

To: Department of Enterprise, Trade and Employment

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From: An Post

Subject: Submission to Public Consultation on the transposition by primary legislation of EU Directive 2019/1152 on Transparent and Predictable Working Conditions

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Please indicate if this submission is made in a personal/employee capacity, an employer capacity or on behalf of your institution, organisation or group.	This submission is made on behalf of An Post.
Name of company, institution, organisation or group covered by this submission.	An Post

An Post welcomes the opportunity to respond to the Department of Enterprise, Trade and Employment's Public Consultation (the "**Consultation**") on the transposition by primary legislation of EU Directive 2019/1152 on Transparent and Predictable Working Conditions (the "**Directive**") and responds to each specific question below.

Any future regulatory employment framework should support the right to a decent job with good terms and conditions, in line with the UN Sustainable Development Goal ("**SDG**") of Decent Work and Economic Growth. An Post is expressly committed to sustainability, including delivering on the five UN SDGs which are core to the postal industry, as underscored by the EU Green Deal. Corporate environmental and social responsibility is recognised by An Post (and indeed by Government) as a key priority. Our [Sustainability Report 2020](#) details our track record to date and ambition for the future.

An Post broadly agrees with the aims of the Directive which are consistent with these UN SDGs, including minimum requirements relating to information on the essential aspects of the employment relationship and a degree of transparency and predictability on working conditions, while maintaining reasonable flexibility of non-standard employment thereby preserving its benefits to workers and employers.

Despite the increased demand for packet and parcel delivery services throughout the pandemic, An Post ensured that its networks remained fully open, connecting citizens and communities and highlighting the key role of postal operators in supporting our economy and society.

The pandemic also highlighted the important role postal operators play in support of both the economy and society. During the pandemic, An Post played a key role in keeping local communities connected as well as supporting the economy by ensuring that vital goods were delivered across Ireland. Despite the significant increase in demand for packets and parcels delivery services during this time, An Post maintained a high quality of service, demonstrating the resilience of An Post's postal network.

Being human is at the core of An Post with our purpose being to act for the common good: now, and for generations to come. An Post will continue to fight against the excesses of the gig economy, and in contrast promote the dignity and respect of the postal profession, both for the sake of employees and customers.

Nonetheless, the transposition of the directive must recognise the needs of forms of employment and businesses which have variable demands and which demands are not entirely predictable or predictable with reasonable notice. A broad range of employment contracts and conditions is required in order to respond to the needs of customers of our Commerce and Retail businesses in particular. For instance, at the outset of the pandemic, parcel volumes grew to an unforeseen extent requiring a labour supply response at short notice. This resourcing demand was managed within the terms of existing legislation which in many respects already meets the requirements of the Directive, *e.g.* Organisation of Working Time Act and The Employment (Miscellaneous Provisions) Act. Further legislation may be unnecessary in Ireland to transpose certain provisions in the Directive. They were also met in consultation with our trade unions and in accordance with our collective agreements which provide adequate protections for employees.

Question 1: Probationary Period

There is currently no statutory provision covering the maximum probationary period at the beginning of a job under Irish Employment Law.

If Ireland were to introduce a maximum probation period in Irish law, provision could also be made for employers to, on an exceptional basis, provide for longer probationary periods where this is justified by the nature of the employment, or in the interest of the worker. Where the worker has been absent from work during the probationary period, employers could provide that the probationary period be extended correspondingly, in relation to the duration of the absence.

Having regard to the above, what would be the benefits in establishing a maximum probation period of six months in line with the Directive?

An Post Response:

While An Post accepts the benefit of a general maximum probationary period provision of six months duration, the legislation should allow for longer probationary periods for staff at management level where longer periods of assessment are needed. The ability to extend probationary periods in some instances should be retained to ensure a fair assessment of an individual (for example relating to the duration of any period of absence during the normal probationary period).

Question 2: Minimum Predictability of Work

Where a worker's work pattern is entirely or mostly unpredictable, the worker shall not be required to work by the employer unless the work takes place within predetermined reference hours / days and the worker is informed by his or her employer of a work assignment within a reasonable notice period.

Where a worker is entitled to be informed within a reasonable notice period by his or her employer of an unpredictable work assignment, what form should this notice take?

An Post Response:

An Post accepts that even in circumstances where levels/volumes of work are unpredictable the employee should have reasonable notice of their changed requirements to ensure a sustainable work-life balance. A minimum of a weeks' notice is reasonable whether given verbally, in writing or through electronic means. Where an employer (as is the case with An Post) offers employees the opportunity to work additional shifts as opposed to requiring the working of shifts at shorter notice then this should be permissible.

Question 3: Right to redress

Where a worker has not received in due time all or part of the documents required under the Directive, one or both of the following shall apply: the worker shall benefit from favourable presumptions which employers shall have the possibility to rebut and the worker shall have the possibility to submit a complaint to a competent authority or body and to receive adequate redress in a timely and effective manner.

The WRC is a competent authority within the meaning of the Directive which provides adequate redress in a timely and effective manner. To provide the best protection to workers, should Ireland also introduce provisions that a worker shall benefit from favourable presumptions where a worker has not received in due time all or part of the documents required under the Directive?

An Post Response:

We believe drawing favourable presumptions from what may in many instances be an oversight or administrative error would be a disproportionate response. With notice to the employer an ability for a competent authority to order a correction of the matter would be a better approach

Question 4: Protection against adverse treatment

Workers, including those who are workers' representatives, will be protected from any adverse treatment by the employer and from any adverse consequences, including dismissal, resulting from a complaint lodged with the employer or resulting from any proceedings initiated with the aim of enforcing compliance with the rights provided for in this Directive.

There are existing anti penalisation provisions in section 6 C of the Terms of Employment (Information) Act 1994.

In your view does the existing legislation provide sufficient protection against penalisation or threat of penalisation from an employer i.e. where an employee invokes any rights under that Act which cover the written statement and other key employment information for employees?

An Post Response:

We believe that employees or their representatives should not be penalised for taking proceeding in good faith and there appears to be adequate protection in the existing legislation for employees in that regard.

Any other comments

Please see as follows with regard to other aspects of the Directive:

- Article 1.3: in line with the Directive, any legislation should apply to all forms of employment and employees.
- Article 6 is already covered by existing employment legislation and requires no further action.
- In respect of Article 9, any proposed legislation should allow employers to prohibit employees working for competitor organisations in parallel with An Post where such working may affect the integrity of the business or its brand.
- With regard to Article 14 of the Directive, any proposed legislation should allow for the provisions contained in Article 8-13 to be varied by collective agreement where such bargaining applies.