



Public Consultation on the Transposition of EU Directive 2019/115 Transparent and Predictable Working Conditions

The purpose of this consultation is to seek your views on the transposition of the EU Directive 2019/115 on Transparent and Predictable Working Conditions. The background to this initiative is set out in the attached consultation paper, which also provides you with an opportunity to provide your views on important relevant issues including: probationary periods at the beginning of a job; the right to predictable working hours; the right to redress; and the right to protection against adverse treatment.

The document provides space for your responses to the questions set out.

Your Name: _____

Organisation (if applicable): _____

Telephone Number: _____

E-mail: _____

Please indicate if this submission is made in a personal/employee capacity, an employer capacity or on behalf of your institution, organisation or group.

Name of company, institution, organisation or group covered by this submission:

Respondents are requested to make their submissions by email to:

TAPW@enterprise.gov.ie.

The closing date for submissions is Monday 25th October at 3pm.

For telephone queries please contact Mark Doheny on 087 3967374.

I. Background

The Department of Enterprise, Trade and Employment is seeking the views of stakeholders on the transposition by primary legislation of EU Directive 2019/1152 on Transparent and Predictable Working Conditions.

Directive 2019/1152 (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union aims at improving working conditions by promoting more transparent and predictable employment while ensuring labour market adaptability. It repeals Directive 91/533 EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship and provides instead for more complete information on the essential aspects of the work to be received by the worker in writing at the beginning of the employment relationship. It also includes a new chapter on minimum requirements relating to working conditions providing completely new material rights for the workers in the European Union.

The purpose of the EU Directive is to ensure that all workers will have:

- I. the right to more complete **information on the essential aspects of the work**, to be received early by the worker, in writing;
- II. a limit to the **length of probationary periods** at the beginning of the job;
- III. the **right to seek additional employment**, with a ban on exclusivity clauses and limits on incompatibility clauses;
- IV. the right to **know in a reasonable period in advance when work will take place** – i.e. for workers with very unpredictable working schedules, as in the case of on-demand work;
- V. **anti-abuse legislation** for zero-hour contracts;
- VI. employees may **request to be transferred** to a form of employment **with more predictable and secure working conditions** where available and receive a reasoned written reply;
- VII. the right to **receive mandatory training** required to carry out the job **cost-free** (such training shall be provided to the worker free of cost, shall count as working time and, where possible, shall take place during working hours).
- VIII. Finally, transposition of the EU Directive will ensure that **these rights cover all workers in all forms of work**, including those in the most flexible non-standard and new forms of work such as zero-hour contracts, casual work, domestic work, voucher-based work or platform work.
- IX. The Directive also contains **targeted provisions on enforcement**, to make sure that workers in the workplace effectively benefit from these rights.

The Employment (Miscellaneous Provisions) Act 2018 pre-empted many aspects of the Directive, e.g. introducing an anti-penalisation provision, stronger penalties for non-compliance, restriction of zero hours contracts and more precise information on hours of work for employees. However, the Directive includes elements which go beyond the measures contained within that Act, and accordingly the Directive will require primary legislation to give it full effect.

II. Scope of the Directive

The Directive's personal scope of application refers to the national concept of worker with consideration to the case law of the Court of Justice of the European Union (CJEU). The Directive lays down minimum rights that apply to every worker in the Union who has an employment contract or employment relationship as defined by the law. Under EU law the status of worker is not affected by the fact that a person has been *"hired as a self-employed person under national law, for tax, administrative or organisational reasons, as long as that person acts under the direction of his employer as regards, in particular, his freedom to choose the time, place and content of his work, does not share in the employer's commercial risks and, for the duration of that relationship, forms an integral part of that employer's undertaking"*.

The Directive aims to improve working conditions by promoting more transparent and predictable employment while ensuring labour market adaptability. The Directive pursues a clear-cut social policy objective, which has to be interpreted together with the relevant provisions of the Charter of Fundamental Rights of the European Union (Charter) and the European Pillar of Social Rights (EPSR). Article 31 of the Charter provides that every worker has the right to working conditions which respect his or her health, safety and dignity, to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

The Employment (Miscellaneous Provisions) Act 2018 pre-empted many aspects of the Directive, including the introduction of anti-penalisation provisions, stronger penalties for non-compliance, restriction of zero-hour contracts and more precise information on the terms and conditions of employment being provided to employees at the outset of the employment relationship. However, the Directive includes elements which go beyond the measures contained within that Act, and accordingly the Directive will require primary legislation to give it full effect.

III. Information about the employment relationship

The Terms of Employment (Information) Acts 1994- 2014 transposed the provisions of Council Directive 91/533/EEC on an Employer's Obligation to Inform Employees of the Conditions Applicable to the Contract or Employment Relationship.

The Terms of Employment (Information) Acts 1994- 2014 already provide that an employer is obliged to provide an employee with a written statement of terms of employment such as a contract of employment, a job description, rate of pay and hours of work within the first two months of the commencement of employment. This requirement does not apply to an employee who has been employed for less than a month.

The Employment (Miscellaneous Provisions) Act 2018 bans zero-hour contracts in most situations and provides for minimum payments and banded hours. It also states that employers must provide employees with information on the core terms of employment within 5 days of them starting work.

Accordingly, much of the minimum employee information obligations placed on employers by the Directive are already enshrined in Irish employment law.

Under the Directive, employers will be required to inform workers of the essential aspects of the employment relationship. An employer must provide each worker with the information required pursuant to the Directive in writing. The information to be provided in writing under the Directive can be provided by electronic means. The basic information should reach workers as soon as possible and at the latest within a calendar week from their first working day. The remaining information should reach them within one month from their first working day. Workers sent abroad should receive additional information specific to their situation.

The information to be provided includes;

- a. the identities of the parties to the employment relationship;
- b. the place of work: where the worker has no fixed or main place of work, or where he or she is free to determine his or her place of work, he or she should receive information about arrangements, if any, for travel between the workplaces;
- c. the title, grade, nature or category of work for which the worker is employed or a brief specification or description of the work;
- d. the date of commencement of the employment relationship; (e) in the case of a fixed term employment relationship, the end date or the expected duration period;
- e. in the case of temporary workers, the identity of the user undertakings, when and as soon as known;
- f. the duration and conditions of the probation period, if any; (h) the training element provided by the employer;
- g. the amount of paid leave or, where this cannot be indicated when the information is given, the procedures for allocating and determining such leave;
- h. the procedure by which the employment relationship is terminated and the method for determining notice periods;
- i. the remuneration and method of payment to which the worker is entitled;
- j. the standard working day or week where the work pattern is predictable and any arrangements for overtime or shift changes;
- k. where the work pattern is unpredictable, the employer shall inform the employee of the principle that work schedules are variable, the number of guaranteed hours, the remuneration for work performed in addition to guaranteed hours, the reference hours and days which the worker may be required to work, and the minimum notice period before the start of a work assignment or the deadline for cancellation of the work assignment;
- l. any collective agreements governing a worker's conditions;
- m. where it is the responsibility of the employer, the identity of the recipient agency for social security contributions and any protection relating to a workers social security arrangements.

IV. Maximum duration of any probationary period

Probation is a period of time at the beginning of the employment relationship during which the employer assesses whether the employee is suitable for permanent employment. It's common to refer to this as the new employee's "probationary period". Irish Employment Law currently does not prescribe any maximum period of probation. However, as a matter of contract a probation period is often put in place for an initial period of between three to twelve months.

Under the Directive, Member States are required to ensure that, where an employment relationship is subject to a probationary period as defined in national law or practice, that period shall not exceed six months. The Directive will also require that, in the case of fixed-term employment relationships, the length of such a probationary period is proportionate to the expected duration of the contract and the nature of the work. In the case of the renewal of a contract for the same function and tasks, the employment relationship shall not be subject to a new probationary period.

Employers may, 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 may provide that the probationary period can be extended correspondingly, in relation to the duration of the absence.

V. Minimum Predictability of Work

Under the Directive an employer cannot prohibit a worker from taking up employment with other employers, outside the work schedule established with that employer, nor subject a worker to adverse treatment for doing so. Employers can, however, lay down conditions for the use of incompatibility restrictions, which are to be understood as restrictions on working for other employers for objective reasons, such as for the protection of the health and safety of workers including by limiting working time, the protection of business confidentiality, the integrity of the public service or the avoidance of conflicts of interests.

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 and days the worker is informed by his or her employer of a work assignment within a reasonable notice period. A reasonable minimum notice period is a period of time between the moment when a worker is informed of a new work assignment and the moment when the assignment is to start.

A worker shall have the right to refuse a work assignment without adverse consequences where a work assignment falls outside of the reference hours and days or if the worker is not notified of the work assignment in accordance with the minimum notice period. Workers also have the right to accept the work assignment if they so wish.

Where an employer cancels a work assignment a worker is entitled to compensation if the employer cancels, after a specified reasonable deadline, the work assignment previously agreed with the worker. The worker will be protected against loss of income resulting from the late cancellation of an agreed work assignment by means of adequate compensation.

VI. Transition to a more Predictable Form of Employment

Where a worker with at least six months' service with the same employer has completed his or her probationary period, if any, he or she may request a form of employment with more predictable and secure working conditions where available and receive a reasoned written reply. An employer will be required to provide the reasoned written reply within one month of the request.

VII. Mandatory Training

Where an employer is required by Union or national law or by collective agreements to provide training to a worker to carry out the work for which he or she is employed, such training shall be provided to the worker free of cost, shall count as working time and, where possible, shall take place during working hours. The costs of such training should not be charged to the worker or withheld or deducted from the worker's remuneration.

VIII. Non-regression and more favourable provisions

The transposition of the Directive will not serve as grounds to reduce the general level of protection already in place for workers. The Directive lays down minimum requirements, thus leaving untouched Member States' prerogative to introduce and maintain more favourable provisions. Rights acquired under the existing legal framework will continue to apply unless more favourable provisions are introduced by the Directive.

VIII. Right to redress and protection against adverse treatment

Where a worker has not received in due time all or part of the documents referred to at IV above, one or both of the following shall apply: the worker shall benefit from favourable presumptions which employers shall have the possibility to rebut; 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.

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.

Workers who consider that they have been dismissed, or have been subject to measures with equivalent effect, on the grounds that they have exercised the rights provided for in the Directive, may request the employer to provide duly substantiated grounds for the dismissal or the equivalent

measures. The employer shall provide those grounds in writing. Where there has been such a dismissal or equivalent measures, it shall be for the employer to prove that the dismissal was based on grounds other than the taking of proceedings initiated with the aim of enforcing compliance with the rights provided for in the Directive

IX. Transposition and implementation

Member States may determine which persons are responsible for the execution of the obligations for employers laid down by this Directive, as long as all those obligations are fulfilled. They may also decide that all or part of those obligations are to be assigned to a natural or legal person who is not party to the employment relationship. In this regard, it is intended that the Workplace Relations Commission (WRC) shall act as adjudicator in any employment disputes arising from implementation of the EU Directive with the Labour Court acting as the Appeals Body.

Transposition of the Directive is required no later than *1 August 2022*.

X. Publication of submissions and Freedom of Information

Any personal information, which you volunteer to this Department, will be treated with the highest standards of security and confidentiality, strictly in accordance with the Data Protection Acts 1988 and 2018. However, please note the following:

- The information provided in the submission form will be shared with relevant Government Departments and State organisations during the review process.
- The Department will publish the outcome of the reviews and the submissions received under this consultation on its website, and
- as information received by the Department is subject to the Freedom of Information Act, such information may be considered for possible release under the FOI Act. The Department will consult with you regarding such information before making a decision should it be required to disclose it.
- If you wish to submit information that you consider commercially sensitive, please identify that information in your submission and give reasons for considering it commercially sensitive.

XI. Note regarding responses

Respondents are encouraged to keep their responses within the box accompanying each question. Please answer any questions that are relevant to you or your organisation.

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?

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?

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?

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?

Any other comments:

