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EUROPEAN SOCIAL CHARTER

Response by the Government of Ireland to comments submitted by the Irish Human Rights and Equality Commission concerning the 19th National Report on the implementation of the European Social Charter

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This is the response to the paper: *‘Comments on Ireland’s 19th National Report on Implementation of the European Social Charter’* which was submitted to the European Committee of Social Rights by the Irish Human Rights and Equality Commission (IHREC) in July 2022.

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Response to the IHREC comments on the Non-Accepted Provisions of the Charter

Article 8(3): The Right of Employed Women to Protection of Maternity

Response

Under Section 15B of the Maternity Protection Acts 1994-2004, an employee who is breastfeeding shall be entitled, without loss of pay, at the option of her employer to either (a) time off from her work for the purpose of breastfeeding in the workplace, or (b) a reduction of her working hours for the purpose of breastfeeding otherwise than in the workplace. These provisions apply to an employee whose date of confinement was not more than twenty-six weeks earlier.

Ireland has published a General Scheme of a Work Life Balance and Miscellaneous Provisions Bill, which proposes to extend the entitlement to breastfeeding breaks to an employee whose date of confinement was not more than 104 weeks earlier. The Bill will be brought to Government in Autumn 2022.

Ireland will re-examine its position following the enactment of the Work Life Balance and Miscellaneous Provisions Bill.

Article 21(a-b): The Right to Information and Consultation

Response

Ireland has legislation governing the provision of information to employees. A list of employee involvement legislation is available on the website of the Department of Enterprise, Trade and Employment (enterprise.gov.ie).

As per the 2020 report, Ireland will re-examine its position regarding Article 21(a-b) with a view towards moving to acceptance.

Article 27(1)(c): The Right of Workers with Family Responsibilities to Equal Opportunities and Equal Treatment

Response

As per the 2020 Report on the non-accepted provisions, Ireland is committed to re-examining its position regarding Article 27(1)(c) with a view towards moving to acceptance.

Article 31(1-3): The Right to Housing

Response

On 21 June 2021, Ireland signed the Lisbon Declaration on the European Platform on Combatting Homelessness. The Declaration commits Member States to work towards ending homelessness by 2030.

The signing of the Declaration was accompanied by the establishment of the European Platform on Combatting Homelessness (EPOCH), which gave effect to an action contained in the European Pillar of Social Rights Action Plan. This Plan committed to the launch of a platform “to support Member States, cities and service providers in sharing best practices and identifying efficient and innovative approaches.”

Members of the Platform committed to work on concrete deliverables. A work programme for the Platform provides details on the specific actions to be implemented.

Key actions for National, Regional and Local Authorities include: the development and adoption of strategies for the eradication of homelessness; the support of policy measures with adequate funding, including the promotion and monitoring of EU funding at a local level; the sharing of good practices in combatting homelessness. Under *Housing for All*, Government’s housing plan to 2030, the Government has committed to “actively participate through the newly established European Platform on Combatting Homelessness to advance the Lisbon Declaration on Combatting Homelessness signed in June 2021”.

Under EPOCH, Ireland has committed to “promote the prevention of homelessness, access to permanent housing and the provision of enabling support services to the homeless”. *Housing for All* outlines exactly how the Government will work towards ending homelessness by 2030, detailing 18 distinct actions tailored to achieve this target. This includes increasing access to supports for both individuals and families.

In addition, Ireland has committed to “welcome the involvement of all relevant stakeholders in the design and implementation of these policy measures”. The formation of the National Homeless Action Committee (NHAC) has brought together all relevant Government departments and external stakeholders, including NGOs, to provide oversight of the delivery of *Housing for All* commitments. NHAC ensures that a wide range of stakeholders can input into the formulation of Homelessness policy.

Under EPOCH, Ireland has committed to “support (EPOCH) policy measures with adequate funding and, when appropriate, make use of EU funding as a lever to improve the way (the EU) address homelessness”. Budget 2022 made provision for €194 million in funding for homeless services. This funding in 2022 reflects the priority the Government is giving to homelessness.

Ireland has committed to “share good practices in combatting homelessness”. The Minister for Housing, Heritage and Local Government attended a ministerial level meeting of EPOCH in February 2022, discussing the most pressing issues in homelessness with his European colleagues. Departmental officials have attended and contributed to subsequent mutual learning events with EU colleagues.

In line with commitments in the Programme for Government, the Government established a Commission on Housing in December 2021 to examine inter alia tenure, standards, sustainability and quality of life issues in the provision of housing. The Commission is also tasked with bringing forward, for Government consideration, proposals on a referendum on housing.

That Commission launched a public consultation seeking views on a referendum on housing in July 2022. The consultation is asking submissions to consider if the Constitution should be amended and, if so, the form such an amendment would take.

The consultation will conclude in early September 2022. The Commission is due to conclude its broader work by July 2023.

Government is focused on accelerating housing delivery. Guaranteed State investment of more than €4 billion will be provided each year, under *Housing for All*, to support a pathway to economic, societal and environmental sustainability in housing. *Housing for All* focuses on tackling supply and affordability, with measures to increase and accelerate home-building, provide quality social and affordable housing, and look after the most vulnerable in society and end homelessness by 2030 in accordance with the Lisbon Declaration.

To this end, Government will inter alia support delivery of 90,000 social homes over the decade of the plan, as well as 36,000 affordable purchase and 18,000 cost rental homes. This includes a target of more than 9,000 social and 4,100 affordable and cost rental homes for 2022.

In the 2020 Report on the non-accepted provisions of the Charter, Ireland stated that Article 31 of the revised Charter could not be accepted due to existing provisions in the Irish Constitution that have not changed since ratification, adding that the question of accepting Article 31 would be re-examined if and when the constitutional position changes.

Ireland is satisfied the substantive rights already provided through legislation; the measures being taken to combat homelessness; the actions to accelerate delivery of social and affordable housing under the *Housing for All* plan; and the commitment to a referendum on housing, provide a possible path to accepting Article 31 of the revised Charter. However, it remains the position that accepting Article 31 can only be re-examined on foot of the outcome of the forthcoming referendum on housing.

Response to the IHREC comments on the Articles contained in Ireland's 19th Report

Article 2: The Right to Just Conditions of Work

The Right to Disconnect

IHREC comment

IHREC is concerned that recent protections relating to the right to disconnect were not in place on the outbreak of the Covid-19 pandemic, and during the reference period of this reporting cycle.

IHREC is further concerned that the right to disconnect is not sufficiently robust and requires stronger enforcement powers and legislative protections in order to adequately protect employees, particularly women.

Response

At the request of the Tánaiste and Minister for Enterprise Trade and Employment, the Workplace Relations Commission (WRC) have prepared a [Code of Practice on the Right to Disconnect](#), in accordance with section 20(2) of the Workplace Relations Act 2015.

The Code is a best practice guide covering statutory obligations around record keeping, maximum average weekly working hours permitted for employees and rest period entitlements. The Code highlights legal protections already in place in Irish Law and is also aimed at ensuring that employees are aware of their legal entitlements and how to raise concerns in relation to non-compliance.

The European Parliament has also proposed a directive on an EU-wide 'right to disconnect'. Developments are being closely followed and, although it may be some time before we see progress on this at a European level, Ireland is ahead as our code of practice is already in place.

Regarding the survey data provided by the IHREC in the 2nd paragraph of their report, it is important to contextualise the survey data on which this section relies ([*Working at home and employee well-being during the Covid-19 pandemic: First findings from the UCD Working in Ireland Survey, 2021*](#)) in that it covers the period between March 2020-May 2021, the period during which the pandemic and associated public health protections/restrictions were at their height and remote working was a sudden and unplanned crisis response.

As such, while not in any way questioning the methodology or findings of the survey and the very real challenges and concerns it highlights, it is worth noting that it is difficult to disaggregate/attribute the impacts of remote working on wellbeing and working conditions in general, and the specific crisis situation in which remote work was taking place, and it may be the case that this section presents a somewhat negative view of remote work. It is important to distinguish between remote work during a public health emergency and as a more established, long-term practice.

It is worth highlighting that other/later survey data (for example, [*Pulse Survey - Our Lives Online - Remote Work November 2021*](#) and [*Remote Working in Ireland - Whitaker Institute for Innovation and Societal Change*](#)) suggest a more positive set of experiences of remote work during later phases of the pandemic (with due regard to the self-selected samples of the latter two surveys). It will be important to continue to monitor the impacts and potential risks of remote work on wellbeing, working conditions and human rights as it becomes an established part of working life beyond the public health emergency.

Overtime Work

IHREC Comment

IHREC is concerned that the regulation of overtime work is not in conformity with Article 2.1 of the Charter and measures are required to protect workers from abuses of overtime and unreasonable demands.

Response

Where an employee does not have regular start/finish times, an employer must give an employee at least 24 hours' notice before the employee is required to work, under section 17(1) of the [Organisation of Working Time Act 1997](#).

For all employees, where an employer requires an employee to work 'additional hours', they are required to give the employee at least 24 hours notice before the employee is required to work, under section 17(2) of the Organisation of Working Time Act 1997.

Directive 2019/1152 on Transparent and Predictable Working Conditions requires that work takes place within pre-determined reference hours and days. These reference hours and days must be notified to the employee on commencement of employment as part of their written statement. Work should take place within these pre-determined hours and days.

Once the Directive is transposed, an employee will be able to refuse a request to work if the employee does not receive 24 hours notice and/or work does not take place within the reference hours or days notified to employee as part of their written terms.

Work is ongoing to transpose Directive 2019/1152.

Compensation Measures for Exposure to Occupational Health Risks

IHREC Comment

IHREC is concerned that the State remains in non-conformity with Article 2.4 of the Charter and must act to recognise the role of compensation (financial or extra leave) in promoting health and safety in the workplace, particularly in sectors and occupations that are manifestly dangerous and unhealthy.

Response

Ireland does not believe that introducing the concept of compensation for exposure to occupational health and safety risks would, enhance or improve the existing legal obligation on all employers to conduct a robust risk assessment and to put in place suitable mechanisms to either prevent, eliminate or mitigate against identified occupational health and safety risks.

The fundamental principle of thorough, appropriate and targeted risk management, which permeates through Irish occupational safety and health legislation, could be compromised in the view of both employers and employees by the introduction of the concept of compensation for “acceptable risk” instead of seeking, in the first instance, to eliminate, reduce or mitigate against the risk.

Pandemic Impact on Essential and Frontline Workers

IHREC Comment

IHREC is concerned that essential workers were not sufficiently protected from the impact of Covid-19 during the reference period, and that pre-existing poor working conditions were exacerbated by the pandemic.

IHREC is concerned that the State should embed learning from the impact of Covid-19 through measures to eliminate or reduce risks in inherently dangerous or unhealthy occupations, particularly those with structurally vulnerable employees such as low-paid women and migrants.

Response

Under Irish occupational safety and health legislation all workers are afforded the same statutory protections irrespective of their gender, nationality or the economic sector in which they work.

The [Safety, Health and Welfare at Work Act 2005](#) places a statutory obligation on all employers to ensure a safe place of work for their workers to carry out and record a risk assessment of the hazards involved in any work tasks and to produce a safety statement based on the risk assessment, and to make the appropriate elements of the safety statement known to the worker in a language easily understood by the worker.

In order to address the specific workplace health and safety risks faced by workers in the context of the COVID-19 pandemic, the Irish Government introduced the *Work Safely Protocol*. The Protocol was designed to assist employers and workers to put infection prevention and control (IPC) and other measures in place to prevent the spread of COVID-19 in the workplace. The Protocol incorporated advice about Public Health measures to reduce the spread of COVID-19 in the community and workplaces as issued by the National Public Health Emergency Team (NPHE) and Government.

The Protocol also covered the measures needed to both ensure the safe operation of the workplace and the re-opening of workplaces following temporary closures. The Protocol was a collaborative effort by a number of State Agencies and Government Departments i.e., the Health and Safety Authority (HSA), the Department of Enterprise, Trade and Employment (DETE), the Health Services Executive (HSE) and the Department of Health. The Protocol was also discussed and agreed 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.

A revision of the *Work Safely Protocol* - [The Transitional Protocol: Good Practice Guidance for Continuing to Prevent the Spread of COVID-19](#) – which was launched in January 2022 reflects the lessons learned to date and places a greater emphasis on guidance and best practice to support the safe return to physical attendance in the workplace.

In addition to the Protocol, the Health and Safety Authority (HSA) produced a range of checklists, templates and guidance material based on the Protocol. Throughout the COVID-19 pandemic the HSA 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.

Between May 2020 and January 2022 over 50,000 inspections of workplaces to check compliance with the Protocol were carried out by a number of State Agencies and there were over 540,000 downloads of Protocol related checklists, templates and guidance material from the [HSA website](#).

In relation to inspections of Department of Agriculture approved Meat Processing Plants between May 2020 and May 2022, the HSA carried out 508 COVID-19 compliance inspections of which 34 were preannounced. This means that only 6.7% of all COVID-19 compliance inspections in the sector carried out over a 2-year period were preannounced. As with all other HSA inspections, Covid-19 compliance inspections were predominantly made without prior notification.

However, in some exceptional circumstances prior notification would have been appropriate, for example, in support of Public Health management of an COVID-19 outbreak, advanced notification may have been required for operational reasons.

In November 2020, Ireland introduced the Safety, Health and Welfare at Work (Biological Agents) (Amendment) Regulations 2020 ([S.I. No. 539 of 2020](#)) which amended the Safety, Health and Welfare at Work (Biological Agents) Regulations 2013 and gave effect to Commission Directive (EU) 2019/1833 of 24 October 2019 and Commission Directive (EU) 2020/739 of 3 June 2020. In parallel, the HSA introduced the Biological Agents Code of Practice which introduced reporting requirements under Regulation 12 of the Safety, Health and Welfare at Work (Biological Agents) Regulations 2013, as amended, for certain workplaces e.g., healthcare or laboratories.

Where an employer becomes aware of a confirmed case of COVID-19 in an employee (e.g., informed by a medical practitioner, public health or other health professional) as a result of the employee carrying out work with the coronavirus (SARS-CoV-2) the employer must notify the HSA. It is also acceptable for a medical practitioner to notify the HSA on behalf of the employer.

To determine whether exposure to COVID-19 is work related, the following is considered: is there a deliberate intention to work with the virus e.g., propagating the virus in a research laboratory. In addition, it is accepted that occupational exposure can also occur incidentally from specific work activities involving direct exposure to the virus e.g., working directly with a COVID-19 patient, handling SARs-CoV-2 infected waste, conducting COVID-19 testing or carrying out diagnostic testing for COVID-19 in a laboratory.

In the case of a death of an employee from COVID-19, where it has been established that the death was because of the employee's work with the coronavirus (SARS-CoV-2), the employer (or medical practitioner) must notify this death to the Health and Safety Authority in the same way as other work-related deaths.

Working Consecutive Days

IHREC comment

IHREC is concerned that Ireland remains in non-conformity with Article 2.5 in relation to this derogation and that the State needs to act to provide adequate safeguards to prevent employees having to work for more than twelve consecutive days without a rest period.

Response

The Code of Practice on the Right to Disconnect is a best practice guide covering statutory obligations around record keeping, maximum average weekly working hours permitted for employees and rest period entitlements. The Code highlights legal protections already in place in Irish Law and is also aimed at ensuring that employees are aware of their legal entitlements and how to raise concerns in relation to non-compliance.

As stated above (under 'Overtime Work'), Directive 2019/1152 on Transparent and Predictable Working Conditions requires that work takes place within pre-determined reference hours and days. These reference hours and days must be notified to the employee on commencement of employment as part of their written statement. Work should take place within these pre-determined hours and days.

Once the Directive is transposed, an employee will be able to refuse a request to work if the employee does not receive 24 hours' notice and/or work does not take place within the reference hours or days notified to employee as part of their written terms.

Work is ongoing to transpose Directive 2019/1152.

Article 4: The Right to a Fair Remuneration

Living Wage

IHREC comment

IHREC is concerned that there were legislative and policy gaps in relation to the right to a living wage during the reference period, despite the State's obligations to ensure the right of workers to a remuneration that will give them and their families a decent standard of living

Response

Ireland notes that the IHREC recognises the recent developments in relation to the living wage, notably the publication of the Low Pay Commission's recommendations on the phasing in of a [living wage](#), and the government's recent [public consultation](#) on same.

Zero-Hour Contracts, the Platform/Gig Economy and Precarious Employment

IHREC comment

IHREC is concerned about the lack of adequate protections for employees in precarious employment, zero-hour contracts and workers in the platform or gig economy, including measures to ensure their right to a fair remuneration.

Response

Ireland's comprehensive body of employment rights legislation protects all employees who are legally employed on an employer-employee basis. Employment rights legislation was strengthened by the commencement of the [Employment \(Miscellaneous Provisions\) Act 2018](#) on 4th March 2019.

The Act delivered on the Programme for Government commitment to address the challenges of the increased casualisation of work and to strengthen the regulation of precarious employment. The Act provides that:

- employers must give to employees their core terms of employment within five days of starting work;
- zero hours contracts are restricted to situations where the work is of a genuinely casual, emergency or short-term relief nature;
- there are minimum payments for people when they are called into work, but sent home without work;
- a 'band of hours' system has been introduced whereby an employee can request to be placed on a contract that better reflects the hours they have worked over a 12 month reference period;

Section 18 of the Organisation of Working Time Act 1997 (OWTA) was amended 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.

There are strong anti-penalisation provisions, including recourse to the Workplace Relations Commission, for employees who invoke their rights under this legislation.

Bogus or False Self-Employment

IHREC comment

IHREC is concerned that legislative and policy gaps result in employees not being adequately protected from bogus or false self-employment.

Response

The Irish Human Rights and Equality Commission have identified that there are three statutory bodies with responsibility for determining the true employment status of a worker.

The Department of Social Protection's (DSP) role in this area is to ensure the correct class of PRSI is being returned for individuals, in order to protect their PRSI contribution record. DSP must also ensure the correct flow of funds into the Social Insurance Fund.

To begin with, it is worth noting that there are approximately 340,000 self-employed individuals in Ireland, the vast majority of whom are genuine entrepreneurs operating their own businesses.

The term 'bogus self-employment' is a provocative one that implies falsehood and a deliberate attempt to commit fraud. However, false self-employment does not always involve a deliberate or fraudulent misclassification of an employee. Sometimes it happens that both employer and employee are genuinely mistaken in their approach and are happy to correct the position once the Department's officials make a determination. Accordingly, it is clear that the misclassification of employees for PRSI purposes can occur through a lack of knowledge or error or due to changes that occur over time in the relationship between an employer and its contractors. Therefore, it is really important that employers and workers have clear information and guidance when looking at employment status.

There is no compelling evidence that false self-employment is widespread. That said, it does exist and as such DSP take it very seriously and does not want to see a situation where any workers are denied their social insurance entitlements or where much-needed funds are denied to the Social Insurance Fund. It is important to point out that welfare deprivation at an individual worker level, as a result of their contribution class, is not as punitive as suggested by some.

All self-employed contributors are currently covered for a wide range of social insurance benefits including State pension (contributory), widow's, widower's or surviving civil partner's pension (contributory), guardian's payment (contributory), maternity, adoptive and paternity benefits, treatment benefits, invalidity pension, partial capacity benefit if in receipt of invalidity pension, jobseeker's benefit (self-employed) and parent's benefit. The table below compares the coverage for employees and the self-employed.

Benefits	Employees	Self-Employed
Adoptive Benefit	X	X
Carer's Benefit	X	
Guardian's Payment (Contributory)	X	X
Health and Safety Benefit	X	
Illness Benefit	X	
Invalidity Pension	X	X
Jobseeker's Benefit	X	
Jobseeker's Benefit (Self-Employed)		X
Maternity Benefit	X	X

Benefits	Employees	Self-Employed
Occupational Injuries Benefit	X	
Parent's Benefit	X	X
Partial Capacity Benefit	X	X
Paternity Benefit	X	X
State Pension (Contributory)	X	X
Treatment Benefit	X	X
Widows', Widowers' and Surviving Civil Partner's (Contributory) Pension	X	X

The Department of Social Protection also introduced two emergency income support payments at the onset of Covid-19. The pandemic unemployment payment and the enhanced illness benefit scheme were available to both employees and self-employed workers. Self-employed workers in receipt of the pandemic unemployment payment and who sought to maintain their business could have an income of up to €960 over an eight-week period and retain their full payment.

DSP's Employment Status Investigation Unit (ESIU) is a team of Inspectors with the sole objective of investigating false self-employment. Since it was established in late 2019, the unit has investigated in excess of 500 employers.

In addition to the ESIU, there are approximately 380 Social Welfare Inspectors appointed nationwide who carry out work across the various social welfare schemes. This includes engagement in a programme of employer inspections nationwide in which they investigate employment status as part of their more general duties.

DSP's Inspectors also work jointly with other agencies including the Revenue Commissioners and the Workplace Relations Commission to combat misclassification of workers.

A working group consisting of DSP, the Revenue Commissioners and the Workplace Relations Commission updated the existing Code of Practice on determining employment status to improve awareness of the differences between employee and self-employed status.

The revised [Code of Practice on Determining Employment Status](#) - published in July 2021 - reflects both the modern world of work, and the relevant legislation and case law that has emerged from various court cases over the years.

Reduced Minimum Wage

IHREC comment

IHREC is concerned that the State remains in non-conformity with Article 4.1 as 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 and has a disproportionate impact on young people entering the workforce

Response

It should be noted that the provision in the legislation in relation to adult workers on their first employment or following a course of studies has been repealed¹.

In February 2022, the Tánaiste and Minister for Enterprise, Trade and Employment requested the Low Pay Commission to examine and make recommendations on subminimum rates. The Low Pay Commission's recommendations on subminimum rates will be made during 2023 and then considered by Government.

¹ Section 16 of the National Minimum Wage Act 2000, repealed by s. 3(b) of the Employment (Miscellaneous Provisions) Act 2018.

Right to an Increased Remuneration for Overtime Work

IHREC comment

IHREC is concerned that the State remains in non-conformity with Article 4.2 as there is no guarantee for workers to a right to increased remuneration for overtime work.

Response

Overtime means work done outside an employee's normal working hours. In Ireland, 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.

Section 3(1) of the Terms of Employment (Information) Act 1994 requires an employer to provide a Written Statement of terms of employment to an employee within two-months of the commencement of employment. Section 3(1)(i) requires that the Written Statement include any terms or conditions relating to hours of work (including overtime). Under section 17 of the [Organisation of Working Time Act 1997](#), where an employer requires an employee to work 'additional hours', or where an employee does not have regular start/finish times, employers are required to give the employee at least 24 hours' notice before the employee is required to work.

EU Directive 2019/1152 on Transparent and Predictable Working Conditions requires that work takes place within pre-determined reference hours and days. These reference hours and days must be notified to the employee on commencement of employment as part of their written statement. Work should take place within these pre-determined hours and days. Once the Directive is transposed, an employee will be able to refuse a request to work if the employee does not receive 24 hours' notice and/or work does not take place within the reference hours or days notified to employee as part of their written terms.

EU Directive 2019/1152 will, once transposed, also require that any terms or conditions relating to hours of work (including overtime) will have to be provided to an employee within five days of commencement of employment i.e., to be included on the 'Day-5 Statement'.

Gender Pay Gap

IHREC comment

While IHREC welcomes this development which recognises the right of men and women to equal pay for work of equal value under Article 4.3, it is concerned that this legislation's delayed commencement meant that it was not in place during the reference period.

Response

The Gender Pay Gap Information Act 2021 was commenced in 2022 and regulations to introduce reporting by organisations with over 250 employees in 2022 have been published. Relevant organisations will provide their first reports in December 2022.

Periods of Notice Applicable to Employees and Civil Servants

IHREC comment

IHREC is concerned that the periods of notice provided for by Irish legislation are not in conformity with Article 4.4 of the Charter.

Response

Under the terms of the [Minimum Notice and Terms of Employment Acts, 1973-2005](#), 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 –

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

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

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.

Deductions from an Employee's Wages

IHREC comment

IHREC is concerned that deductions from wages may still be determined by employers and employees in the context of a contractual agreement. Such deductions may also be authorised in circumstances which are not well-defined in the legislation. For these reasons, IHREC is of the view that the situation has not been brought into conformity with Article 4.5 of the Charter.

IHREC is concerned that after authorised deductions, the wages of workers with the lowest pay does not allow them to provide a decent standard of living for themselves or their dependants, and this matter has not been brought into conformity during the reference period.

Response

Section 5(1) of the [Payment of Wages Act 1991](#) prohibits an employer from making a deduction from an employee's wages unless the deduction is required by statute; is required or authorised to be made by virtue of a term of the employee's contract of employment where this has been included in the contract before, and is in force at the time of, the deduction or payment; the employee has given his prior consent in writing to it. Sections 5(2) to 5(6) of the Act of 1991 provide for more detailed provisions on whether and when authorised deductions can take place.

Section 6 of the Payment of Wages Act 1991 provides for an employee to make a complaint to the Workplace Relations Commission (WRC) where an employee believes that an unauthorised deduction has taken place and section 7 of the Act allows for a further appeal to the Labour Court.

The current provisions of the Payment of Wages Act 1991 are considered appropriate having regard to the rights and obligations of the employer and the employee and are designed to cater for the deduction of statutory and voluntary deductions in a lawful, fair, and transparent manner.

Article 5: The Right to Organise

Trade Union Membership

IHREC comment

IHREC is concerned at the lower rates of trade union membership in Ireland, particularly among employees born outside of Ireland and young workers; and that Irish data continues to conflate trade union membership with data on membership of staff associations.

Response

All workers in Ireland, regardless of nationality, have a constitutional right to join or not to join a union(s).

Defence Forces

IHREC comment

IHREC welcomes the recent developments in relation to membership by military representative associations but is concerned that these are temporary and limited measures. IHREC is further concerned that there is no commitment to implement these measures on a permanent basis, or any timeline for the introduction of permanent measures.

IHREC is of the view that the State should remove the complete prohibition against military representative associations from joining national employees' organisations, in order to bring the current legislative framework into conformity with Article 5 of the Charter.

Response

By law (the Defence Act as amended), the Permanent Defence Force Representative Associations are prohibited from being associated with, or affiliated with, any trade unions or any other body without the consent of the Minister for Defence. Ireland is not unique in imposing limitations on the rights of association for military personnel.

Both Defence Forces Representative Associations (PDFORRA & RACO) sought associate membership with the Irish Congress of Trade Unions (ICTU) for the purpose of being involved in central public sector pay negotiations.

As provided for in the Defence Acts, conditional temporary consent for this purpose was provided to both organisations in late May and early June 2022, respectively. This associate membership is temporary until the appropriate legislative provision is put in place.

The Report of the Commission on the Defence Forces noted the complex nature of the issue, as well as the requirement for a range of matters to be resolved before this could be facilitated in the longer term by the Government. The Department of Defence is now proceeding with developing the necessary legislative provision in this regard.

It is the role of the Minister for Defence to ensure that ultimately, the State's ability to control and direct its Armed Forces remains absolute, and that any eventual solution in this regard definitively retains that certainty.

The Authorisation of Certain ‘Closed Shop’ Practices by Law

IHREC comment

IHREC notes that in 2014 the Committee stated that:

“domestic law must clearly prohibit all pre-entry or post-entry closed shop clauses and all union security clauses (automatic deductions from the wages of all workers, whether union members or not, to finance the trade union acting within the company).”

IHREC notes that this situation did not change during the reference period.

However, IHREC draws the Committee’s attention to the decision of the Irish Court of Appeal in O’Connell v. Building and Allied Trade Union [2016] IECA 338, where it was held that the defendant trade union had breached the plaintiff’s constitutional right to earn a livelihood when it refused him full membership of the union, in circumstances where it enjoyed an effective monopoly over the relevant market.

IHREC is of the view that no action was taken to remedy the situation during the reference period and there is ongoing non-conformity with Article 5.

Response

The Payment of Wages Act regulate deductions from a person's salary. Any deduction for union fees would require the employee’s consent or an express employment clause authorising such deduction.

Closed shop practices are unlikely to withstand constitutional scrutiny and accordingly the practice is largely obsolete.

Article 6: The Right to Bargain Collectively

Collective Bargaining

IHREC comment

IHREC is concerned that the right to collective bargaining is not provided for or protected by domestic law. Given the exercise of this right represents an essential basis for the fulfilment of other fundamental rights guaranteed by the Charter and the ongoing pandemic impact and worsening economic inequality in Ireland, immediate action by the State is required to address this gap and the imbalance of power in the labour market.

Response

It is incorrect to suggest that Ireland does not provide for collective bargaining. It is true to say that Ireland's legislation does not compel any employer to engage with a union.

Ireland has statutory mechanisms that facilitate collective bargaining and an institutional framework to support same.

Victimisation for trade union membership has been prohibited since 1973.

Employees and employers enjoy contractual freedom to agree to terms and conditions provided that they do not undermine existing statutory provisions.

Protections relating to Strike Action

IHREC comment

IHREC is concerned that the State continues to be in non-conformity with Article 6.4 of the Charter

Response

The Industrial Relations Act of 1990 provides immunities for members of trade unions and their representatives in the event of a lawful strike. Any dismissal is subject to the protections of fair procedures.

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

Response to the COVID-19 Pandemic

IHREC comment

IHREC is concerned that these measures [regarding Right to Request Remote Working and the Right to Disconnect] were not in place during the reference period, and, in particular, on the outbreak of the Covid-19 pandemic.

Response

It is incorrect to suggest that there were no right to disconnect protections in place during the Covid pandemic. Employees in Ireland enjoy contractual employment rights including express 'working hours'; health and safety protections and the protection of the organisation of working time which governs rules on rest periods, holidays and public holidays.

The commitment to introduce legislation to underpin employees' right to request remote work was made in the national [Remote Work Strategy – Making Remote Work](#) - published in January 2021. In January 2022, Government approved the priority drafting of the Right to Request Remote Working Bill 2022.

Pre-legislative scrutiny of the General Scheme by the Joint Oireachtas Committee on Enterprise, Trade and Employment commenced on 9th February and the Report of the Committee was published on the 7th of July. Officials in the Department of Enterprise, Trade and Employment are considering its contents.

Entitlement of Disabled Employees to Consult with Employers in Relation to Reasonable Accommodation

IHREC comment

IHREC is concerned that disabled employees do not have an express right to consult with their employer in relation to the provision of reasonable accommodation in the workplace. IHREC is therefore of the view that disabled employees are not adequately afforded the right to take part in the determination and improvement of the working conditions and working environment under Article 22; and that the State needs to urgently legislate for a proactive duty on employers.

Response

Regulation 25 of the Safety, Health and Welfare at Work (General Application) Regulations 2007 to 2021 - the “General Application Regulations” - states-

“Employees with disabilities

An employer shall ensure that places of work, where necessary, are organised to take account of persons at work with disabilities, in particular as regards doors, passageways, staircases, showers, washbasins, lavatories and workstations us”

The provision of suitable accommodation for all workers at a place of work must be taken into consideration when an employer carries out their statutorily required risk assessment and should also be referred to their written safety statement.

The relevant contents of the employer’s safety statement must be shared with appropriate workers and the workers must acknowledge having received the information to validate the employer’s safety statement.

Other Relevant Developments

IHREC comment

IHREC notes that the European Commission has issued an infringement notice on Ireland in respect of the transposition of the EU Directive on European Works Councils and called on Ireland to amend its legislation.

The European Commission has identified a number of shortcomings in Irish legislation, which fails to guarantee the right of workers' representatives, the Special Negotiating Body (a body of workers' representatives) or the European Works Council to go to a national court over disputes related to breaches of the rights and obligations under this Directive.

This concerns, for instance, disputes related to the right to request assistance and presence of an expert in negotiation meetings or disputes related to confidentiality obligations. IHREC awaits the outcome of that process.

Response

Ireland is engaging with the European Commission directly on this issue. It is Ireland's position that the Irish transposition is in compliance with the Directive.

Article 26: The Right to Dignity at Work

Review of Equality Legislation

IHREC comment

IHREC is concerned that employees harassed on the grounds of socio-economic status and intersectional discrimination were not adequately protected by the existing equality legislation during the reference period; that the State's intention to 'examine the introduction of a new ground of discrimination, based on socio-economic disadvantaged status' is insufficiently ambitious; and that the State's commissioned research has yet to be published.

Response

Significant advances have been made in recent years to address inequality in Irish society, with Ireland's commitment to fostering a diverse, inclusive and equal society re-affirmed through the Programme for Government commitments to achieve social solidarity, equality of opportunity and economic equity for all.

In June 2021, a public consultation process was launched, which will inform the review of two important pieces of equality legislation. The review will examine the functioning of the Employment Equality Acts (Equal Status Acts 2000-2018 and the Employment Equality Acts 1998-2015), and their effectiveness in combatting discrimination and in promoting equality, particularly from the perspective of a person taking a claim under its redress mechanisms. The review will also examine the awareness of equality legislation among those experiencing discrimination, and whether there are obstacles that preclude individuals from taking action.

This review of equality legislation will also consider Ireland's commitment, in its Programme for Government, to introduce socioeconomic circumstances as a ground for discrimination. Current definitions of discrimination will be assessed, in addition to issues such as intersectionality and legalities with regard to non-disclosure agreements in cases of discrimination and harassment.

The consultation received a substantial response from members of the public. Submissions received are being analysed and will inform the development of the legislative proposals to be brought forward in 2023.

Protected Disclosure

IHREC comment

Harassment is recognised as a form of penalisation under the Protected Disclosures Act 2014. The Protected Disclosures (Amendment) Bill 2022 contains some proposed amendments to the legislation. Of significance is that it is proposed to expand the definition of worker to include volunteers, shareholders and prospective employees. It is also proposed to extend the recourse to interim relief to penalisation other than dismissal (including harassment), and to provide for criminal penalties for penalisation.

IHREC is concerned that these proposed protections were not in place during the reference period, and that there was a gap in the legislation.

Response

The Protected Disclosures Act has been in place since 2014 and penalisation against those who report wrongdoing have been prohibited.

The [Protected Disclosures \(Amendment\) Act 2022](#), which amended the Protected Disclosures Act 2014, was signed into law on 21 July 2022 and transposes Directive (EU) 2019/1937, the Whistleblowing Directive. While it is regrettable this could not be enacted ahead of the European Commission's December 2021 deadline, it was recognised that, given the consequences to whistle-blowers, that this legislation was done correctly. Schedule 7 in the Act provides for retrospective protections for those in the expanded personal scope of the legislation who would qualify for protection in the meaning of the Directive.

A new Office of the Protected Disclosures Commissioner will be established in the Office of the Ombudsman to support the operation of the new legislation.