassment and sexual violence and calls on us to stop excusing sexual harassment and sexual violence. The ultimate goal is to reduce and prevent the incidences of sexual harassment and sexual violence in any setting including the workplace.

Harassment, Harmful Communications and Related Offences Act 2020

The enactment in February 2021 of the Harassment, Harmful Communications and Related Offences Act 2020 - creates two separate image-based criminal offences and broadens the scope of the existing offence of harassment to cover all forms of persistent communications about a person. The Department is currently running a campaign on intimate image abuse to highlight the new offences introduced by Coco's law.

National strategy to combat domestic, sexual and gender-based violence

The Department of Justice is currently leading the development of Ireland's third national strategy to combat domestic, sexual and gender-based violence. The strategy will place a priority on prevention and reduction and will include a national preventative strategy.

The Department has engaged in an innovative partnership with the NGO sector in leading the development and design of this new national strategy, which is key to ensuring its' comprehensive development.

The strategy is on track to be developed by the end of this year and the Minister for Justice will then engage in a focused public consultation process early in 2022, before bringing the finalised strategy to Government in Quarter 1 of that year. It is expected that as part of the strategy's focus on prevention and informing victims of supports available, there will be new and potentially multi-faceted awareness campaigns.

Victims' Support

The Department of Justice is also in the process of developing of a new Annual/Bi-Annual Victims' Forum for state, social and community groups.

The forum will facilitate information exchange and examine avenues of improvement in relation to victims' rights. Findings from these forums will assist the Department of Justice in developing further supports for victims including victims of domestic, sexual and gender-based violence.

In October 2020, the Department of Justice launched 'Supporting a Victim's Journey: A Plan to Help Victims and Vulnerable Witnesses in Sexual Violence Cases'. Supporting a Victim's Journey is introducing important reforms to support and protect vulnerable victims, to ensure our criminal justice system is more victim-centred, a system that supports victims, keeps them fully informed and treats them respectfully and professionally for the entirety of their journey through the criminal justice system.

Bullying in the Workplace

A [Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work](#) came into effect in December 2020.

The Code replaces the Health and Safety Authority's (HSA) 'Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work' and the Workplace Relations Commission's (WRC) 'Code of Practice Detailing Procedures for Addressing Bullying in the Workplace'.

The Code sets out the responsibilities and the roles of the HSA and the WRC. It gives guidance for employees, employers and trade unions on dealing with an informal and formal bullying complaint in the workplace.

The Code also outlines the WRC's objective to achieve harmonious working relations between employers and employees through promoting compliance with relevant employment, equality and equal status legislation early dispute resolution, mediation, conciliation, facilitation and advisory services, and adjudication on complaints and disputes.

While failure to follow a Code prepared under the Industrial Relations Act 1990 is not an offence in itself, Section 42(4) provides that in any proceedings before a Court, the Labour Court or the WRC, a code of practice shall be admissible in evidence and any provision of the Code which appears to the Court, body or officer concerned to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

Similarly, while failure to follow this Code is not an offence in itself under the Safety, Health and Welfare at Work Act 2005, the Act provides that a Code of Practice published or approved of by the Health and Safety Authority shall be admissible as evidence in any proceedings under that Act.

Question B

b) Please provide information on specific measures taken during the pandemic to protect the right to dignity in the workplace and notably as regards sexual, and moral harassment. The Committee would welcome specific information about categories of workers in a situation of enhanced risk, such as night workers, home and domestic workers, store workers, medical staff, and other frontline workers.

Response

The Employment Equality Acts 1998 to 2015 prohibit the harassment and sexual harassment in work of employees, including agency workers and trainees.

This includes sexual harassment and harassment by co-workers, the employer, clients, customers or other business contacts of the employer, including anyone the employer could reasonably expect the worker to come into contact with.

As mentioned above, practical guidance to employers and employees on how to prevent sexual harassment and harassment at work and how to put procedures in place to deal with it is given in the statutory Code of Practice on Sexual Harassment and Harassment at Work, first introduced in 2002 under the Employment Equality Acts and updated in 2012.

The Code of Practice has recently been revised by the Irish Human Rights and Equality Commission and is awaiting Ministerial approval.

During its meetings in 2020, the Irish Human Rights and Equality Commission's Work and Employer Advisory Committee, which is made up of representatives nominated trade union and employer groups, addressed the right to decent work

and the impact of Covid-19 on employment, unemployment and supports and services to those most affected.

Question C

c) Please explain whether any limits apply to the compensation that might be awarded to the victim of sexual and moral (or psychological) harassment for moral and material damages.

Response

Under Employment Equality legislation, the redress that may be awarded by the Workplace Relations Commission in complaints of harassment or sexual harassment includes one or more of the following as appropriate:

- an order for equal treatment; an order for compensation of up to 2 years pay or up to €40,000, whichever is the greater, for the effects of discrimination or harassment/sexual harassment suffered (and for someone who is not an employee of the respondent, compensation of up to €13,000 is applicable);
- an order for compensation of up to 2 years pay or up to €40,000, whichever is the greater, for the effects of 'victimisation' (and for someone who is not an employee of the respondent, compensation of up to €13,000 is applicable);
- an order for a specified person to take a specified action; and an order for re-instatement or re-engagement.

Complaints on the gender ground may also be taken in the first instance before the Circuit Court, and no prior upper limit applies to the redress that may be awarded by the Court.

Article 28 – right of workers' representatives to protection in the undertaking and facilities to be accorded to them

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.

Question A Article 28

a) With the objective of keeping this reporting exercise focussed, the Committee asks for no specific information in respect of Article 28. Nonetheless, it would welcome information about the situation in practice concerning this right during the pandemic and about measures taken to ensure that the COVID-19 crisis was not used as an excuse to abuse or circumvent the right of workers' representatives to protection, especially protection against dismissal

Response

The Employees (Provision of Information and Consultation) Act 2006 Act provides that an employer should not penalise representatives for performing their functions under the Act (for example, by dismissal or other prejudicial treatment such as unfavourable changes in conditions of employment).

The Act provides that a grievance arising in this regard can be referred to a Rights Commissioner and that a decision of a Rights Commissioner can be appealed to the Labour Court.

Section 27 of the Safety, Health and Welfare at Work Act 2005 provides protection for Safety reps against penalisation in relation to

- suspension, lay-off or dismissal or the threat of suspension, lay-off or dismissal,
- demotion or loss of opportunity for promotion,
- transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- imposition of any discipline, reprimand or other penalty (including a financial penalty), and
- coercion or intimidation

as a result of their role as a safety representative.

A [Code of Practice on Duties and Responsibilities of Employee Representatives and the Protection and Facilities](#) was introduced by the Labour Relations Commission in 1993 under the Industrial Relations Act, 1990.

Section 5 of the Code regarding the protection of Employee Representatives, sets out that Employee representatives who carry out their duties and responsibilities in accordance with paragraph 3 of this Code should not:

- a) be dismissed or suffer any unfavourable change in their conditions of employment or unfair treatment, including selection for redundancy, because of their status or activities as employee representatives, or
- b) suffer any action prejudicial to their employment because of their status or activities as employee representatives, without prior consultation taking place between the management and the relevant trade union.

There has been no change to any of the above as a result of COVID 19.

Question B

b) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

In its 2014 conclusions, the Committee found that the situation in Ireland is in conformity with Article 29 of the Charter pending receipt of some additional information regarding workers representatives.

Please find below our response to the Committee's request.

Response

Code of Practice on Duties and Responsibilities of Employee Representatives

The Code of Practice on Duties and Responsibilities of Employee Representatives and the Protection and Facilities to be afforded to them by their Employer was introduced by the Labour Relations Commission (LRC) in 1993 under the Industrial Relations Act, 1990. The functions of the LRC have since been subsumed by the Workplace Relations Commission (WRC), established in 2015.

The main purpose of the Code of Practice is to set out for employers, employees and trade unions the duties and responsibilities of employee representatives. It also sets out 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.

Employee representatives, for the purpose of this Code, are:

- a) employees of an undertaking or establishment who have been formally designated employee representatives for that undertaking or establishment by a trade union in accordance with the rules of that trade union and any employer/trade union agreement which relates to the appointment of such representatives in that undertaking or establishment and
- b) who normally participate in negotiations about terms and conditions of employment for all or a section of the workforce and who are involved in the

procedures for the settlement of any disputes or grievances which may arise in that undertaking or establishment.

Reference to trade unions throughout this Code includes reference to “excepted bodies” under the Trade Union Acts, 1871 – 1990. An “excepted body” is a body which may lawfully negotiate wages or other conditions of employment without holding a negotiation licence. “Excepted body” is defined in section 6(3) of the Trade Union Act 1941, as amended, and includes an association, all the members of which are employed by the same employer.

The duties and responsibilities of employee representatives and the protection and facilities to be afforded them under this Code are indicative of the important position and role of such representatives in our system of industrial relations and in the resolution of disputes/grievances. The manner in which employee representatives discharge their duties and responsibilities significantly affects the quality of management/labour relations in the undertaking or establishment in which they work, its efficient operation and future development.

Section 6 of the Code regarding facilities for Employee Representatives sets out, amongst other conditions, that:

1. Employee representatives should be afforded such reasonable facilities as will enable them to carry out their functions as employee representatives promptly and efficiently.
2. Such facilities should have regard to the needs, size and capabilities of the undertaking or establishment concerned and should not impair the efficient operation of the undertaking or establishment.
3. Employee representatives should be afforded necessary time off for carrying out their representative functions in the undertaking or establishment in which they work.

Employee representatives in the undertaking or establishment should be granted reasonable access to all workplaces and access, without undue delay, to

management at the appropriate level on matters relating to their representative functions and responsibilities.

The Code also states that employee representatives who carry out their duties and responsibilities in accordance with paragraph 3 of the Code should not:

- a) be dismissed or suffer any unfavourable change in their conditions of employment or unfair treatment, including selection for redundancy, because of their status or activities as employee representatives, or
- b) suffer any action prejudicial to their employment because of their status or activities as employee representatives, without prior consultation taking place between the management and the relevant trade union.

The full text of the Code of Practice can be accessed here:

[duties_responsibilities_of_employee_representatives.pdf \(workplacerelations.ie\).](https://www.workplacerelations.ie/publications/duties_responsibilities_of_employee_representatives.pdf)

It should be noted that section 7 of this Code is without prejudice to the provisions of the Unfair Dismissals Acts 1977 and 1991.

Unfair Dismissals Acts

Under section 6 of the Unfair Dismissals Acts, it is provided that:

6.— (1) Subject to the provisions of this section, the dismissal of an employee shall be deemed, for the purposes of this Act, to be an unfair dismissal unless, having regard to all the circumstances, there were substantial grounds justifying the dismissal.

(2) Without prejudice to the generality of subsection (1) of this section, the dismissal of an employee shall be deemed, for the purposes of this Act, to be an unfair dismissal if it results wholly or mainly from one or more of the following:

(a) the employee's membership, or proposal that he or another person become a member, of, or his engaging in activities on behalf of, a trade union or excepted body under the Trade Union Acts, 1941 and 1971, where the times at which he engages in such activities are outside his hours of work or are times during his hours of work in which he is permitted pursuant to the contract of employment between him and his employer so to engage.

The Unfair Dismissals Act provides under section 7 that for redress in instances where an employee is dismissed and the dismissal is an unfair dismissal. In such instances, the employee shall be entitled to redress consisting of reinstatement, reengagement, or compensation, whichever, as the case may be, (...) considers appropriate having regard to all the circumstances.

Time frame for taking a claim of Unfair Dismissal

A claim for unfair dismissal, should be brought within 6 months of the date of dismissal. This time limit may be extended to 12 months if there are reasonable circumstances which prevented the complainant from bringing the complaint within the normal limit.

Article 29 – The right to information and consultation in collective redundancy procedures

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.

Question A

a) *With the objective of keeping this reporting exercise focussed, the Committee asks for no specific information in respect of Article 29. Nonetheless, it requests information about the situation in practice as regards the right to information and consultation in collective redundancy procedures during the pandemic, and about any changes introduced in law modifying or reducing its scope during the COVID-19 crisis.*

Response

There have been no changes to the law or practice during the pandemic and the Workplace Relations Commission (WRC) have facilitated both in person and remote meetings between employer and employee representatives as required throughout the pandemic.

Similarly, the provisions outlined below in our response to Article 29 Question B and the recourse available for contraventions have remained in force throughout the pandemic.

Question B

b) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised

In its 2014 conclusions, the Committee concluded that the situation in Ireland is in conformity with Article 29 of the Charter, pending receipt of additional information requested.

Please see our response to this request below.

Response

Under the Protection of Employee Acts 1977 – 2007, there are a number of provisions regarding an information and consultation process that must be entered into prior to any redundancies being implemented and regarding the provision of information to employees and to the Minister for Jobs, Enterprise and Innovation. The Protection of Employment Act 1977 implemented Council Directive 75/129/EEC. This Directive was replaced by Council Directive 98/59/EC.

Sections 9 and 10 of the Protection of Employment Act 1977 (as amended) make it mandatory on employers proposing a collective redundancy to engage in an information and consultation process with employees' representatives and to provide certain information relating to the proposed redundancies. An employer is prohibited from issuing any notice of redundancy during the mandatory 30-day (minimum) employee information and consultation period.

Pursuant to section 11 of the Protection of Employment Act 1977 (as amended), an employer found guilty of failing comply with section 9 (obligation to consult) or section 10 (obligation to supply certain information) may be subject to a fine not exceeding €5,000.

There is also an obligation under section 12 which makes it mandatory on employers proposing a collective redundancy to notify the Minister for Enterprise Trade and Employment of the proposed collective redundancy.

Regulation 6 of the European Communities (Protection of Employment) Regulations 2000 (paragraphs (1) to (3) provides a remedy for employees whose employer has not complied with sections 9 and 10 of the Protection of Employment Act 1977, whereby they may refer complaints to a rights commissioner.

Mitigating the consequences of Collective Redundancies

In relation to the Committee's query regarding mitigating the consequences of collective redundancies including actions aimed at retraining and redeployment of the workers concerned, a Job Loss Response Protocol has been established between the Department of Social Protection (DSP), Department of Further and Higher Education, Research (DFHERIS), Innovation and Science and the Department of Enterprise, Trade and Employment (DETE).

The Department of Social Protection is the lead Department. In practice as the redundancy position becomes clear, the protocol arrangements will be put in place to assist the impacted workers access their welfare entitlements, job-search assistance and access to the wide range of upskilling and reskilling opportunities available.

Every State support is made available, to help workers transition and find new employment opportunities. The aim of the Protocol is to provide a swift and multidisciplinary approach to any impending company closures or redundancies.

The Protocol identifies 3 workstreams with lead responders for each:

- Workstream 1 (Communications)
- Workstream 2 (People)
- Workstream 3 (Enterprise)

Key parts of the process include - the creation of a high-level skills profile of each person losing their job, establishing a Key Point-of-Contact (PoC) between the firm and the public sector and assisting businesses to maintain or extend existing jobs.

More detail provided below:

Key features of the Protocol are summarised below:

- The aim of the Protocol is to provide a swift and multidisciplinary approach to any impending company closures or redundancies. Agencies involved: DBEI¹(IDA/EI/Local Enterprise Office (LEO)), DSP (Regional & Local) DFHERIS (ETB’s and Skills Forum).
- The Protocol identifies 3 workstreams, with lead responders for each as per the table below.

Table 2: Workstream Leadership Guide

	EI Client	IDA Client	LEO Client	None*
1. Communications	DBEI (EI Liaison Unit) – (A & B) EI Regional – C	DBEI (IDA Liaison Unit) – (A & B) IDA Regional - C	LEO Local	DEASP (HQ Comms?)
2. People	DEASP Regional	DEASP Regional	DEASP Local	DEASP Regional
3. Enterprise	EI Regional	IDA Regional	LEO Local	DEASP Regional
Key Point-of-Contact	EI Dev Advisor	IDA Dev Advisor	LEO Rep	DEASP Rep

* Major employers that are not potential clients of any enterprise agency - e.g. Banking, Gambling, Airlines, Domestic Construction Service, Retail, Distribution, Transportation, Telecoms, Hospitality, Security and Building services.

The process agreed is as follows:

The Response Process – Pre-announcement

- 1) Enterprise Ireland (EI)/Industrial Development Authority (IDA Ireland) Development Advisors (DAs) are pre-notified of an upcoming

¹ Department of Business & Innovation (DBEO) is now known as the Department of Enterprise, Trade and Employment (DETE)

announcement but are not allowed by the client to share any more details for HR or commercial reasons. In this case:

The DA should:

- Inform their (IDA/EI) Regional Director and implement internal communications protocols, including communicating with their DBEI Liaison Unit, as set out by their own organisation. Seek data on the job losses from the firm.
- Act as the only Key Point-of-Contact (PoC) between the firm and the public sector, unless other public sector PoCs are approved by the EI/IDA Regional Director.

2) The EI/IDA Regional Director to:

- Inform DSP Regional Director that a job loss is coming including scale, timing and approximate location. If there is a risk that this will compromise firm anonymity, the EI/IDA Regional Director should only share enough information so that it is not possible for anyone to deduce which firm it is.
- Agree with the DSP Regional Director as to the appropriate Response Level.

3) The DSP Divisional Manager to:

- Start planning DSP resource allocation to deal with the spike in demand.
- As leader of the Workstream 2, the DSP Regional Director is responsible for informing the Education & Training Board (ETB) Director of Further Education and Training, and any other relevant key state actors, as they decide is necessary given the confidentiality constraints.

Workstream 1 (Communications)

For Response Levels A or B announcements, this work is led by the EI or IDA Liaison Unit in DBEI if the firm is an EI or IDA client. If the firm is not an EI or IDA client, it is led by the Communications Unit in DSP. Response Level C announcements should be handled by Regional EI/IDA/DSP Offices.

On the day the job losses are announced there may be a strong demand for communication material from multiple arms of the State, including the Minister and broader political system. The leader of Workstream 1 is accountable for collating, quality-controlling and disseminating all this material. This workstream generates high volumes of work but generally for a short period of time so the leader should consider seeking additional communications or policy staff temporarily. A Communications Plan should be completed and implemented.

Workstream 2 (People)

For all Response Levels announcements, this work is led by the Regional DSP Office.

This workstream covers the response necessary to assist workers who are losing their jobs. The key success factor to this workstream is seamless co-operation between DSP and the local ETB and any other local trainers, educators or career advisors. This is important so that workers are given a single joint menu of 'offerings', created and jointly communicated to the impacted staff and not given conflicting messages or career advice.

A key part of the process is the creation of a high-level skills profile of each person losing their job. Data captured by existing profiling processes in DSP should be shared, subject to GDPR compliance, with ETBs to ensure individuals receive the best advice. This allows ETBs to build upon this data without asking similar questions again.

This workstream leader is also responsible for managing relationships with unions. While the State will have a limited role in individual cases, the unions

may have a contribution to make regarding engagement with workers and possible initiatives to help the workers that might be developed as part of the inter-Agency response.

A streamlined approach will also be more appealing to the employer as it will minimise impact on their business and may encourage them to allow staff to engage in the process during work hours and on the work premises.

One-to-one engagement is the most effective way to conduct a skills audit and provide advice but it requires a lot of extra capacity to deliver it effectively. DSP and the ETB aim to get resources into an area quickly to assist, sometimes assigning neighbouring areas to assist temporarily.

Workstream 3 (Enterprise)

For all Response Levels announcements this work is led at a Regional level, either by the EI or IDA Regional Office for their clients and by the DSP Regional Office, in liaison with EI and IDA, if the firm is not an EI or IDA client.

This workstream covers all efforts to assist the business to maintain or extend existing jobs, providing advice to management about a potential Management-Buy-Out, conducting searches to find replacement business to take over the vacant premises and attempts to minimise the commercial impacts on the firm's suppliers, particularly locally based suppliers.

A key part of Workstream 3 is managing the on-going relationship with the firm making the redundancies and leading any discussions with that firm of a commercial nature. Ideally, the leader of the workstream should try to get the firm to commit to:

- funding employment support services (e.g. Outplacement for employees)
- releasing staff from work so that they can attend upskilling before they finish up

- letting an employee leave with full redundancy if an employee finds another job with a start date before they get to their exit date

Workstream 3 also involves assessing whether the location is suitable for a replacement firm to take over some of the existing staff or premises. An in-depth skills audit of the workers is very helpful for this process so ideally Workstream 2 will deliver this data expediently.

Workstream 3 also includes providing advice for workers whom are seeking advice on starting a business. This will be led by the local LEO with the involvement of the local EI staff where appropriate. Workstream 2 will identify which employees are interested in starting their own businesses and refer them to the LEO.

Annex 1 Workplace Relations Commission Inspection Activity 2017 – 2020

2017

Sector	Cases	No in Breach	Incidence of Breach %	National Minimum Wage	Sunday Premium	Records	Employment Permits	Protection of Young Persons	Annual Leave and Public Holidays	Employment Agency Licences	Other Terms and Conditions of Employment	Employees	Unpaid Wages
AGRICULTURE	48	36	75%	3	2	32	4	1	13	1	1	804	56,229
CONSTRUCTION	75	39	52%	8	1	37	2	0	9	3	1	2,228	44,497
CONTRACT CLEANING	18	14	78%	5	3	11	2	0	3	0	1	4,276	29,395
DOMESTIC WORKER	20	10	50%	7	0	7	0	0	2	0	1	40	30,190
ELECTRICAL	6	2	33%	1	0	2	0	0	2	0	0	103	2,933
EQUINE	54	30	56%	7	5	30	0	0	11	0	1	128	7,759
FISHERIES	95	13	14%	2	6	10	3	0	3	0	0	150	6,252
FOOD & DRINK	645	371	58%	52	104	243	128	2	134	0	9	8,077	444,634
HAIR AND BEAUTY	79	48	61%	12	2	46	7	0	8	0	0	481	19,955
HEALTH NURSING AND CHILDCARE	78	30	38%	10	5	19	3	0	9	0	0	7,496	200,198
HOTEL	55	28	51%	10	12	17	3	1	8	0	0	3,679	109,227
MANUFACTURING	38	18	47%	3	0	14	1	0	5	0	2	6,927	33,576
OTHER	332	132	40%	25	16	105	17	0	38	0	2	35,063	224,462
PROFESSIONAL SERVICES	124	33	27%	8	2	25	2	0	6	6	1	17,145	46,959
SECURITY	20	7	35%	1	2	1	1	0	4	0	0	1,627	13,167
TRANSPORT	61	29	48%	7	4	26	1	0	10	0	2	1,576	168,125

Sector	Cases	No in Breach	Incidence of Breach %	National Minimum Wage	Sunday Premium	Records	Employment Permits	Protection of Young Persons	Annual Leave and Public Holidays	Employment Agency Licences	Other Terms and Conditions of Employment	Employees	Unpaid Wages
WHOLESALE AND RETAIL	258	157	61%	36	35	127	15	0	56	0	5	9,459	331,927
TOTALS	2,006	997	50%	197	199	752	189	4	321	10	26	99,259	1,769,484
UNANNOUNCED VISITS	2,741	1,035	38%	212	0	801	320	8	0	0	0	0	0
GRAND TOTAL	4,747	2,032	43%	409	199	1,553	509	12	321	10	26	99,259	1,769,484

2018

Sector	Cases	No in Breach	Incidence of Breach %	National Minimum Wage	Sunday Premium	Records	Employment Permits	Protection of Young Persons	Annual Leave and Public Holidays	Employment Agency Licences	Other Terms and Conditions of Employment	Employees	Unpaid Wages
AGRICULTURE	106	46	43%	6	5	34	5	1	14	0	2	6,312	188,597
CONSTRUCTION	81	37	46%	12	1	32	1	0	12	0	1	1,835	109,562
CONTRACT CLEANING	22	8	36%	2	1	4	0	0	4	0	1	10,351	4,119
DOMESTIC WORKER	5	1	20%	1	0	0	0	0	0	0	0	2	1,207
ELECTRICAL	11	7	64%	1	1	6	1	0	3	0	0	887	2,538
EQUINE	45	38	84%	7	10	34	2	0	16	0	5	949	73,469
FISHERIES	40	27	68%	2	4	26	3	0	4	0	0	43	433
FOOD & DRINK	656	439	67%	56	142	331	99	2	208	0	5	14,113	472,824
HAIR AND BEAUTY	121	75	62%	16	3	59	7	1	25	0	3	654	45,941
HEALTH NURSING AND CHILDCARE	69	35	51%	11	4	18	1	0	17	0	4	11,607	824,216
HOTEL	64	37	58%	12	12	24	6	0	19	0	2	3,950	129,453
MANUFACTURING	48	19	40%	8	1	15	0	0	9	0	4	3,678	51,584
OTHER	236	144	61%	28	24	117	11	1	40	1	7	7,128	142,686
PROFESSIONAL SERVICES	218	83	38%	21	8	61	7	0	24	0	6	29,863	189,612
SECURITY	18	9	50%	5	3	4	0	0	3	0	1	14,113	29,286
TRANSPORT	71	43	61%	13	4	33	2	0	14	1	2	3,860	141,040
WHOLESALE AND RETAIL	363	216	60%	37	51	166	18	0	78	0	14	24,117	731,351
TOTALS	2,174	1,264	58%	238	274	964	163	5	490	2	57	133,462	3,137,916
UNANNOUNCED VISITS	3,579	1,284	36%	265	0	997	285	10	0	0	0	0	0
GRAND TOTAL	5,753	2,548	44%	503	274	1,961	448	15	490	2	57	133,462	3,137,916

2019 - Cases finalised on the old Case Management System

Sector	Cases	No in Breach	Incidence of Breach %	National Minimum Wage	Sunday Premium	Records	Employment Permits	Protection of Young Persons	Annual Leave and Public Holidays	Employment Agency Licences	Other Terms and Conditions of Employment	Employees	Unpaid Wages
AGRICULTURE	48	20	42%	7	4	14	0	0	12	0	0	2,661	84,656
CONSTRUCTION	39	29	74%	12	1	28	2	0	6	0	1	1,315	127,444
CONTRACT CLEANING	6	4	67%	3	1	4	2	0	1	0	0	1,899	19,613
DOMESTIC WORKER	4	2	50%	0	0	1	0	0	0	0	0	14	7,877
ELECTRICAL	9	7	78%	3	0	6	0	0	2	0	0	476	20,035
EQUINE	11	5	45%	2	1	4	1	0	2	0	0	238	29,009
FISHERIES	45	10	22%	0	3	7	4	0	3	0	0	64	1,907
FOOD & DRINK	337	247	73%	29	76	203	92	1	111	0	2	5,394	435,936
HAIR AND BEAUTY	44	37	84%	6	4	30	11	0	15	0	0	281	31,452
HEALTH NURSING AND CHILDCARE	27	13	48%	3	2	7	0	0	7	0	2	5,519	371,558
HOTEL	26	19	73%	6	7	10	4	1	5	0	1	2,234	53,643
MANUFACTURING	14	7	50%	2	0	6	1	0	2	0	0	3,775	6,059
OTHER	117	82	70%	18	7	75	5	0	37	0	2	5,545	843,958
PROFESSIONAL SERVICES	71	29	41%	6	4	19	3	0	12	0	2	25,543	830,487
SECURITY	9	5	56%	3	1	4	2	0	2	0	0	4,295	30,255
TRANSPORT	39	27	69%	9	5	21	2	0	7	2	2	1,562	166,461
WHOLESALE AND RETAIL	135	86	64%	17	11	67	12	0	44	0	3	7,995	205,595
TOTALS	981	629	64%	126	127	506	141	2	268	2	15	68,810	3,265,946

2019 - Cases finalised on new Case Management System²

Sector	Cases	No in Breach	Incidence of Breach %	Carer's Leave Act 2001	Employment Agency Act 1971	Employment Permits Act 2003	National Minimum Wage Act 2000	Organisation of Working Time Act 1997	Payment of Wages Act, 1991	Protection of Young Persons Act 1996	Terms of Employment (Information) Act 1994	Workplace Relations Act 2015	Employees	Unpaid Wages
Accounting & Financial Services	12	1	8%	0	0	0	0	1	0	0	0	0	685	0
Activities of Households as Employers	4	0	0%	0	0	0	0	0	0	0	0	0	2	0
Administration & Support	37	11	30%	0	0	2	0	14	4	0	4	0	4,624	8,253
Advertising & Marketing	6	2	33%	0	0	0	0	3	1	0	0	0	70	1,577
Agriculture	19	11	58%	0	0	5	1	14	1	0	5	0	1,119	2,481
Arts, Entertainment & Recreation	81	22	27%	0	0	0	1	16	1	0	5	0	646	10,758
Beverage Service Activities	143	22	15%	0	0	0	5	54	5	1	15	0	800	17,591
Construction	142	28	20%	0	0	1	2	31	19	0	11	0	725	75,385
Contract Cleaning	40	13	33%	0	0	0	0	15	4	0	4	0	2,327	12,792
Education	31	15	48%	0	1	0	0	18	0	0	2	0	614	14,908
Electrical Contracting	15	1	7%	0	0	0	0	1	0	0	0	0	232	0
Equine Activities	9	4	44%	0	0	0	1	7	1	4	5	0	201	0
Fishing	2	0	0%	0	0	0	0	0	0	0	0	0	0	0
Food Service Activities	1394	285	20%	0	0	49	38	401	42	40	141	4	7,736	182,447
Hair & Beauty	344	105	31%	1	0	8	23	135	13	2	48	3	1,787	41,557
Hotels	136	29	21%	0	0	1	2	33	2	4	9	0	4,669	17,708

² From January 2019, the WRC has utilised a new inspection case management system which provides richer data in term of sectoral reporting based on NACE sector. Since 2019, the figure for “not specified” NACE sector has decreased greatly, going from 2,811 in 2015 to 421 in 2019 and 4 in 2020

Sector	Cases	No in Breach	Incidence of Breach %	Carer's Leave Act 2001	Employment Agency Act 1971	Employment Permits Act 2003	National Minimum Wage Act 2000	Organisation of Working Time Act 1997	Payment of Wages Act, 1991	Protection of Young Persons Act 1996	Terms of Employment (Information) Act 1994	Workplace Relations Act 2015	Employees	Unpaid Wages
Human Health & Social Work	75	13	17%	0	0	1	0	16	1	1	2	0	4,722	65,154
Information & Communications	20	7	35%	0	0	1	1	6	1	0	3	0	195	5,485
Legal Services	6	4	67%	0	0	0	0	4	0	0	0	0	15	5,394
Manufacturing	53	21	40%	0	0	0	1	32	6	0	14	0	3,611	13,933
Meat Processing	6	1	17%	0	0	0	0	1	1	1	1	0	1,171	0
Mechanical Eng. Building Services	6	0	0%	0	0	0	0	0	0	0	0	0	4	0
Mining & Quarrying	2	1	50%	0	0	0	0	2	0	0	0	0	570	0
Not Classified	3	2	67%	0	0	2	0	3	0	1	2	1	81	0
Other Accommodation	4	0	0%	0	0	0	0	0	0	0	0	0	5	0
Other Service Activities	85	22	26%	0	0	2	3	24	5	0	12	0	322	270
Postal & Courier Services	6	5	83%	0	0	1	2	7	2	0	2	0	909	0
Professional Services	84	18	21%	0	0	2	0	13	3	0	2	0	4,199	641
Public Administration	8	0	0%	0	0	0	0	0	0	0	0	0	5	0
Real Estate Activities	14	11	79%	0	0	2	1	13	4	0	4	0	281	7,644
Security	9	5	56%	0	0	0	0	4	1	0	0	0	684	16,041
Transport	35	19	54%	0	0	0	3	26	1	1	6	0	3,174	35,477
Travel & Tour Operators	18	6	33%	0	0	0	2	11	0	0	1	0	490	10,996
Veterinary & Animal Health Services	3	2	67%	0	0	0	2	4	1	0	2	0	19	26,774
Warehousing & Support Activities	2	1	50%	0	0	0	0	2	0	0	0	0	5	735
Water Supply, Sewerage & Waste Remediation	2	0	0%	0	0	0	0	0	0	0	0	0	5	0

Sector	Cases	No in Breach	Incidence of Breach %	Carer's Leave Act 2001	Employment Agency Act 1971	Employment Permits Act 2003	National Minimum Wage Act 2000	Organisation of Working Time Act 1997	Payment of Wages Act, 1991	Protection of Young Persons Act 1996	Terms of Employment (Information) Act 1994	Workplace Relations Act 2015	Employees	Unpaid Wages
Wholesale & Retail	955	177	19%	1	0	13	24	227	18	9	72	2	11,731	92,015
TOTAL	3811	864	23%	2	1	90	112	1138	137	64	372	10	58,435	666,015

2020

Sector	Cases	No in Breach	Incidence of Breach %	Atypical Worker Permission Scheme for Non-EEA Crews	EC (Workers on Board Sea Fishing Vessels)(Working Time) Regulations 2003	Employment Agency Act 1971	Employment Permits Act 2003	Fishing Vessel (Basic Safety Training) Regulations 2001	National Minimum Wage Act 2000	Organisation of Working Time Act 1997	Payment of Wages Act 1991	Protection of Young Persons Act 1996	Terms of Employment (Information) Act 1994	Workplace Relations Act 2015	Employees	Unpaid Wages
Accounting & Financial Services	26	5	19%	0	0	0	0	0	0	7	1	0	1	0	159	€3,359
Activities of Households as Employers	6	1	17%	0	0	0	0	0	0	2	0	0	0	0	6	€0
Administration & Support	41	17	41%	0	0	0	0	0	0	16	4	0	0	1	9,279	€158,977
Advertising & Marketing	16	4	25%	0	0	0	0	0	0	3	0	0	1	0	2,260	€0
Agriculture	41	17	41%	0	0	0	1	0	1	29	5	0	7	1	902	€26,396
Arts, Entertainment & Recreation	70	19	27%	0	0	0	0	0	1	28	2	1	2	0	1,025	€85,806
Beverage Service Activities	105	28	27%	0	0	0	4	0	4	58	4	4	19	1	1,416	€43,457
Construction	150	53	35%	0	0	0	1	0	6	67	25	1	26	17	2,042	€31,501
Contract Cleaning	48	24	50%	0	0	0	1	0	5	39	14	2	8	3	3,470	€55,316
Education	29	10	34%	0	0	0	0	0	0	14	3	0	0	1	2,130	€1,966
Electrical Contracting	18	5	28%	0	0	0	0	0	1	4	2	0	3	0	411	€2,196
Equine Activities	13	12	92%	0	0	0	2	0	2	32	5	0	6	5	353	€91,456
Fishing	64	25	39%	2	17	0	9	1	16	13	3	0	0	9	106	€9,846
Food Service Activities	1,536	492	32%	0	0	0	152	0	72	795	82	97	244	30	14,265	€327,067
Hair & Beauty	466	144	31%	0	0	0	13	0	12	167	12	1	46	4	1,780	€30,564
Hotels	139	33	24%	0	0	0	7	0	9	48	5	13	18	3	7,833	€69,377
Human Health & Social Work	132	29	22%	0	0	0	4	0	3	34	5	0	7	0	2,912	€91,978
Information & Communications	36	8	22%	0	0	0	0	0	0	6	0	0	0	0	826	€144
Legal Services	6	3	50%	0	0	0	0	0	0	3	0	0	1	0	52	€0

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Manufacturing	222	38	17%	0	0	0	2	0	0	33	5	0	4	0	10,234	€6,665
Meat Processing	11	5	45%	0	0	0	2	0	0	2	2	0	0	0	917	€876
Mechanical Eng. Building Services	15	1	7%	0	0	0	0	0	0	1	0	0	0	0	2,951	€0
Mining & Quarrying	2	2	100%	0	0	0	0	0	0	1	0	0	1	0	19	€0
Not Classified	4	0	0%	0	0	0	0	0	0	0	0	0	0	0	0	€0
Other Accommodation	5	3	60%	0	0	0	0	0	0	3	1	2	0	1	86	€0
Other Service Activities	256	49	19%	0	0	1	5	0	1	23	2	2	5	2	2,100	€4,066
Postal & Courier Services	7	0	0%	0	0	0	0	0	0	0	0	0	0	0	30	€0
Professional Services	85	29	34%	0	0	0	1	0	4	31	13	0	10	2	2,254	€179,309
Public Administration	9	2	22%	0	0	0	0	0	1	5	0	0	2	0	1,865	€295
Real Estate Activities	22	11	50%	0	0	0	0	0	0	8	2	0	3	0	612	€90
Security	31	13	42%	0	0	0	1	0	0	25	3	0	0	1	2,382	€74,447
Transport	87	28	32%	0	0	0	0	0	3	36	7	0	15	2	1,495	€23,314
Travel & Tour Operators	10	2	20%	0	0	0	0	0	0	4	1	0	0	0	173	€5,720
Veterinary & Animal Health Services	12	0	0%	0	0	0	0	0	0	0	0	0	0	0	56	€0
Warehousing & Support Activities	14	1	7%	0	0	0	0	0	0	2	0	0	0	0	431	€0
Water Supply, Sewerage & Waste Remediation	11	2	18%	0	0	0	0	0	0	2	0	0	1	0	143	€455
Wholesale & Retail	3,942	645	16%	0	0	0	18	0	46	525	56	37	166	13	39,889	€334,633
TOTALS	7,687	1,760	23%	2	17	1	223	1	187	2,066	264	160	596	96	116,864	1,659,277

Annex 2. Trade Unions Membership (December 2021)

Union	Public	Private	Total	Comment
Assoc of Higher Civil Servants	3335	0	3335	
Assoc of Traditional Musicians		165	165	
Assoc of Prof Officers		293	293	
ASTI	18452		18452	May have members in private schools but details not known
Building & Allied Trade Union		2492	2492	
CWU		13402	13402	
Connect	3000	34000	37000	Estimated as they have members in Health & Education sector
Dairy Executive		553	553	
Energy Services Union		1200	1200	
Forsa	74641	7000	81641	
Guinness Staff Union		1057	1057	
IBOA		10630	10630	
Independent Workers Union		1428	1428	
Irish Dental Assoc.	400	1345	1745	400 Dentist approx. in Health Service Executive (HSE)
Irish Federation of University Teachers	2613		2613	
Irish Medical Organisation	6949		6949	Would also have members in private sector but details not known
INTO	42663		42663	Would also have members in private schools but details not known
INMO	37000	6642	43642	Estimated 15% in private sector
Irish Postmasters Union		636	636	
Mandate		29250	29250	
Medical Lab Scientists	1495	300	1795	Estimated
National Bus & Railworkers Union		3743	3743	
National Union of Journalists		2274	2274	

Union	Public	Private	Total	Comment
National Union of Maritime Ops		63	63	
Plasters Allied Trades		928	928	
Prison Officers Assoc	3171		3171	
Psychiatric Nurses Assoc	5949	1000	6949	Estimated
SIPTU	70000	119315	189315	Estimated
TUI	19091		19091	May have members in private schools but details not known
Transport and Salaried Officers		510	510	
Union of Motor Assoc Trade		350	350	
Union of Inst of Engineers		75	75	
Unite	2062	18561	20623	Estimated 10% in public sector
Veterinary Ireland	200	899	1099	Estimated as would have members in Dept Agriculture and Universities
Vet Officers Association	255		314	
10 Employer Groups	92	8,769	8861	
Total	258,203	300,104	558,307	