

**INDUSTRIAL RELATIONS (AMENDMENT) BILL 2014**  
**HEADS OF BILL**

**PART I**

|               |                    |
|---------------|--------------------|
| <b>Head 1</b> | <b>Short title</b> |
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Provide for the short title, collective citation and construction provisions of the Bill.

**Explanatory Note.**

This is a standard legislative provision.

**Head 2****Commencement**

Provide that this Bill shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

**Explanatory Note.**

This is a standard legislative provision.

## **PART II**

AGREEMENTS RELATING TO REMUNERATION AND CONDITIONS OF EMPLOYMENT: -

TO PROVIDE FOR A LEGISLATIVE FRAMEWORK TO ALLOW INDIVIDUAL ENTERPRISES AND TRADE UNIONS TO REGISTER EMPLOYMENT AGREEMENTS WITH THE LABOUR COURT THAT WILL BE BINDING ONLY ON THE PARTIES TO THE AGREEMENT

### **Registered Employment Agreements**

#### **Head 3        Definitions for the purposes of Part II**

##### **Provide**

In this Part -

the expression “employment agreement” means an agreement relating to the remuneration or the conditions of employment of workers of any class, type or group made between a trade union, or trade unions, of workers and an employer, or a trade union of employers that are binding only on the parties to the agreement;

the expression “the register” means the Register of Employment Agreements;

the expression ‘registered employment agreement’ means an employment agreement for the time being registered in the register;

and the word ‘registered’ shall be construed accordingly;

the words “relevant employer or relevant employers” means an employer or employers that is or are party to an employment agreement

##### **Explanatory Note.**

These definitions are modelled on corresponding definition provided for in section 25 of the Industrial Relations Act 1946.

## **Head 4      Register of Employment Agreements**

### **Provide**

The Court shall maintain a register to be known as the Register of Employment Agreements.

### **Explanatory Note**

This provision replicates Section 26 of the Industrial Relations Act 1946.

## **Head 5          Registration of employment agreements**

### **Provide**

(1) Any party to an employment agreement may apply to the Court to register the agreement in the register.

(2) Every application to register an employment agreement shall be accompanied by -

- (a) a copy of the agreement, and
- (b) confirmation, in such form and accompanied by such documentation as the Court may specify, that the trade union of workers is, or trade unions of workers are, substantially representative of the workers in the class, type or group to which the agreement is expressed to apply.

(3) Where an application is duly made to the Court to register in the register an employment agreement, the Court shall, subject to the provisions of this section, register the agreement in the register if it is satisfied—

- a) that there is agreement amongst the parties to the employment agreement that it should be registered,
- b) that the agreement is expressed to apply to all workers of a particular class, type or group and their employer where the Court is satisfied that it is a normal and desirable practice or that it is expedient to have a separate agreement for that class, type or group,
- c) that the trade union of workers is, or trade unions of workers are substantially representative of such workers,
- d) that the agreement is not intended to restrict unduly employment generally or the employment of workers of a particular class, type or group or to ensure or protect the retention in use of inefficient or unduly costly machinery or methods of working,
- e) that the agreement provides that, if a trade dispute occurs between workers to whom the agreement relates and their employer, a strike or lock-out shall not take place until the dispute has been submitted for settlement by negotiation in the manner specified in the agreement, and

f) that the agreement is in a form suitable for registration.

(4) The Court shall not register an agreement under subsection (3) unless it is satisfied that—

(a) the trade union of workers is, or trade unions of workers are, substantially representative of the workers, and in satisfying itself in that regard the Court shall take into consideration the number of workers represented by the trade union party or parties that are employed by the employer, and that where a trade union of employers is party to the agreement that the relevant employers are members of the trade union of employers, and

(b) registration of the agreement is likely to promote—

- (i) harmonious relations between workers and their employer, and
- (ii) the avoidance of industrial unrest.

(5) Where an application is made to the Court to register an employment agreement, the Court shall direct such parties thereto as the Court shall specify to publish specified particulars of the agreement in such manner as, in the opinion of the Court, is best calculated to bring the application to the notice of all persons concerned.

(6) (a) The Court shall not register an employment agreement until the lapse of fourteen days after publication of particulars of the agreement in accordance with subsection (5) of this section.

(b) If within that period the Court receives notice of an objection to the agreement being registered, the Court shall, unless it considers the objection frivolous, consider the objection and shall hear all parties appearing to the Court to be interested and desiring to be heard, and if, after such consideration, the Court is satisfied that the agreement does not comply with the requirements specified in subsections (3) and (4) of this section, the Court shall refuse to register the agreement.

(7) A registered employment agreement shall not prejudice any rights as to rates of remuneration or conditions of employment conferred on any worker by another Part of this Act or by any other Act.

## **Explanatory Note**

This Head is modelled on Section 27 of the Industrial Relations Act 1946 albeit that any reference to sectoral representation has been removed as they are not relevant to company-level agreements. However, as the new provisions are restricted to the registration of employment agreements that are binding only on the parties to the agreement, it is not considered necessary to provide for the same level of principles and policies that would apply in the case of agreements that would have application beyond the contracting parties. Neither, for the same reasons, is it considered necessary for the registration to be confirmed by Ministerial order.

## **Head 6      Variation of registered employment agreements**

### **Provide**

(1) Subject to this section, any party to a registered employment agreement may apply to the Court to vary the agreement in its application to any worker or workers to whom it applies.

(2) Where all parties to the registered employment agreement agree to vary the agreement in the terms of the proposed application, the Court shall within 6 weeks of receipt of an application under subsection (1) consider the application and shall hear all persons appearing to the Court to be interested and desiring to be heard.

(3) Not later than 4 weeks after considering an application under subsection (2) and where it is satisfied that it is appropriate to do so, having regard to the matters specified in subsection (4) of Head 5, the Court shall, as it thinks fit, refuse the application or make an order varying the agreement in such manner as it thinks proper.

(4) Where a party to a registered employment agreement wishes to apply to the Court to vary the agreement, and the other party or parties to the agreement do not agree with the proposed variation, a party to the agreement may invoke the dispute resolution procedures contained in the agreement.

(5) Where the parties to the registered employment agreement have complied with subsection (4) and have failed to reach agreement, a party to the agreement may refer the dispute to the Labour Relations Commission/WRC for conciliation.

(6) Following a referral of a dispute to the Labour Relations Commission/WRC under subsection (5), where the parties to the dispute have failed to arrive at a settlement of the dispute through conciliation, the Commission shall, within 6 weeks of referral of the dispute, forward a report to the Court stating that it is satisfied that no further efforts on its part will advance the resolution of the dispute and, notwithstanding



section 26 of the Industrial Relations Act 1990, the Commission shall request the Court to investigate the dispute.

(7) On receipt of a report under subsection (6), the Court shall consider the application and shall hear all persons appearing to the Court to be interested and desiring to be heard, and the Court shall, within 6 weeks of receipt of the report, issue a recommendation to the parties to the registered employment agreement setting out its opinion on the merits of the dispute and the terms on which it should be settled.

(8) Where, 6 weeks after the date on which a recommendation under subsection (7) has issued, the dispute has not been resolved, a party to the agreement may apply to the Court to vary the agreement in the terms of the Court's recommendation.

(9) The Court shall consider an application under subsection (8) and shall hear all persons appearing to the Court to be interested and desiring to be heard, and after such consideration, where it is satisfied that it is appropriate to do so having regard to the matters set out in subsections (3) and (4) of Head 5, the Court may, within 6 weeks of receipt of the application, as it thinks fit, refuse the application or make an order varying the agreement in such manner as it thinks proper.

(10) Where a registered employment agreement provides for a notice period for a party to withdraw from such an agreement where the Labour Court has made an order varying the agreement under section (9) of this Head, the Court, on receiving notice of such withdrawal shall cancel or amend the registered agreement as appropriate.

### **Explanatory Note**

This Head provides for a time-bound process by which the terms of an Agreement may be varied by the Labour Court in certain circumstances without necessarily obtaining the consent of all parties to the Agreement. The provisions are modelled on Section 28 of the Industrial Relations Act 1946. It also allows a party to the agreement who feels unable to meet the changed terms and conditions arising from a varying of the agreement to withdraw where the agreement contains a provision to this effect.

## **Head 7            Cancellation of a registration**

### **Provide**

- (1) The registration of an employment agreement may be cancelled by the Court on the joint application of all parties thereto if the Court is satisfied that the consent of all such parties to its cancellation has been given voluntarily.
  
- (2) Where a registered employment agreement does not provide for its duration or termination, the Court may, after the lapse of twelve months from the date of registration, cancel the registration on the application, made after six months' notice to the Court, of all parties thereto.
  
- (3) (a) Where a registered employment agreement is expressed to be for a specified period, it shall, if in force at the end of that period, and notwithstanding any provision that it shall cease to have effect at the expiration of such period, continue in force until its registration is cancelled in accordance with this Part.  
(b) The registration of an employment agreement continued in force under paragraph (a) of this subsection may be cancelled by the Court on the application of any party thereto, made after three months' notice to the Court, and consented to by all parties thereto.
  
- (4) Where a registered employment agreement is terminated by any party thereto in accordance with any provision contained therein, the Court shall, on receiving notice of the termination, cancel the registration.
  
- (5) The Court may cancel the registration of an employment agreement if it is satisfied, having regard to section 4(a) of Head 5 above, that the trade union of workers, or trade unions of workers, who were party to the agreement are no longer substantially representative of the workers concerned.

## **Explanatory Note**

This Head provides for the cancellation of an employment agreement and is modelled on Section 29, subsections (1), (3), (4) and (5) of the Industrial Relations Act 1946. As the employment agreement at issues is binding only on the parties to the agreement, subsections (2), (6) and (7) of Section 29 are not relevant.

**Head 8      Adaptation of contracts of service consequential upon registration of employment agreement.**

Provide

(1) A registered employment agreement shall, so long as it continues to be registered, apply, for the purposes of this section, to every worker of the class, type or group to which it is expressed to apply, and his/her employer.

(2) If a contract between a worker of a class, type or group to which a registered employment agreement applies and his/her employer provides for the payment of remuneration at a rate (in this subsection referred to as the contract rate) less than the rate (in this subsection referred to as the agreement rate) provided by such agreement and applicable to such worker, the contract shall, in respect of any period during which the agreement is registered, have effect as if the agreement rate were substituted for the contract rate.

(3) If a contract between a worker of a class, type or group to which a registered employment agreement applies and his employer provides for conditions of employment (in this subsection referred to as the contract conditions) less favourable than the conditions (in this subsection referred to as the agreement conditions) fixed by the agreement and applicable to such worker, the contract shall in respect of any period during which the agreement is registered, have effect as if the agreement conditions were substituted for the contract conditions.

**Explanatory Note**

This Head provides for the incorporation of the terms of any Registered Employment Agreement in respect of pay or pensions to be incorporated in a worker's contract of employment and is modelled on Section 30 of the Industrial Relations Act 1946.

**Head 9      Publication of particulars in relation to employment agreements and right to obtain copies thereof**

**Provide**

- (1) When an employment agreement is registered the Court shall cause to have published in such manner as it thinks fit notice of the registration together with such particulars of the agreement as the Court considers necessary.
- (2) When a registered employment agreement is varied the Court shall cause to have published in such manner as it thinks fit notice of the variation together with such particulars of the variation as the Court considers necessary.
- (3) When the registration of an employment agreement is cancelled the Court shall cause to have published in such manner as it thinks fit notice of the cancellation.
- (4) The Court may from time to time publish in such manner as it thinks fit lists of registered employment agreements together with such particulars of the agreements as the Court considers necessary.

**Explanatory Note**

This provision is based on section 31 of the Industrial Relations Act 1946. It removes requirement for payment of prescribed fee for obtaining a copy of such an agreement. This has rarely been utilised in practice and, in any event, all agreements will be published via the website under Head 9, section (1). The administrative cost of processing such a fee would exceed any fee that could be charged.

## **Head 10 Breaches of registered employment agreements**

Provide

- (1)
  - (a) If a trade union representative of workers, or a worker, affected by a registered employment agreement complains to the Director General of the WRC<sup>1</sup> that the employer to which the agreement relates has failed or neglected to comply with the agreement, the provisions of section 41(2) of the Workplace Relations Bill will be followed whereby the Director General may refer the matter to the early resolution service, or mediation, or to an adjudication officer as appropriate and section 41(4) of the Workplace Relations Bill adjudication officer process shall apply.
  - (b) if early resolution or mediation has not been deemed appropriate by the Director General or has not brought about a resolution of the complaint and the matter has been referred to an adjudication officer, such officer, where the officer is satisfied that the complaint is well-founded, may make a decision requiring the said employer to do such things (including the payment of any sum due to a worker for remuneration in accordance with the agreement) as will in the opinion of the adjudication officer result in the said agreement being complied with by the said employer.
  - (c) The enforcement provisions of Sections 43 and 45 of the Workplace Relations Bill shall apply in terms of dealing with non-implementation of an employer with a decision of the adjudication officer under section (1)(b) or a subsequent determination on the matter by the Labour Court and possible making of an Order by the District Court.
- (2) If the employer affected by a registered employment agreement complains to the Court that a trade union representative of workers affected by the agreement is promoting or assisting out of its funds in the maintenance of a strike which to the

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<sup>1</sup> Provisions are drafted in accordance with provisions of the Workplace Relations Bill (WRB). If this Bill is enacted before WRB then existing procedures via Labour Court will apply – however, this will be temporary as, on passing of WRB processes will be amended to reflect those in WRB.

knowledge of the general committee of management of the trade union of workers is in contravention of the agreement and which has for its object the enforcement of a demand on an employer to grant to a worker remuneration or conditions other than those fixed by the agreement, the following provisions shall have effect—

(a) the Court shall consider the complaint and shall hear all persons appearing to the Court to be interested and desiring to be heard;

(b) if, after such consideration, the Court is satisfied that the complaint is well-founded—

(i) the Court may, by order, direct the said trade union of workers to refrain from assisting out of its funds in the maintenance of the said strike;

(ii) the Court may cancel the registration of the agreement.

(3) Where—

(a) a strike continues after the Court has made an order under subsection (2) of this section in respect of the strike, and

(b) members of a trade union of workers, whose rates of remuneration or conditions of employment are not the subject of the strike, are unable or decline to work while the strike continues, then, the payment to those members of strike benefit in accordance with the rules of the trade union shall not be regarded, for the purposes of this section, as assisting in the maintenance of the strike.

### **Explanatory Note**

This Head makes provision for breaches of a Registered Employment Agreement and is modelled on Sections 41, 43 and 45 of the Workplace Relations Bill (complaint and enforcement) approved by Government on 8 July, 2014, and section 32 of the Industrial Relations Act 1946 (strike in contravention of agreement).

## **Head 11 Interpretation of registered employment agreements.**

### **Provide**

(1) The Court may at any time, on the application of any person, give its decision on any question as to the interpretation of a registered employment agreement or its application to a particular person.

(2) A court of law, in determining any question arising in proceedings before it as to the interpretation of a registered employment agreement or its application to a particular person, shall have regard to any decision of the Court on the said agreement referred to it in the course of the proceedings.

(3) If any question arises in proceedings before a court of law as to the interpretation of a registered employment agreement or its application to a particular person, the court of law may, if it thinks proper, refer the question to the Court for its decision, and the decision of the Court thereon shall be final.

### **Explanatory Note**

This Head provides that the Labour Court shall have the responsibility for the interpretation of Registered Employment Agreements and is modelled on Section 33 of the Industrial Relations Act 1946.



## **PART III**

TO PROVIDE FOR ORDERS ESTABLISHING MINIMUM RATES OF REMUNERATION AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT FOR A SPECIFIED TYPE, CLASS OR GROUP OF WORKERS AS PROVIDED FOR IN THE CONTEXT OF TRANSNATIONAL PROVISION OF SERVICES AND IN THE CONTEXT OF PROMOTING HARMONIOUS RELATIONS BETWEEN WORKERS OF THE PARTICULAR CLASS, TYPE OR GROUP AND EMPLOYERS

### **Sectoral Minimum Rates of Remuneration and Other Terms and Conditions**

#### **Head 12 Definitions for the purpose of Part III**

##### **Provide**

Remuneration means—

- (a) basic pay, and
- (b) may include any pay in excess of basic pay in respect of—
  - (i) shift work,
  - (ii) piece work,
  - (iii) overtime,
  - (iv) unsocial hours worked,
  - (v) hours worked on a Sunday, or
  - (vi) travelling time (when working away from base).

“overtime” means any hours worked in excess of normal working hours.

“worker” means any person who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract with an employer whether the contract be for manual labour, clerical work, or otherwise, be expressed or implied, oral or in writing, and whether it be a contract of service or of apprenticeship or a contract personally to execute any work or labour.

**Explanatory Note**

The definition of “remuneration” is based on the definition of “pay” in section 2 of the Protection of Employees (Temporary Agency Work) Act 2012, with the addition of travelling time (when working away from base). It is permissory in this draft Bill as not all elements of remuneration as listed may be relevant to the sector in question.

The definition of “overtime” is based on the definition in section 2 of the Protection of Employees (Temporary Agency Work) Act 2012.

The definition of “worker” is based on the definition provided in section 23 (1) of the Industrial Relations Act 1990.

## **Head 13      Non-application of Act**

### **Provide**

This Act does not apply to the remuneration of a person who is the spouse, civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Co-habitants Act 2010, 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, employed by the employer.

### **Explanatory Note**

The exclusion of immediate family members from the scope of the Bill is based on their exclusion from the scope of the National Minimum Wage Act 2000 in accordance with section 5(a).

**Head 14      Submission of Request**  
**Terms and Conditions relating to Remuneration**

**Provide**

- (1) Any organisation, which the Labour Court is satisfied is substantially representative of workers of a particular class, type or group, may separately or jointly with any organisation, which the Labour Court is satisfied is substantially representative of employers of such workers, request the Labour Court to examine the terms and conditions relating to the remuneration of workers of that particular class, type or group and request the Court to make an appropriate recommendation to the Minister that the Minister make an Order setting terms and conditions as provide for under Head 24.
  
- (2) Except where the Court is satisfied that exceptional and compelling circumstances exist which justify an earlier request, the Court shall not consider such a request which is made earlier than 12 months after the Minister has, by order, last declared terms and conditions relating to remuneration for the said class, type or group, as provided for under Head 24.
  
- (3) The request shall be in a form prescribed by the Court.

**Explanatory Note**

In the judgment delivered on 9 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.

That Article provides, in effect, that the exclusive power to make laws is vested in the Oireachtas. The Supreme Court took the view that REAs were instruments having the status

of laws made by private individuals. While the Constitution allows for the limited delegation of law making functions, the provisions of the 1946 Act went beyond what is permissible under the Constitution.

The effect of this decision is to invalidate the registration of employment agreements previously registered under Part III of the 1946 Act.

Having considered the legal advice from the Attorney General on the implications of the Supreme Court ruling, and given the importance of the issue for employers and their workers, particularly in relation to rates of pay and tendering for contracts, the Minister intends to bring forward legislation to address the ruling and to provide for a revised framework to deal with those matters.

The new framework proposes a mechanism whereby, in contrast with the previous REA system struck down by the Supreme Court which, prior to the enactment of the IR (Amendment) Act 2012, provided for employment agreements made between trade unions and employer representatives being given general application by being registered by the Labour Court. The 2012 Act which was not considered by the Supreme Court in *McGowan* provides for a Statutory Order by the Minister confirming the registration of the agreement. This new framework involves the Labour Court initiating a review of the pay and pension and sick pay entitlements of workers in a particular sector, and, if it deems it appropriate, making a recommendation to the Minister on the matter. A trade union and/or employer body that is substantially representative of workers or employers of such workers in a sector may make an application to the Labour Court to initiate the process looking for a possible recommendation to be made to the Minister to make the Order. Interested parties will be given an opportunity to make submissions to the Labour Court in the context of a review.

This Head provides that any organisation, which the Labour Court is satisfied is substantially representative of workers of a particular class, type or group, may separately or jointly with any organisation, which the Labour Court is satisfied is substantially representative of

employers of such workers, request the Labour Court to examine the terms and conditions relating to the remuneration of those workers and the Labour Court may make a recommendation to the Minister on the issue.

## **Head 15      Labour Court Recommendation**

### **Provide**

The Labour Court recommendation may provide for

- (i) minimum hourly rates of basic pay for the particular class, type or group that is greater than the national minimum wage
- (ii) not more than 2 higher hourly rates of basic pay based on length of service in the sector or enterprise concerned, or the attainment of recognised standards or skills in the sector concerned
- (iii) minimum hourly rates of basic pay lower than that for an experienced adult worker in respect of young workers in accordance with the relevant percentages set out in the National Minimum Wage Act,
- (iv) minimum hourly rates of basic pay for apprentices, and
- (v) any pay in excess of basic pay in respect of shift work, piece work, overtime, unsocial hours worked, hours worked on a Sunday, or travelling time (when working away from base).

The Court shall specify the categories of employers, and the grade, group or category of workers covered in the scope of the Order.

### **Explanatory Note**

This Head provides that the rate of basic pay recommended by the Court may be in excess of the National Minimum Wage. The recommendation may also provide for:

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

- additional payments in respect of shift work, piece work, overtime, unsocial hours worked, hours worked on a Sunday, or travelling time (when working away from base).

These proposed provisions are modelled on similar provisions in Section 42A of the Industrial Relations (Amendment) Act 2012 and section 2 of the Protection of Employees (Temporary Work Agency) Act 2012.

It is also proposed that the recommendation may include a minimum rate of pay for apprentices.



## **Head 16      Terms and Conditions relating to Sick Pay, Pension and Mortality Schemes**

### **Provide**

- (1) Any organisation, which the Labour Court is satisfied is substantially representative of workers of a particular class, type or group, may separately or jointly with any organisation, which the Labour Court is satisfied is substantially representative of employers of such workers, request the Labour Court to examine the sick pay, pension and mortality scheme provisions of workers of that particular class, type or group and make an appropriate recommendation to the Minister that the Minister make an Order setting terms and conditions as provided for under Head 25.
  
- (2) Except where the Court is satisfied that exceptional and compelling circumstances exist which justify an earlier request, the Court shall not consider such a request which is made earlier than 12 months after the Minister has, by order, last declared terms and conditions relating to sick pay, pension and mortality scheme provisions under Head 25, for the said class, type or group of workers.
  
- (3) The request shall be in a form prescribed by the Court.

### **Explanatory Note**

This Head provides that any organisation, which the Labour Court is satisfied is substantially representative of workers of a particular class, type or group, may separately or jointly with any organisation, which the Labour Court is satisfied is substantially representative of employers of such workers, request the Labour Court to examine the sick pay, pension and mortality scheme provisions of those workers and the Labour Court may make a recommendation to the Minister on the issue.

## **Head 17      Labour Court Recommendation**

### **Provide**

The Labour Court recommendation may provide for:

- (i) the requirements of a particular pension and mortality scheme or schemes for the class, type or group of workers, including a minimum daily rate of contribution to a scheme by workers and
- (ii) the requirements of a particular sick pay scheme for the class, type or group of workers and employers, and

The Court shall specify the employers, workers and the nature of the work covered in the scope of the Order.

### **Explanatory Note**

The Head provides for the scope of a Labour Court recommendation in relation to requirements of pension and mortality and sick pay schemes.

## **Head 18      Supporting evidence from employers and workers**

### **Provide**

Every request submitted under section (1) of Head 14 and section (1) of Head 16 shall be accompanied by confirmation, in such form and accompanied by such documentation as the Court may specify that the organisation(s) is/are substantially representative of the workers and/or employers, as the case may be, in the class, type or group to which the request is expressed to apply.

### **Explanatory Note:**

This Head is modelled on Section 27(2)(b) of the Industrial Relations Act 1946 which applied to the registration by the Labour Court of an employment agreement.

## **Head 19 Examination of Request by Labour Court**

### **Provide**

The Court shall not undertake an examination unless it is satisfied that –

- (a) the request is expressed to apply to all workers of a particular class, type or group and their employers in the identified sector where the Court is satisfied that it is a normal and desirable practice or that it is expedient to have separate terms and conditions relating to remuneration, or pension and mortality scheme and sick pay scheme for that class, type or group.
- (b) the organisation or organisations making the request is/ are substantially representative of the class, type or group of workers and/or employers in the sector to which the request is expressed to apply, and in satisfying itself in that regard the Court shall take into consideration -
  - (i) the number of workers represented by the organisation representing the workers, and
  - (ii) the number of workers employed by the employers represented by the organisation representing employers,in the class, type or group of workers to which the request is expressed to apply, and
- (c) any recommendation is likely to promote harmonious relations between workers of the particular class, type or group and their employers.

### **Explanatory Note:**

This Head provides is modelled on Sections 27(3)(b) and 27(3)(A) of the Industrial Relations Act 1946 which applied to the registration by the Labour Court of an employment agreement. The purpose is to ensure that the Labour Court may not undertake a review of the pay and pensions of the workers of a particular class, type or group unless the Court considers it appropriate to do so; that the organisation making the request is substantially representative of those workers and employers and that any recommendation is likely to promote harmonious relations between those workers and their employers.

## **Head 20      Hearing by Labour Court**

### **Provide**

(1) Where a request is submitted to the Court under Head 14, Head 16 or Head 25, the Court shall, where it considers it appropriate to undertake an examination, publish details of its intention to review the terms and conditions of the identified sector in such manner as, in the opinion of the Court, is best calculated to bring the request to the notice of all interested persons concerned.

The Court may hear all parties appearing to the Court to be interested and desiring to be heard.

- (2)      (i) Subject to paragraph (ii) the Court shall not make a recommendation until the lapse of twenty-one days after publication of particulars of the review in accordance with this section,
- (ii) Without prejudice to paragraph (i), the Court shall not hear interested parties until the lapse of twenty-one days after publication of particulars of the review in accordance with this section.

### **Explanatory Note:**

The purpose of this Head is to provide for the Labour Court, if it considers it appropriate to undertake a review, to bring to the attention of interested parties its intention to do so and to hold a hearing where interested parties will have an opportunity to be heard on the matter.

## **Head 21      Recommendation of the Labour Court**

### **Provide**

The Court shall not make a recommendation to the Minister unless it is satisfied that

- i. to do so would promote harmonious relations between workers and employers and assist in the avoidance of industrial unrest;
- ii. the recommendation is reasonably necessary to promote and preserve high standards of training and qualifications in the sector; and
- iii. the recommendation is reasonably necessary to ensure fair and sustainable rates of remuneration in the identified sector, in light of EU law on the transnational provision of services.

The Court shall, for the purpose of making a recommendation to the Minister, take into account/ have regard to the following matters:

- (a) the potential impact of the recommendation on levels of employment and unemployment in the identified sector;
- (b) the terms of any relevant national agreement relating to pay and conditions for the time being in existence;
- (c) the potential impact of the recommendation on competitiveness in the identified sector;
- (d) the general level of wages in sectors within which workers of the same, class type or group are employed.

### **Explanatory Note:**

The purpose of this Head is to provide guidance to the Labour Court in terms of the principles and policies that it will be required to take into account before making a recommendation to the Minister. In this context, the Court shall not make a recommendation to the Minister unless it is satisfied that the criteria at (i) to (iii) have been met and shall have regard to the matters listed at (a) to (d).

## **Head 22      Dispute Settling Provisions**

### **Provide**

The recommendation from the Labour Court submitted under Head 21 shall provide that if a trade dispute occurs between workers in relation to the provisions of the Order and to whom the Order relates and their employers a strike or lock-out shall not take place until the dispute has been submitted by the parties for possible settlement to the Labour Relations Commission or Labour Court as appropriate.

### **Explanatory Note:**

One of the critical elements of the former REA system was the requirement for such agreements to have mandatory dispute settling provisions provided for. The purpose of the Head is to ensure that this important element of sectoral wage setting continues to be provided for under the new legislative arrangements.

## **Head 23      Submission of recommendation to Minister**

### **Provide**

The Court shall, within 6 weeks of the hearing, and provided it considers it appropriate to do so having regard to (i) to (iii) in Head 21, submit a recommendation to the Minister, together with a report setting out the basis on which it satisfied itself with regard to the principles and policies it is required to take into account when making the recommendation.

### **Explanatory Note**

This Head provides that the Court will be required to make to the Minister a recommendation (if appropriate) within 6 weeks together with a report setting out the basis on which it satisfied itself with regard to the principles and policies it is required to take into account when making the recommendation.



## **Head 24      Decision by Minister**

### **Provide**

The Minister shall, within 6 weeks after receiving a recommendation of the Labour Court, and where he or she is satisfied, having regard to the report submitted by the Labour Court with the recommendation, that the Labour Court has complied with provisions of the Act, accept the recommendation and make the Order, giving effect to the recommendation, accordingly.

Where the Minister is not satisfied that the provisions have been complied with, he or she shall:

- (i) refuse to make an order in accordance with the terms of the recommendation, and
- (ii) notify the Court in writing of his or her decision and the reasons for the decision

Every order made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as practicable after it is made and, if a resolution annulling the order or regulation is passed by either House within the next subsequent 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done under the order.

### **Explanatory Note:**

This Head provides for the making of an order by the Minister to give effect to a Labour Court recommendation. The provisions are modelled on new provisions inserted in the Industrial Relations Act 1946 by the Industrial Relations (Amendment) Act 2012 dealing with the making of Orders by the Minister in relation to REAs and Employment Regulation Orders. The standard provisions dealing with the laying of orders before the Oireachtas are proposed.

## **Head 25      Review of Order**

### **Provide**

If an order has not been revoked or amended within three years, then the Minister may request the Labour Court to review the terms and conditions that are the subject of the order and the Court will initiate review procedures as if it were a new application and the provisions of Heads 20 to 24 shall apply.

### **Explanatory Note:**

This Head provides that if an order has not been amended or revoked within 3 years, the Minister may request the Labour Court to undertake a review of the terms and conditions of the previous order. Such a review would be undertaken under the same provisions as if it were a new application for a review.

## **Head 26      Exemption from obligation to pay statutory minimum remuneration**

### **Provide**

(1) The Court may in accordance with this section exempt an employer from the obligation to pay the remuneration, otherwise payable by the employer in accordance with an order made under this Act to a worker or number of workers.

(2) An exemption under subsection (1) shall remain in force for such period, being not less than 3 months and not more than 24 months from the date on which the exemption is granted, as is specified in the exemption.

(3) (a) Subject to paragraph (b) the Court shall not grant an exemption to an employer under subsection (1) if the employer has been granted an exemption in respect of the same worker or workers under that subsection within the previous 5 years.

(b) Where an exemption under subsection (1) has been granted for a period of less than 24 months, an employer or employer's representative with the employer's consent may, prior to the date on which the exemption is due to expire, apply to the Court to extend the period of the exemption for an additional period.

(c) Where an application is made under paragraph (b) the Court shall not extend the period of the exemption for more than 24 months from the date on which the exemption was granted.

(d) Where the period of the exemption has been extended by the Court under paragraph (b), the Court shall not further extend the period.

(4) An employer or employer's representative with the employer's consent may, in the manner and form approved by the Court, apply to the Court for an exemption under subsection (1).

- (5) An application under subsection (4) shall be accompanied by -
- (a) a current tax clearance certificate under section 1095 (inserted by section 127 of the Finance Act 2002) of the Taxes Consolidation Act 1997 in respect of the employer concerned, and
  - (b) such information, particulars and documentation as the Court may reasonably require for the purpose of determining whether an exemption under subsection (1) should be granted, in particular such information in relation to the employer, his or her business and the potential impact of an exemption, as the Court may direct.
- (6) On receiving an application under subsection (4) the Court shall convene a hearing of parties to the application and the workers or their representatives and shall give its decision on the application in writing to the parties.
- (7) Subject to subsection (8) the Court shall not grant an exemption under subsection (1) unless it is satisfied that -
- (a) where the employer makes an application he or she has entered into an agreement with -
    - (i) the majority of the workers,
    - (ii) the representative of the majority of the workers, or
    - (iii) a trade union representing the majority of the workers, in respect of whom the exemption is sought, whereby the workers, the representative of the workers or the trade union, consents to the employer making the application, and to abide by any decision on the application that the Court may make, and
  - (b) the employer's business is experiencing severe economic difficulties.
- (8) Notwithstanding subsection (7), where the Court is not satisfied that the majority of the workers or their representatives consent to an application under that subsection, the Court may grant an exemption under subsection (1), provided the Court is satisfied that:
- (a) the employer has informed the workers concerned of the financial difficulties of the business and has attempted to come to an agreement

with the workers or their representatives concerned in relation to a reduction of the remuneration provided by the order,

- (b) the employer is unable to maintain the terms of the order, and
- (c) were the employer compelled to comply with the terms of the order concerned there would be a substantial risk that -
  - (i) a significant number of the workers concerned would be laid off or made redundant, or
  - (ii) the sustainability of the employer's business would be significantly adversely affected.

(9) In considering whether to grant an exemption under subsection (1), the Court shall have regard to the following:

- (a) whether, if an exemption was granted, it would have an adverse effect on employment levels and distort competition in the sector to the detriment of employers not party to the application, who are also subject to the order concerned,
- (b) the long term sustainability of the employer's business, were such an exemption to be granted, and
- (c) any other matters the Court considers relevant.

(10) An exemption under subsection (1) shall specify:

- (a) the names and employment positions occupied by the workers to whom the exemption applies;
- (b) the duration of the exemption; and
- (c) the remuneration to be paid to the worker or workers during the period of the exemption and the worker or workers shall be entitled to be paid at not less than that remuneration accordingly.

(11) Notwithstanding anything in this section, an exemption under subsection (1) shall not -

- (a) specify an hourly rate of pay which is less than that declared by order for the time being in force under section 11 of the National Minimum Wage Act 2000, or
- (b) reduce pension contributions paid by the employer on behalf of the worker or workers concerned.

(12) Where during the period of an exemption under this section a new worker replaces a worker to whom the exemption relates, the employer may pay the new worker the remuneration specified by the Court in respect of the former worker and shall, as soon as practicable, notify the Court in writing of the employment of the new worker.

(13) Where a contract between an employer and a worker specified in an exemption under subsection (1), provides for the payment of remuneration at more than the rate provided by such exemption, the contract shall, in respect of any period during which the exemption is in force, have effect as if the remuneration provided for by such exemption and applicable to such worker were substituted for the remuneration provided for by the contract.

(14) The Court shall establish its own procedures for the hearing of applications, and in relation to incidental matters to be dealt with, under this section.

(15) The Court shall establish and maintain a register of all exemptions under this section and shall make the register available for examination by members of the public at such place and during such reasonable times as it thinks fit.

(16) No appeal shall lie from a decision of the Court under this section except to the High Court on a point of law.

**Explanatory Note:**

The purpose of this Head is to allow an employer apply to the Labour Court for a temporary derogation from the requirement to pay the remuneration provided for by order. The provision is constructed in line with Section 33A (in relation to REAs) and Section 48A (in relation to Employment Regulation Orders) of the Industrial Relations Act 1946.

## **Head 27      Compliance and Enforcement Provisions**

It is proposed that the Bill will provide for enforcement measures to deal with breaches and enforcement of the provisions of Part III.

Separately, the Minister is currently undertaking a major reform programme of all of the Workplace relations bodies and it is expected that these reforms will deliver a "fit for purpose" workplace relations system that will be supported by proportionate, effective and efficient compliance and enforcement measures. The Minister is proposing to make provision in the Workplace Relations Bill for a range of enhanced compliance measures, including the use of Compliance Notices, Fixed Charge Notices and a new mechanism for enforcing awards of the WRC Adjudicators and Labour Court Determinations.

The Minister also proposes to allow for sanctions to be imposed personally on directors, officers or managers for certain offences under employment law committed by a company if it is proven in the course of the prosecution that any such offences were committed with the consent or connivance etc. of any director, manager secretary or other officer of the company. Such offences would include, for example, failure to comply with an enforcement order of the District Court in respect of a determination of the Labour Court or a decision of an adjudication officer. The Minister is confident that the introduction of these measures will provide for more appropriate, efficient and effective enforcement of employment law.

The enforcement and compliance measure to be provided for in relation to Part III of this Bill will be drafted to ensure consistency with the measures proposed by the Minister in relation to employment rights compliance and enforcement provisions under the WRC Bill and agreed by Government on 8 July, 2014.

**Head 28      Provisions in agreement or legislation to pay less than minimum hourly rate of pay are void**

**Provide**

A provision in a contract of employment (whether made or entered into before or after the commencement of this section) is void in so far as it purports to exclude or limit the operation of any provision of this Act.

(1) A contract or agreement or an enactment in force immediately before the commencement of this section that provides for the entitlement to terms and conditions in relation to pay, sick pay, pensions and mortality provisions for a worker less favourable than that to be provided in accordance with this Act is hereby modified to the extent necessary to provide that the worker's entitlement after the commencement of this section shall be not less favourable than that to be provided in accordance with this Act.

(2) Nothing in this section shall prevent the inclusion in a contract of employment of a provision more favourable to a worker than an entitlement in accordance with this Act

**Explanatory Note:**

This provision is modelled on Section 7 of the National Minimum Wage Act 2000.



## Head 29      Prohibition on Penalisation

### Provide

- (1) An employer shall not penalise or threaten penalisation of a worker for—
- (a) invoking any right conferred on him or her by this Part,
  - (b) having in good faith opposed by lawful means an act that is unlawful under this Part,
  - (c) making a complaint to a member of the Garda Síochána or the Minister that a provision of this Part has been contravened,
  - (d) giving evidence in any proceedings under this Part, or
  - (e) giving notice of his or her intention to do any of the things referred to in the preceding paragraphs.
- (2) If a penalisation of a worker, in contravention of *subsection (1)*, constitutes a dismissal of the worker within the meaning of the Unfair Dismissals Acts 1977 to 2007, relief may not be granted to the worker in respect of that penalisation both under *Schedule 2* and under those Acts.
- (3) In this section “penalisation” means any act or omission by an employer or a person acting on behalf of an employer that affects a worker to his or her detriment with respect to any term or condition of his or her employment, and, without prejudice to the generality of the foregoing, includes—
- (a) suspension, lay-off or dismissal (including a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2007), 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.

**Explanatory Note.**

This provision in relation to prohibition on penalisation of workers for

- (a) invoking any right conferred on him or her by this Part,
- (b) having in good faith opposed by lawful means an act that is unlawful under this part,
- (c) making a complaint to a member of the Garda Síochána or the Minister that a provision of this Part has been contravened,
- (d) giving evidence in any proceedings under this Part, or
- (e) giving notice of his or her intention to do any of the things referred to in the preceding paragraphs.

is based on section 23 and Schedule 2 of the Protection of Employees (Temporary Agency Work) Act 2012.