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Turasóireachta agus Fostaíochta
Department of Enterprise,
Tourism and Employment

Public Consultation on Ireland's Action Plan to Promote Collective Bargaining

Report

Table of contents

1.BACKGROUND

The objective of this consultation was to gather views from relevant stakeholders in relation to the possible content of Ireland's Action Plan on Collective Bargaining and to identify how Ireland can provide conditions to progressively increase and promote collective bargaining.

This objective must be seen in the current economic and social context where collective bargaining can make a positive contribution to the economy and society, driving and enabling competitiveness and productivity. The submitted proposals have been examined against this overarching objective.

It has been the consistent policy of successive Irish governments to promote collective bargaining through the development of an institutional framework supportive of a voluntary system of industrial relations, premised upon freedom of contract and freedom of association. The 2015 Industrial Relations Act defines 'collective bargaining' as comprising voluntary engagements or negotiations between any employer or employers' organisation on the one hand and a trade union of workers or excepted body to on the other, with the objective of reaching agreement regarding working conditions or terms of employment, or non-employment, of workers.

Additionally, it should be noted that the Programme for Government commits to:

"Publish an Action Plan for collective bargaining in 2025 in line with our commitments under the EU Directive" and to "support the central role of the Workplace Relations Commission and the Labour Court in industrial relations and employment rights."

EU Directive on Adequate Minimum Wages

The Directive on Adequate Minimum Wages in the European Union was published on 19 October 2022 and was transposed in Ireland by 15 November 2024. The Directive aims to ensure that workers across the European Union are protected by adequate minimum wages allowing for a decent living wherever they work.

Collective bargaining is defined by the Directive as "all negotiations that take place according to national law and practice in each member state between an employer, a group of employers or one or more employers organisations on one hand, and one

or more trade unions on the other, for determining working conditions and terms of employment."

Article 4 of the Directive aims to promote collective bargaining on wages in all member states. To reach that objective, member states, with the involvement of the social partners, in accordance with national law and practice, shall:

- promote the building and strengthening of the capacity of the social partners to engage in collective bargaining on wage-setting, in particular at sector or cross-industry level
- encourage constructive, meaningful and informed negotiations on wages between the social partners, on an equal footing, where both parties have access to appropriate information in order to carry out their functions in respect of collective bargaining on wage-setting
- take measures, as appropriate, to protect the exercise of the right to collective bargaining on wage-setting and to protect workers and trade union representatives from acts that discriminate against them in respect of their employment on the grounds that they participate or wish to participate in collective bargaining on wage-setting
- for the purpose of promoting collective bargaining on wage-setting, take measures, as appropriate, to protect trade unions and employers' organisations participating or wishing to participate in collective bargaining against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration

In addition, each member state in which the collective bargaining coverage rate is less than a threshold of 80% (as in a majority of Member States, including Ireland) shall provide for a 'framework of enabling conditions' for collective bargaining and shall also establish an action plan by end of 2025 to promote collective bargaining. The action plan shall be reviewed at least every five years. The design of the framework of enabling conditions and the content of the action plan is entirely up to member states, in consultation with the social partners.

The Directive states:

In order to respect the autonomy of the social partners, which includes their right to collective bargaining and excludes any obligation to conclude collective agreements,

the threshold of 80 % of collective bargaining coverage should only be construed as an indicator triggering the obligation to establish an action plan.

It should therefore be noted that 80% is a threshold, not a target to be reached. There is no obligation on Member States to reach any prescribed level of collective bargaining coverage within any defined timeframe. The European Commission Expert Group's Report on transposition of the Directive is clear that the design of the framework of enabling conditions and the content of the action plan is entirely up to Member States, in consultation with the social partners.

The Department of Enterprise, Tourism and Employment had already received proposals for possible inclusion in Ireland's action plan. These include the recommendations arising from the *Final Report of the LEEF High Level Group on Collective Bargaining.*

Results

The consultation period ran from 14 April 2025 to the 12 May 2025. The Department of Enterprise, Tourism and Employment received 80 valid submissions in total.

The Department received views from a range of respondents, including: 9 Trade unions, 58 Individuals, 8 employer reps, 2 Labour party submissions, the University of Limerick, UCD Sutherland School of Law and Migrant Rights Centre of Ireland.

Trade union submissions Included ICTU, Mandate, FORSA, SIPTU, Unite, Meath Council of Trade Unions, INMO, FSU and the Communications Workers Union.

Business representative submissions included IBEC, AMCH, Stratis, ICF, CIPD, ISME, Musgraves and the LVA.

All submissions will be published on the Department of Enterprise, Tourism and Employment website.

2.CAPACITY BUILDING FOR COLLECTIVE BARGAINING

Do you have views in relation to training or other capacity building activities which would assist the social partners to engage in collective bargaining?

Context

The objective of greater capacity building to support collective bargaining is ultimately to support a stable institutional framework for industrial relations. Greater expertise and professionalism in the sphere of industrial relations will contribute to more efficient use of the State's industrial relations and dispute resolution machinery. Industrial peace is a key factor in fostering economic growth, enterprise development and competitiveness. The promotion of collective bargaining at all levels is key to productive, equitable and stable employment relations.

Feedback from Respondents

There was broad agreement that Capacity Building is required, that it should be an element of cooperative training between the social partners and that this is a priority area. Trade unions emphasised the importance of state-supported training and capacity-building initiatives. They proposed that funding from the National Training Fund and the European Social Fund be allocated to support both trade union and employer representatives' capacity to engage effectively in collective bargaining.

Some specific suggestions included the development of national training programs, commissioning the International Labour Organisation (ILO) to assist in strengthening sectoral bargaining, and ratifying ILO Conventions 151 and 154. There was also support for tax relief on union subscriptions and broader state support for union recruitment and research.

Employers, while generally supportive of training, stressed the importance of voluntary participation. Some, like Stratis, supported joint training initiatives, while others, such as the Licensed Vintners Association, rejected collective bargaining as a suitable model for their sector and so did not see the value in training in this area. Ibec believes that the provision of collective bargaining training should focus on

those employee and employer representatives in companies which are already engaged in collective bargaining or have agreements in place to recognise a union.

What Already Exists

The Education Training and Assistance Support Grant has been paid to ICTU since 1975. The current value of this annual grant is €900,000. The Fund's objective is to support the creation of a stable institutional framework for industrial relations, enabling the trade union movement to develop a centralised policy formulation, training and technical support role.

Preferred Policy Response

Funding has been agreed to conduct research which will provide baseline information regarding current collective bargaining coverage rates in Ireland and also to source and collate information with regard to positive impacts of collective bargained agreements at sectoral and enterprise levels. The research will also delve into some of the specific direct and indirect costs associated with industrial action. We expect this research to be completed by end Q2 2026. Work will be undertaken with the Workplace Relations Commission (WRC) and the Labour Court (LC) to develop well-defined metrics that effectively measure the impacts of collective bargaining. This initiative will also support the establishment of a consistent and robust stream of evidence-based research and data to inform policy decisions across the wider industrial relations landscape.

A fund for capacity building will be sought to cover a five-year period. This will be used to support a number of initiatives which may include sectoral and enterprise-level training, as well as longer-term accredited learning opportunities.

It is intended that training will be based on the principles agreed in the Code of Best Practice on Collective Bargaining which is being developed by the social partners with the Workplace Relations Commission (WRC) (see also Section 9).

We will also put forward a proposal to the Minister for Finance on allowing tax relief for trade union fees, akin to section 472C of the Taxes Consolidation Act 1997,

which was available for the tax years 2001 to 2010 inclusive. The tax relief was introduced in 2001 in recognition of the role played by the trade union movement in Irish society and in the social partnership process. Tax relief was subsequently abolished from 2011, in line with the National Recovery Plan and with a view to widening the tax base. The estimated yield to the Exchequer was €19 million in 2011 and €26 million the following year.

The Department of Enterprise, Tourism and Employment requested tax relief be considered on trade union fees in its budget submission for 2025. We are fully committed to working with the Department of Finance on exploring this proposal further in advance of Budget 2026. We will also continue to engage with the Department of Finance and Revenue in exploring possible alternative tax options to promote collective bargaining.

Other Policy Responses Being Considered

The Department of Enterprise, Tourism and Employment is cognisant of the fact that awareness raising, and the promotion of collective bargaining are clear elements arising from the consultation process. In that regard, it is proposed to modernise the ETAS Grant to include marketing/ publicity assistance when the Department enters into a new three-year grant cycle in January 2026. It is proposed that ICTU identify new training, capacity building and promotion activities it may wish to undertake in relation to collective bargaining in areas such as membership outreach, diversification of services for members, promotion of services to members and potential members.

It is also proposed that the Department would lead public campaigns to promote collective bargaining. Investment will also be directed towards the digitalisation and modernisation of the Workplace Relations Commission (WRC), supporting the development of more efficient, accessible, and technology-driven services.

3.OPERATION OF JOINT LABOUR COMMITTEES

Do you have views in relation to the operation of Joint Labour Committees and how social partners can be incentivised to participate in them?

Context

A Joint Labour Committee (JLC) is an independent body made up of equal numbers of employer and worker representatives. A JLC sets the employment conditions and minimum rates of pay for employees in a certain sector through the negotiation of an Employment Regulation Order (ERO). The role of a Joint Labour Committee is set out in the Industrial Relations (Amendment) Act 2012 (amending 1946 Industrial Relations Act).

JLCs are set up by the Labour Court following an application from either the Minister for Enterprise, Tourism and Employment, a trade union, or any organisation that represents the workers or the employers involved. The chairman and substitute chairman of a JLC are appointed by the Minister for Enterprise, Tourism and Employment. When formulating proposals to submit to the Court, a JLC must consider the legitimate interests of employers and workers likely to be affected by the proposals.

Feedback from Respondents

There were divergent views from the social partners as to the continued relevance of the Joint Labour Committee (JLC) system and how they could be made more effective. Trade unions advocated for the expansion of Joint Labour Committees (JLCs) and the removal of the employer 'veto' on participation in JLCs in order to negotiate sectoral employment agreements. They also suggested adopting a Chamber system to institutionalise employer participation and supported the implementation of the recommendations arising from the Labour Employer Economic Forum High Level Group Report.

In contrast, many employer representatives questioned the relevance of JLCs, with some viewing them as outdated and ineffective. SME representatives expressed concern that JLCs function as a "closed shop," limiting broader participation and excluding smaller employers from meaningful engagement. Ibec is of the view that the JLC structure, as it currently operates, is not fit for purpose in the modern workplace.

What Already Exists

There are JLCs for Agricultural Work, Catering, Contract Cleaning, Early Years Learning, English Language Schools, Hairdressing, Hotels, Retail, Grocery and Allied Trades, Security Industry. These JLCs have not been active for some time.

The active JLCs are for the Security, Contract Cleaning and Early Years Learning Sectors.

There are currently three EROs in force, for the Security, Early Years Learning and Contract Cleaning Sectors, which demonstrate that the JLCs can work very effectively when employer and employee representatives are willing to engage constructively.

In addition, as detailed in Section 4, a Sectoral Employment Order (SEO) can set the pay, pension or sick pay scheme for workers in a particular sector, such as construction following a request to the Labour Court to review these issues by organisations that substantially represent employers or workers in the sector, such as a trade union.

Preferred Policy Response

Joint Labour Committees remain the foremost industrial relations mechanism which provides for collective bargaining of sectoral terms and conditions through agreement. As such, it is important that we have a strong and well-functioning JLC system in order to contribute positively to the economy by supporting and promoting fair wages and terms and conditions for workers, particularly in low paid sectors. Collectively bargained agreements also play a positive role in increasing productivity for businesses and ensuring ongoing industrial harmony, which is critical to economic growth.

A number of EROs have recently come into force which demonstrate that the JLCs can work very effectively when employer and employee representatives are willing to engage constructively. As the Early Years Learning JLC demonstrates, there is the potential for the JLC system to operate as a means to help further public policy in a given area. In this instance, the Orders are being supported by the Government's Early Years Learning Core Funding Scheme which targets supporting improvements

in staff wages in order to attract and retain staff in the sector, alongside a commitment to freeze fees.

The Department of Enterprise, Tourism and Employment will examine the use of JLCs for other Government funded sectors

Other Policy Responses Being Considered

The Department has considered the recommendation on JLCs from LEEF High Level Group Report. This proposal would require considerable legislative changes as such a JLC would no longer be a forum for voluntary collective bargaining if the provision is triggered (given that one side refuses to engage).

A chamber system of collective bargaining, as advocated by some trade unions, would involve legally mandated employer membership in a chamber (like a business or economic chamber) that then negotiates collective agreements on behalf of its members.

However, neither of these proposals are in line with the voluntarist industrial relations system currently in place in Ireland, and we do not consider that it would necessarily contribute to the overall objective of promoting collective bargaining in order to make a positive contribution to the economy and society, driving and enabling competitiveness and productivity.

4.GOOD FAITH ENGAGEMENT AT ENTERPRISE LEVEL

What are your views on a proposal to have a Good Faith Engagement process at enterprise level which would involve a single mandatory meeting between an employer and a trade union?

Context

The High-Level Group on Collective Bargaining was formed by the former Tánaiste in consultation with the employee and employer participants of the Labour Employer Economic Forum (LEEF). The Group agreed to explore mechanisms that would enhance existing industrial relations frameworks with a view to encourage greater collective bargaining coverage in Ireland. The final High Level Group Report was published on 5th October 2022. The Report addresses promoting 'Good Faith Engagement at Enterprise Level' and includes a recommendation for the establishment of a process whereby employers would be required to hold a single 'good faith' meeting with trade unions, though without compelling the parties to reach any outcomes or agreement.

Feedback from Respondents

The proposal for a Good Faith Engagement process, involving a single mandatory meeting between employers and trade unions, drew mixed reactions. Trade unions argued that a single meeting was insufficient and called for a legally enforceable process with multiple engagements, clear timelines, and penalties for non-compliance. They also proposed the introduction of a 'Bargaining Order' in cases where good faith engagement was absent.

Employers, particularly SMEs, raised concerns about the practicality of such a process and its constitutional validity with respect to freedom of association rights. While some, like Ibec, acknowledged that a single mandatory good faith engagement meeting might have a role under certain conditions, others, including the Licensed Vintners Association, opposed any form of mandatory engagement.

What Already Exists

There is no statutory provision for a mandatory good faith engagement meeting at enterprise level. The 2015 Industrial Relations Act defines 'collective bargaining' as

comprising voluntary engagements or negotiations between any employer or employers' organisation on the one hand and a trade union of workers or excepted body to on the other, with the object of reaching agreement regarding working conditions or terms of employment, or non-employment, of workers.

There is no constitutional or legal impediment which prevents parties who wish to exercise their right to collectively bargain from freely doing so in Ireland. There is an extensive range of statutory provisions designed to back up the voluntary bargaining process. The system is based on respecting the autonomy of parties to negotiate and agree terms that enhance existing statutory protections. The Directive states, in Article 2: *This Directive shall be without prejudice to the full respect for the autonomy of the social partners, as well as their right to negotiate and conclude collective agreements.*

Policy Response Considered

The Department of Enterprise, Tourism and Employment, has considered a mandatory good faith engagement meeting which ends with a Labour Court recommendation should the parties fail to reach agreement on the meeting, would need to assess whether it would contribute positively to the economy and society. This proposal would require significant legislative change as it would require an employer to attend a 'good faith engagement' with a trade union representative on a statutory basis. We do not support the use of penalties where employers do not engage and can consider other deterrent or incentive mechanisms to encourage engagement.

The proposed Code of Best Practice on Collective Bargaining (as also recommended by the LEEF High Level Group Report) would be more helpful in achieving the overarching objective of this paper.

5.PROMOTING WAGE NEGOTIATIONS

Do you have other views in relation to how negotiations between social partners on wages could be promoted and facilitated?

Context

Under Irish law, there is no requirement for an employer to recognise trade unions for the purpose of collective bargaining. Article 40 of the Irish Constitution guarantees the right of citizens to form associations and unions. It has been established in a number of legal cases that the constitutional guarantee of the freedom of association does not guarantee workers the right to have their union recognised for the purpose of collective bargaining.

However, it is also worth noting that the Industrial Relations (Amendment) Act 2015, which came into effect in August 2015, provides an improved framework for employees' right to engage in collective bargaining. The 2015 Act provides a clear and balanced mechanism by which the fairness of the employment conditions of workers in their totality can be assessed where collective bargaining does not take place.

The 2015 Industrial Relations Act provides for the establishment of a 'Sectoral Employment Order' (SEO). This is a statutory wage setting mechanism based on the principles of collective bargaining. It may set out minimum pay rates as well as pension and sick pay schemes for a given economic sector, it also has a dispute resolution procedure. It provides for an independent assessment of pay rates in a proposed sector by the Labour Court that considers the views of all interested parties with a view of ensuring industrial harmony and competitiveness.

In addition, as detailed in Section 2, the 2012 Industrial Relations (Amendment) Act (amending the 1946 Industrial Relations Act) provides for the establishment of Joint Labour Committees (JLCs) which are independent bodies made up of equal numbers of employer and worker representatives in a particular sector who come together voluntarily to negotiate collective agreements. JLCs can draft an Employment Regulation Order (ERO), setting out the employment conditions and minimum rates of pay for the sector they represent. The JLC must be satisfied that such proposals would promote harmonious relations between workers and employers and avoid industrial unrest.

Feedback from Respondents

Trade unions emphasised the need for legal obligations and incentives to encourage employer participation in wage negotiations. They called for increased resources for the Workplace Relations Commission and the introduction of mandatory engagement processes.

Employer representatives, on the other hand, stressed the importance of voluntarism and warned against state interference, citing constitutional considerations and the need for flexibility in how businesses engage with workers. Ibec is satisfied that Ireland has sufficient institutions and procedures (such as direct local bargaining, WRC conciliation and Labour Court involvement) to facilitate negotiations between the social partners at all levels, where it is their wish to engage in collective bargaining. They also called for continued and sufficient funding for the WRC and Labour Court.

What Already Exists

There is currently one SEO in place for the Construction Sector: SI No 620 of 2024 Sectoral Employment Order (Construction Sector) 2024. The Order amends the previous SEO for the industry made in 2023 and is the fifth of this kind to be made since the first SEO for the Construction Sector was issued in 2017. The SEO is considered important in ensuring continued good industrial relations between workers and employers in the Construction Sector, ensuring stability, and helping to maintain the attractiveness of this sector as a viable career option for apprentices. Under Chapter Three of the 2015 Industrial Relations Act, following a request from a trade union and/or employers' organisation, the Labour Court can conduct an examination of the terms and conditions relating to the remuneration, and any sick pay scheme or pension scheme, of a particular sector of workers.

In addition, as referenced in Section 2, a JLC is an independent body made up of equal numbers of employer and worker representatives which collectively bargains to set the employment conditions and minimum rates of pay for employees in a certain sector.

Preferred Policy Response

In line with the Programme for Government we will support the operation of the WRC and Labour Court by reviewing and strengthening the SEOs and EROs mechanisms

and enforcement, providing greater certainty for workers and employers and increasing the incentive for the social partners to engage in collective bargaining. This proposal would require consideration as to what specific legal powers might be required or whether administrative/resource measures would be beneficial.

It has been agreed that the Labour Court will amend its Rules to include guidance on the use of technical assessors which are provided for under section 14(1) and (2) of the Industrial Relations Act 1946. This guidance will be useful for the Labour Court when considering if a technical assessor could assist the Court in carrying out its duties.

6.ACCESS TO NEGOTIATION INFORMATION

Do you have views on how the social partners could better access the information required to engage in negotiations?

Context

It is recognised that access to information is important for effective collective bargaining. Trade unions have advocated that they need accurate and comprehensive information to negotiate effectively on behalf of their members. This includes data on wages, working conditions, and company financials. Access to appropriate information also fosters transparency between employers and employees, building trust and facilitating smoother negotiations. Detailed information allows trade unions and employer representatives to make informed decisions about their positions and priorities when collective bargaining.

Article 4 of the EU Directive states that Member States, with the involvement of social partners and with accordance with national law and practice, shall encourage constructive, meaningful and informed negotiations on wages between the social partners, on an equal footing, where both parties have access to appropriate information in order to carry out their functions in respect of collective bargaining on wage-setting.

Feedback from Respondents

Trade unions advocated for improved access to company financials, including free access to filings with the Companies Registration Office, and better macroeconomic and sectoral data. They argued that both parties must have access to relevant information to engage effectively in collective bargaining.

Employer representatives supported structured frameworks for information sharing but emphasised the need to protect sensitive data. Some also highlighted the importance of strengthening trade associations to support SMEs in negotiations. Ibec believes that the development of a Code of Best Practice on Enterprise Collective Bargaining, pursuant to section 20 of the Workplace Relations Act 2015, could help address this issue and include provisions around the need for relevant information,

other than confidential or commercially sensitive information, to be provided by both parties in a timely and efficient manner.

What Already Exists

The Employees (Provision of Information and Consultation) Act 2006 transposes EU Directive 2002/14/EC. The purpose of the Act is to establish a general framework setting out minimum requirements for the right to information and consultation of employees in undertakings with at least 50 employees. The Labour Court may make a binding decision in relation to the application of the Act, which is enforceable by the Circuit Court. A guidance booklet provides user friendly information on employees' rights under the Act (guide_to_information_and_consultation_act.pdf).

The WRC Code of Practice on Employee Involvement in the Workplace details the legislation which provides for employee information and involvement. The Code of Practice on Duties and Responsibilities of Employee Representatives sets out for the guidance of employers, employees and trade unions the duties and responsibilities of employee representatives and the protection and facilities which should be afforded them in order to enable them to carry out their duties in an effective and constructive manner.

In addition, European Works Councils are bodies representing the European employees of a company. Through them, workers are informed and consulted by management on the progress of the business and any significant decision at European level that could affect their employment or working conditions. European Works Councils are established under Directive 2009/38/EC. Member States must provide for the right to establish European Works Councils in companies or groups of companies with at least 1000 employees in the EU and the EEA when there are at least 150 employees in each of two Member States.

Preferred Policy Response

We are considering reviewing the Code of Practice on Duties and Responsibilities of Employee Representatives in this context.

7.PROTECTION FROM UNFAIR DISMISSAL

Are Ireland's protections, including Codes of Practice, adequate to protect members and representatives of trade unions from unfair dismissal? If not, how can these protections be strengthened?

Context

Dismissal is unfair if it results wholly or mainly from the employee's membership, or proposal that he or another person become a member of, or his engaging in activities on behalf of, a trade union or excepted bodies, where the times at which he engages in such activities are outside his hours of work or are times during his hours of work in which he is permitted pursuant to the contract of employment between him and his employer so to engage.

Feedback from Respondents

Trade unions called for stronger legal safeguards against unfair dismissal for union members and representatives. They proposed penalties for breaches, the ability to pursue collective legal actions, and referenced recent studies highlighting employer resistance to union activity.

Employer Representatives generally believed that existing protections under the Unfair Dismissals Acts and Codes of Practice were adequate and effective in deterring non-compliance.

What Already Exists

The Unfair Dismissals Acts, 1977 - 2016, provide that the dismissal of an employee shall be deemed to be an unfair dismissal unless, having regard to all the circumstances, there were substantial grounds justifying the dismissal. The purpose of the Acts is to protect employees from being unfairly dismissed from their employment by laying down criteria by which dismissals are to be judged unfair and by providing an adjudication system and redress for an employee whose dismissal has been found to be unfair. One of the grounds under which a dismissal may be considered unfair is membership or proposed membership of a trade union or engaging in trade union activities, whether within permitted times during work or outside of working hours.

Preferred Policy Response

The Unfair Dismissal Acts will be reviewed by the Employment Law Review Group (ELRG) in 2025-2026 so these issues will form part of the review.

It may consider amending the Unfair Dismissal Acts (as part of the Employment Law Review Group Work Programme 2025-2026) to include broader trade union activity in the workplace and to introduce a deterring provision as well as compensation.

8.PROTECTION FROM DISCRIMINATION

Do you have views as to whether workers are sufficiently protected by law, including Codes of Practice, from acts of discrimination if they wish to organise or join a trade union?

Context

The Government fully supports the right of any worker to join and be active in their trade union. Article 40 of the Irish Constitution guarantees the right of citizens to form associations and unions. Freedom of association and the right to organise and bargain collectively are also guaranteed in a number of international instruments which the State has ratified and which it is, therefore, bound to uphold under international law. Employees have the right under the Constitution to join, or not join, a trade union of their choice.

Feedback from Respondents

Trade unions urged the government to adopt legislation banning 'union-busting' practices and protecting the right to organise. They emphasised the need for legal clarity and enforcement mechanisms to ensure workers can freely join and participate in trade unions. Trade Unions pointed out that workers are only protected from victimisation under current legislation where it is not the practice of the employer to engage in collective bargaining. They argued there is no protection from victimisation for workers wishing to engage in collective bargaining unless they intend to, or already have, invoked the procedures under the *Code of Practice on Voluntary Dispute Resolution*. Respondents reported that the most common factors that act as a barrier to union organising, bargaining and representing were actual or fear of employer reprisals. Examples given of possible victimisation activities included: constructive dismissals (employers willing to pay the 2 years compensation if required), isolation of activists, using poor performance ratings, using control over working hours and arrangements, using non-disclosure arrangements, bogus self-employment, and exploiting the vulnerable situation of migrant workers. Trade unions also recommended amending the Employment Equality Acts to explicitly include trade union membership and activities as protected grounds. They argued that current legislation does not go far enough in safeguarding union members from discrimination.

Employer representatives, however, maintained that the existing legal framework provides sufficient protection and that instances of victimisation are rare. They cautioned against overregulation.

What Already Exists

The 2004 Industrial Relations Act states that an employee will not be victimised on account of being or not being a member of a trade union or engaging in any activities on behalf of a trade union. 'Victimise' is any act which adversely affects the interests of the employee (not including dismissal).

The *2015* *Code of Practice on Victimisation* (under Section 42 of the 1990 Industrial Relations Act) sets out what actions constitute victimisation arising from an employee's membership or activity on behalf of a trade union. It applies to situations where there are no negotiating arrangements and where collective bargaining has not taken place. Under the Code, examples of unfair or adverse treatment include an employee suffering any unfavourable change in his/her conditions of employment or acts that adversely affect the interest of the employee (including any adverse effect arising from the employee refusing an inducement designed specifically to have the employee forego representation by a trade union). A procedure for addressing complaints of victimisation is set out in the Industrial Relations Act 2004. Section 9 of the Act provides that a complaint may be presented to the WRC, and an adjudicator may make an award of up to 2 years compensation.

Preferred Policy Response

We will explore along with the social partners, the scope to increase legal protections for employee representatives.

Other Policy Responses Being Considered

The Department of Enterprise, Tourism and Employment may examine the need to amend Section 8 of the 2004 Industrial Relations Act. The Act currently applies where it is not the practice of the employer to engage in collective bargaining negotiations and the internal dispute resolution procedures have failed.

The Department may also Review the 2015 Code of Practice on Victimisation to see if it can be enhanced in the context of the overall objective of promoting collective bargaining to make a positive contribution to the economy and society, driving and enabling competitiveness and productivity.

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9.EMPLOYER PROTECTION FROM INTERFERENCE

Do you have views as to whether employers are sufficiently protected in Irish legislation against acts of interference where they wish to participate in collective bargaining?

Context

Employers are protected from undue interference through a combination of legal principles, voluntary industrial relations framework and specific statutory provisions.

The 1990 Industrial Relations Act of provides several protections for employers:

- Peaceful Picketing: The Act allows for peaceful picketing but restricts actions that could lead to intimidation or obstruction, protecting employers from disruptive activities
- Secret Ballots: Trade unions must conduct secret ballots before engaging in industrial action. This ensures that any action has the genuine support of the majority of union members, reducing the likelihood of unwarranted strikes
- Restriction on Injunctions: The Act limits the circumstances under which courts can grant injunctions against employers, providing them from legal actions that aim to disrupt business operations.
- Codes of Practice: The Act empowers the Labour Court to prepare and issue codes of practice, which provide guidelines for good industrial relations practices which can be taken into account by the WRC when adjudicating on disputes.

Feedback from Respondents

Trade unions supported legal protections for employers who wish to engage in collective bargaining, noting that they were unaware of any instances of union interference. They emphasised the importance of upholding the right to collective bargaining for all parties.

Employer representatives suggested the development of a code of practice to guide enterprise-level bargaining and ensure clarity in expectations and responsibilities. Ibec have raised a number of specific proposals regarding Sections 10 to 13 inclusive of the 1990 Industrial Relations Act which they believe would ensure

greater accountability and transparency at enterprise level and would promote best practice and in doing so promote collective bargaining.

These include amending balloting requirements, including the introduction of sanctions for unofficial action, requirements for what information which should be on balloting and rules around strike notice and majority thresholds. They also propose limits on mass picketing to ensure proportionality and introduction of a legislative requirement to exhaust all internal industrial relations procedures prior to balloting for industrial action. In addition, free riding where non-union members gain the benefits of collective bargaining outcomes, without contributing to union membership, was raised as a concern that required action.

What Already Exists

Employers retain the right to manage their business, including hiring, setting terms and operational decisions unless otherwise agreed in a contract or collective agreement. In relation to the issue of free riding, it is important to clarify that there is no obligation on employers to extend the terms of a centrally negotiated pay deal to employees who are not members of the negotiating union.

Preferred Policy Response

The WRC has been engaged with Ibec and ICTU on developing a Code of Best Practice on Collective Bargaining as recommended in the LEEF High Level Group Report on Collective Bargaining. Elements of such a code might include the following *inter alia*:

- The overarching principle that disputes should be resolved as close to the workplace as possible (i.e., at local level).
- Making the bargaining process as timely and efficient as possible.
- Relevant information (other than confidential or commercially sensitive information) should be provided.
- Roles and responsibilities of the representatives for both parties.
- How to deal with impasses in negotiations and how to engage with the conciliation process at the WRC and how to engage with the Labour Court.

In the context of the Action Plan, the Department of Enterprise, Tourism and Employment supports the development of a Code of Practice on Collective Bargaining.

We will also examine whether the introduction of mandatory mediation between notice and strike might contribute positively to collective bargaining, the economy and society, subject to assessing the feasibility of this.

10.TRADE UNION ACCESS TO WORKPLACES

Do you have views as to whether a statutory entitlement should be introduced to allow for trade union access to the workplace, or activities within the workplace, for the purposes of the promotion of collective bargaining even in the case that an employer has not given permission for such activities in the workplace?

Context

Trade union access to workplaces has been a central demand of ICTU and other trade unions for inclusion in Ireland's action plan. They argue that access is essential in order to encourage transparency, identify workers' issues, establish a mandate for effective bargaining, inform workers of developments, recruit and retain members, communicate and discuss workplace matters.

Trade union membership in Ireland, and across Europe, has seen a decline over the years. According to ICTU, trade union density stands at approximately 22%, with coverage approximately 34%. This is a significant drop from the 1980s when around 60% of the workforce were union members.

Trade union membership in Ireland, and across most of the world, has been declining for several reasons (Geary, J. and Belizon, M. (2022) Union Voice in Ireland .pdf):

- There has been a significant shift from manufacturing and public sector jobs, which traditionally have high union membership, to service and technology sectors where union presence is significantly lower.
- The rise of part-time, temporary, and gig economy jobs has made it harder for unions to organise workers who are not in traditional, long-term employment.
- Younger workers may be less likely to join unions; younger workers (aged 16-24) have the lowest level of union membership at about 14%, while older workers (aged 55-64) have the highest at around 45%. This is partly due to a lack of awareness about the benefits of union membership and partly because they are more likely to work in sectors with low union density, such as hospitality.

Feedback from Respondents

Trade unions strongly endorsed the introduction of a statutory right for trade unions to access workplaces, including digital and remote environments. They proposed that this access should be comprehensive, covering all shifts and work arrangements, and suggested the creation of a new Workers' Rights Act.

Trade Unions also specifically asked for the introduction of a statutory right guaranteeing access both in person and digitally to engage with workers on union matters including worker issues, pay negotiations and pay proposals. Also, a statutory right guaranteeing workers' access to a designated trade union representative in the workplace to discuss union matters, including wages and pay negotiations. This access should be in a manner that does not interfere with business operations but remains effective for worker engagement.

Employer representatives opposed this proposal, citing safety, legal, and operational concerns. They emphasised the importance of maintaining a voluntarist approach and argued that access should remain at the discretion of the employer. Ibec wrote to the Department of Enterprise, Tourism and Employment in July 2024 to confirm that they have not agreed that the core issues that could be considered as part of Ireland's action plan include anti-discrimination measures for trade union members 'nor have we indicated in any way that access of trade unions to workers in the workplace is a core issue we support as part of the action plan'.

Stratis note that 'efforts to introduce compulsory measures on access would be fiercely resisted by employers and especially so, where it is not their practice to engage in voluntary collective bargaining'. It may represent a serious punitive challenge to the private property rights of employers and may raise fundamental issues of compliance with GDPR requirements in the case of digital access. Statutory access would undermine the voluntary nature of collective bargaining.

The American Chamber of Commerce state statutory access requires careful consideration in relation to its practical impact on businesses. Many MNCs in Ireland have secure sites and facilities and NDAs can be required to access offices and there would be concerns regarding trade practices and IP issues. Cases would require rapid and effective determination at the WRC and costs would particularly

impact SMEs. Consideration should be given to alternative approaches, with a particular focus on existing communication channels.

The Construction Industry Federation (CIF) raised health and safety concerns, security and insurance in relation to on-site access. They argued that construction is a safety-critical industry and, therefore, access to sites must be strictly controlled. While those with statutory authority such as Health and Safety Inspectors and WRC Inspectors, as official public bodies, are permitted access to a site, they were strongly of the view that trade unions should not be granted statutory powers to enter workplaces without permission. entitlement to trade unions to access workplaces would be counterproductive.

What Already Exists

Where a trade union is recognised in the workplace, the 1993 voluntary WRC Code of Practice on Duties and Responsibilities of Employee Representatives sets out for the guidance of employers, employees and trade unions the duties and responsibilities of employee representatives (frequently referred to in trade union rule books and employer/trade union agreements as shop stewards) and the protection and facilities which should be afforded them in order to enable them to carry out their duties in an effective and constructive manner.

In particular, in relation to trade union access, the Code provides that employee representatives in the undertaking or establishment should be granted reasonable access to all workplaces where they represent trade union members and where such access is necessary to enable them to carry out their representative functions. It also states that management and trade unions should agree on the particular information and facilities which should be made available to employee representatives to enable them to carry out their functions and responsibilities in accordance with the Code.

Preferred Policy Response

We will engage with social partners on digital and physical access within agreed criteria. This may enhance the ability of trade unions to engage directly with employees for the purposes of recruitment, visibility, communication, providing support to workers and understanding of workplace issues on a voluntary and confidential basis.

We will review the 1993 WRC Code of Practice on Duties and Responsibilities of Employee Representatives

11.PROMOTING EMPLOYER ENGAGEMENT

Do you have views on what measures could be introduced which would promote employer engagement in collective bargaining?

Context

It has been the consistent policy of successive Irish governments to promote collective bargaining through the development of an institutional framework supportive of a voluntary system of industrial relations, premised upon freedom of contract and freedom of association. There is an extensive range of statutory provisions designed to back up the voluntary bargaining process, including the provision of the independent services of the WRC and the Labour Court to assist parties in dispute.

The WRC has responsibility for promoting the improvement of workplace relations, and maintenance of good workplace relations, promoting and encouraging compliance with relevant enactments, and providing guidance in relation to compliance with codes of practice approved under Section 20 of the Workplace Relations Act 2015. The WRC will launch a Knowledge, Information and Advisory Division which should provide further support for the social partners.

A strong and well-functioning collective bargaining system is an important element in the economy to support and promote fair wages and terms and conditions, particularly in low paid sectors. Collectively bargained agreements can also play a positive role in increasing productivity for businesses and ensuring ongoing industrial harmony, which is critical to economic growth.

Trade union representatives have long held that employer representatives refuse to engage in collective bargaining on a voluntary basis and they need further incentives to do so.

Feedback from Respondents

Trade unions proposed a range of incentives to encourage employer engagement in collective bargaining. These included tax benefits, changing public procurement rules, and linking work permits to collective agreements. They also suggested creating a non-compliance register to exclude violators from public contracts.

As detailed in number 10, Employer representatives emphasised the need for reform of the Industrial Relations Act 1990 to enhance transparency and accountability in relation to taking industrial action. They supported training and guidance but remained opposed to compulsion, particularly among SMEs, who expressed fears about the potential negative impact of enforced collective bargaining or penalties on their businesses.

What Already Exists

Ireland maintains a voluntary model of Industrial relations and the Government encourages participation through dialogue with the social partners and through providing support from the WRC/LC for dispute resolution.

A Registered Employment Agreement (REA) is a collective agreement between a trade union and an employer. It can also be an agreement between multiple unions and multiple employers (or an employers' organisation). The agreement is reached through *collective bargaining*, which means each side voluntarily engages in the negotiations. A REA sets out the pay and employment conditions of the workers covered in the agreement and once registered with the Labour Court, it becomes binding for the parties involved. The Labour Court maintains a Register of Employment Agreements which is available to the public.

The 2016 Public Procurement Irish regulations for Goods and Services require tenderers to comply with applicable obligations in the fields of environmental, social and labour law that apply at the place where the works are carried out or, the services provided that have been established by EU law, national law, collective agreements or by international, environmental, social and labour law. In addition, Regulation 57(8) of the Public Contract Regulations lists a number of discretionary grounds upon which the contracting authority may exclude an economic operator from participation in a procurement procedure, including employment law. A contracting authority is required to reject a tender where it has been established that the prices are abnormally low because of non-compliance with applicable obligations in the fields of environmental, social and labour law.

The aim of the Industrial Relations Act 1990 is to promote harmonious relations between employers and workers. It provides a legal framework for resolving industrial disputes and reform and regulate the activities of trade unions and

industrial action. The Act establishes procedures for investigating trade disputes, including the role of the Labour Court and the Labour Relations Commission (now WRC) and allows for the creation of codes of practice to guide workplace practices and promote best practices.

Preferred Policy Response

Adding the existence of collectively bargained agreements as a positively weighted criteria for the award of public contracts has been raised with the Office of Government Procurement. They highlighted that guidelines for public procurement could be amended so that a collectively bargained agreement in the workplace is something that contracting authorities may consider in their criteria. This can be further examined, possibly on a pilot basis but only after exploratory research, a Regulatory Impact assessment and application of the SME Test.

While linking state aid and work permit eligibility to collective bargaining has been proposed, we propose to explore the introduction of a competitive call scheme for collectively negotiated productivity improvements as we believe that this action would more closely align to our overarching objective to ensure a positive contribution to the economy and society, driving and enabling competitiveness and productivity.