



INDUSTRIAL RELATIONS ACT, 1990

EXPLANATORY BOOKLET

Note: This booklet gives a general description of the Industrial Relations Act, 1990 and is not a legal interpretation. The purpose is to present in non-legal language an outline of the main provisions of the Act. Copies of this booklet may be obtained from the Information Unit, Department of Enterprise, Trade and Employment, Adelaide Road, Dublin 2.

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INDUSTRIAL RELATIONS ACT, 1990

INTRODUCTION

General

The purpose of the Industrial Relations Act, 1990 is to put in place an improved framework for the conduct of industrial relations and for the resolution of trade disputes with the aim of maintaining a stable and orderly industrial relations climate.

The Role of Law and the State

Industrial relations in Ireland is based on the principle of free collective bargaining between workers or their representatives and employers.

The role of the State in industrial relations is primarily one of facilitating the relationship between trade unions and employers by providing the legislative framework within which trade unions can operate and machinery to assist the parties in dispute settlement.

THE INDUSTRIAL RELATIONS ACT, 1990 – AN OVERVIEW

The provisions of the Act can be divided broadly between trade union law and industrial relations law.

The Trade Union Law Provisions

- reform trade dispute law (**Sections 8 – 19**)
- introduce pre-strike secret ballot rules (**Sections 14 – 19**)
- restrict the use of injunctions in trade disputes (**Section 19**)
- facilitate the further rationalisation of the trade union movement (**Section 22**)

The Industrial Relations Provisions

- provide for the establishment of a new Labour Relations Commission with overall responsibility for the promotion of good industrial relations (**Section 24**)

- make changes in the procedure for referral of disputes to the Labour Court (**Section 26**)
- amend procedures governing the establishment and operation of Joint Labour Committees (**Sections 44 – 45**)
- improve the arrangements for the enforcement of Employment Regulations Orders and Registered Employment Agreements (**Sections 49 – 54**)

TRADE UNION LAW

TRADE DISPUTES

The Trade Disputes Act, 1906 which was the main statute dealing with trade disputes has been repealed in full and its main provisions have been re-enacted with a number of amendments. The 1906 Act dealt with two major areas; firstly, the protection of persons who organise or engage in trade disputes from civil liability and the protection of trade union funds against actions for damages; and secondly, the legalisation of peaceful picketing in trade disputes situations.

For individuals it set out the position in relation to lawful picketing and introduced immunities against common law torts of inducing breach of contract, interference with trade and conspiracy. It also made lawful acts done by groups of people where those acts done by an individual were lawful.

As far as trade union funds were concerned the Act provided a total immunity against actions in tort. While the immunities given to individuals were confined to actions done in contemplation or furtherance of a trade dispute no similar limitation was applied to immunity enjoyed by trade unions.

IMMUNITIES

- The provisions contained in the 1906 Act in relation to conspiracy and combination have been re-enacted without any amendments. **(Section 10)**
- The immunities enjoyed by individuals have been re-enacted with an amendment to remove an anomaly whereby organising a strike was protected but threatening to organise or take part in a strike appeared not to be. **(Section 12)**
- The immunity for trade unions has been limited to acts done in contemplation or furtherance of a trade dispute. **(Section 13)**
- Where agreed procedures exist for the resolution of individual grievances the immunities will apply to disputes concerning one worker only when the procedures have been resorted to and exhausted. **(Section 9)**
- The definition of trade dispute has been amended to exclude ‘worker versus worker’ disputes from the protection of the immunities. **(Section 8)**
- The immunities no longer apply in the case of industrial action taken where the outcome of a secret ballot is against such action. **(Section 17)**
- The immunities provided for in respect of peaceful picketing have been re-enacted and the circumstances in which peaceful picketing can lawfully take place have been amended. (see below). **(Section 11)**
- The immunities provided for in Sections 11, 12 and 13 of the Act are confined to trade unions holding a negotiation licence and the members and officials of such unions. **(Section 9)**
- Expressions such as “employer”, “worker”, “strike” and “industrial action” are defined in **Section 8**.

PICKETING

Primary Picketing

It is lawful for workers to picket peacefully at a place where their employer works or carries on business, or where this is not practicable, at the approaches to the place, provided the picketing is for the purpose of peacefully obtaining or

communicating information or of peacefully persuading any person to work or not to work. This provision applies to one or more persons acting on their own behalf or on behalf of a trade union, in contemplation or furtherance of a trade dispute. **(Section 11(1))**

Secondary Picketing

The Act provides that secondary picketing (i.e. picketing of an employer other than the primary employer involved in the dispute) is lawful only in situations where it is reasonable for those workers picketing to believe that the second employer was acting to frustrate the industrial action by directly assisting their employer. **(Section 11(2))**

Health Services

The Act provides that action taken in the health services to maintain life-preserving services does not constitute assistance of the type which might otherwise give ground for legal secondary picketing. **(Section 11(3))**

Picketing by Trade Union Officials

Trade union officials, i.e. paid officials and elected officers of unions and branches, are permitted to accompany their members on picket duty and may engage only in peaceful picketing. **(Section 11(4))**

SECRET BALLOTS

Trade Union Rule Books – Secret Ballot Provision

The rules of every union must contain a provision to the effect:

- that no strike or other industrial action take place without a secret ballot
- that all members whom it is reasonable for the union to believe at the time of the ballot are likely to be called upon to engage in the strike or industrial action be given a fair opportunity of voting
- that the governing body of the union shall not call, organise or participate in industrial action without a majority of votes having being cast in favour of industrial action

- that the governing body of the union shall have full discretion in relation to the calling, organisation of or participation in, industrial action where the majority of votes cast favour industrial action
- that the trade union make known to the members entitled to vote in the ballot the results of a secret ballot as soon as practicable after the vote
- that the governing body of the trade union may set aside a majority vote against industrial action *only when the aggregate majority* of the members of all unions balloted favours industrial action. (A formal aggregation arrangement is not necessary)
- that the union must ballot before calling on its members to support industrial action by another union. Where the decision is to support another union, that decision shall not be implemented without sanction by the Irish Congress of Trade Unions. **(Section 14)**

No ballot is required by law to approve the settlement of a dispute and a return to work.

Enforcement of Rule for Secret Ballot

All trade unions with negotiation licences must forward a copy of their rules incorporating the secret ballot requirements of the Act to the Registrar of Friendly Societies. Failure to do this will result in the automatic revocation of their negotiation licence. **(Section 16(1))**.

Where the Registrar of Friendly Societies is satisfied after due investigation that it is the policy or practice of a trade union to persistently disregard the secret ballot rule he may issue an instruction to a trade union to comply with the rule. In the event of such instruction being ignored the Registrar shall inform the Minister for Enterprise, Trade and Employment of the situation, and the Minister may then revoke the union's negotiation licence. **(Section 16(5))**

Any right of legal action against a trade union for failure to comply with the secret ballot rule is confined to the members of the union concerned. **(Section 14(3))**

INJUNCTIONS

The Act places restrictions on the right of employers to obtain injunctions in dispute situations.

Ex-parte Injunctions

Where the secret ballot provisions of the Act have been met and where at least one week's notice has been given to the employer, the employer is not entitled to seek an ex-parte injunction. **(Section 19(1))**

The Act clarifies how an employer may give notice of his intention to seek an injunction. This provision is aimed at ensuring that workers have reasonable opportunity to become aware of such intention. **(Section 19(3))**

Interlocutory Injunctions

Where a secret ballot favouring industrial action has been held and the employer is given one week's notice a court will not grant an injunction restraining the industrial action where the respondent union or unions establish a fair case that they were acting in contemplation or furtherance of a trade dispute. **(Section 19(2))**

In the course of a dispute a number of ballots may be held. The ballot of relevance to the injunction provisions is the latest ballot. **(Section 19(5))**

Injunctions can still be sought without restriction in cases of unlawful action (e.g. trespass, sit-in, occupations, damage to property) or actions resulting in or likely to result in personal injury or death. **(Section 19(4))**

TRADE UNION RATIONALISATION

The Act provides for a number of amendments to trade union law designed to encourage mergers between unions and discourage the formation of new or breakaway unions. These changes are aimed at strengthening the trade union movement and thus improving the service which unions can provide for their members.

Membership Levels

The Act increases the minimum membership for the granting of a negotiation licence to a trade union from 500 to 1,000. Any new applicant for a negotiation licence will have to have had 1,000 members both at the date of the application and for 18 months prior to the application. **(Section 21)**

High Court Deposits

Trade unions which hold a negotiation licence must deposit a sum of money with the High Court. The size of the deposit varies according to the size of the union. The Act increases the levels of such deposits for trade unions applying for negotiation licences. The increased levels of deposits do not apply to unions which already have a negotiation licence. **(Section 21)**

The new deposit levels are set out in Appendix 1.

When a union is formed as a result of the amalgamation of existing unions each of which already holds a negotiation licence the membership requirements for obtaining a negotiation licence do not apply and the Minister for Enterprise, Trade and Employment has discretionary powers in relation to the level of the High Court deposit for the new union. **(Section 21)**

Membership Returns

Every trade union which has a negotiation licence is required to make an annual return of membership to the Minister for Enterprise, Trade and Employment within one month of the 31 December each year. The trade union is required to make appropriate changes, if necessary, in its High Court deposit within four months of that date. The first membership returns under the Act are required within one month of the 31 December. **(Section 20)**

Grants for Merger Expenses

Under the Act grants may be paid towards the expenses incurred by trade unions in contemplating or attempting an amalgamation or transfer of engagements which for some reason eventually does not take place. Grant assistance is confined to expenses incurred in the two-year period immediately prior to the failure of the merger attempt. **(Section 22)**

Previously, grants could be paid only in the case of successful mergers. **(Trade Union Act, 1975)**

On the coming into effect of an instrument of amalgamation the registration of the amalgamating unions in the Registry of Friendly Societies will automatically cease to have effect. Similarly, negotiation licences held by amalgamating unions will automatically cease to have effect on the granting of a negotiation licence to the new union.

Where a union transfers engagements to another union, the registration and negotiation licence of the transferor union will be automatically cancelled on the coming into effect of the instrument of transfer of engagements. **(Section 22)**

INDUSTRIAL RELATIONS LAW

ACCESS TO THE LABOUR RELATIONS COMMISSION, THE LABOUR COURT AND RIGHTS COMMISSIONERS

Access to the services of the Labour Relations Commission, Labour Court and Rights Commissioner is governed by the definition of “worker” in **Section 23** of the Act. The Section makes no change to the definition which was previously spread over a number of pieces of legislation. Employees generally have access to these services with the exception of workers in the public service who are covered by conciliation and arbitration machinery.

LABOUR RELATIONS COMMISSION

The Labour Relations Commission established under the Act is a tri-partite body with employer, trade union and independent representation. It has a general responsibility for promoting good industrial relations. The Commission provides a comprehensive range of services designed to help prevent and resolve disputes. **(Section 24)**

The Functions of the Commission

The main functions of the Commission are

- to promote good industrial relations
- to provide conciliation and advisory services
- to prepare and offer guidance on codes of practice
- to conduct or commission research on industrial relations
- to review and monitor industrial relations developments
- to provide a rights commissioner service
- to provide an equality service
- to assist Joint Labour Committees and Joint Industrial Councils in the exercise of their functions. **(Section 25)**

Conciliation Service

The Commission is responsible for the conciliation service formerly provided by the Labour Court. The relocation of the service in the Commission is designed to give a new impetus to the role of conciliation and encourage the parties to take more responsibility for the resolution of their own disputes. This will encourage the resolution of disputes at the earliest possible stage of the dispute settling machinery rather than having issues progress almost automatically to a full Labour Court investigation.

Advisory Service

Disputes are often merely a symptom of a greater underlying problem in the workplace and such problems often remain after a dispute has been resolved. The main focus of the conciliation service is to deal with the immediate dispute. The role of the advisory service on the other hand is to assist in identifying the

underlying problems which may be giving rise to on-going industrial relations unrest and help work out solutions to such problems.

Research and Monitoring

The Commission is responsible for undertaking or commissioning research as well as reviewing and monitoring developments in the industrial relations area. This aspect of its activities recognises that changes are occurring in the workplace to which dispute resolution structures and workplace negotiation machinery must adapt if they are to remain relevant to the needs of the industrial relations environment.

RIGHTS COMMISSIONER AND EQUALITY SERVICES

The Rights Commissioner Service is part of the Labour Relations Commission. The Equality Service is part of the Office of the Director of Equality Investigations (the functions of the Equality Service were transferred from the Labour Relations Commission to the Director of Equality Investigations in September, 1999 under the provisions of the Employment Equality Act, 1998). Rights Commissioners and Equality Officers are independent in the performance of their functions. **(Sections 35 and 37)**

In relation to the Rights Commissioner Service the Act provides that an objection to an investigation by a Rights Commissioner must be notified in writing to the Commissioner within three weeks of the date of notification by post that a dispute has been referred. An appeal against a Rights Commissioner's recommendation must be notified in writing to the Labour Court within six weeks from the date of the recommendation. **(Section 36)**

The Labour Relations Commission cannot become involved in a dispute on which a Rights Commissioner has made a recommendation. **(Section 36)**

CODES OF PRACTICE

In order to highlight and encourage the adoption of good practice in particular aspects of industrial relations the Commission can draw up codes of practice on

industrial relations issues, in consultation with trade unions, employers' organisation and other interested parties.

The Commission may draw up such codes either on its own initiative or at the request of the Minister. Draft codes are submitted to the Minister who may then make an order declaring that code to be a code of practice for the purpose of the Act.

At the request of, or after consulting with, the Commission, the Minister may revoke or amend a code of practice. The terms of a code of practice are not legally binding. However, courts of law and industrial relations bodies may take account of any provisions of a code of practice which they deem to be relevant in determining any proceedings before them. **(Section 42)**

The Labour Court and Codes of Practice

The Court may:

- give an interpretation of a code of practice if requested to do so by one or more parties concerned and as long as all parties have been notified;
- investigate a complaint by a party directly involved that there has been a breach of a code of practice. However, the Commission must first have either conciliated on the complaint and allowed the case to proceed or waived the need for prior conciliation.

Following an investigation, the Court may issue a recommendation outlining its views on the matter and if necessary, specify a course of action which a party in breach of the code should take or cease to take in order to comply with the code. **(Section 43)**

INVESTIGATION OF DISPUTES BY THE LABOUR COURT

The Act provides that the Court may normally investigate a dispute only in one of the following situations:

- if it receives a report from the Commission that no further efforts on its part will help resolve the dispute, or

- if it is notified by the Chairman of the Commission that the Commission has waived its function of conciliation in the dispute.

In both of the above cases, the parties to the dispute must also request the Court to investigate the dispute.

The Court may also investigate a dispute:

- if it is hearing an appeal in relation to a recommendation of a Rights Commissioner or of an Equality Officer, or
- if it decides after consultation with the Commission that exceptional circumstances of the case warrant a Labour Court investigation
- referred to it under Section 20 of the Industrial Relations Act, 1969.
(Sections 25 and 26)

In addition, the Court may investigate a dispute at the request of the Minister **(Section 38)**

Referral of Disputes by the Minister to the Labour Relations Commission or the Labour Court

The Act enables the Minister for Enterprise, Trade and Employment to refer an actual or threatened dispute to the Commission or the Court for resolution if s/he is of the opinion that such a dispute affects the public interest.

The Minister may request the Commission, the Court or another person or body to conduct an inquiry into a dispute of particular importance and to furnish a report to him on the findings. **(Section 38)**

JOINT LABOUR COMMITTEES

A Joint Labour Committee is a statutory body which may be set up by the Labour Court on the application of an organisation representing workers or employers or on the application of the Minister for Enterprise, Trade and Employment.

JLCs may recommend minimum rates of pay and conditions of employment for workers in certain specific categories which, when confirmed by the Labour Court by means of Employment Regulation Orders (EROs), become statutory enforceable minimum rates and conditions for the workers concerned.

The Act makes changes in the composition of, and proceedings of, JLCs and also contains provisions to improve their operation. In future, JLCs will include employer and workers members and only one independent member, who will also act as Chairman of the Committee. **(Section 44 and Fifth Schedule)**

The procedure for holding an inquiry on foot of an application for the establishment of a Joint Labour Committee is speeded up. The Court is required to either establish a new JLC or make known its decision not to establish a JLC within 42 days of the inquiry. **(Section 45)**

Under the Act, the Labour Relations Commission is required to carry out a periodic review of the JLC system to ascertain whether new JLCs should be established or whether existing JLCs should be abolished or amended. **(Section 39)**

Procedures for making Employment Regulation Orders (EROs)

The Act sets out the following procedures for making Employment Regulation Orders:

- the JLC drafts and publishes proposals;
- representations on the proposals may be referred to the Committee within 21 days;
- the JLC submits proposals to the Labour Court;
- the Labour Court may make an ERO or submit the proposals back to the Committee with amendments;
- where the Labour Court refers amended proposals back to the Committee, the Committee may re-submit these to the Court in amended or unamended form without being required to give public notice of them or obtain representations on them;

- the Labour Court may then either accept the proposals in full and make an ERO or reject the proposals in full. **(Section 48)**

Enforcement of Employment Regulation Orders

It is an offence for an employer not to comply with the rates of pay and other conditions of employment laid down by an ERO. Inspectors of the Department of Enterprise, Trade and Employment have power to institute proceedings on behalf of a worker for non-compliance with the terms of an ERO. The Act contains provisions to make enforcement easier. **(Sections 49 and 50).**

Exclusion from Scope of an Employment Regulation Order

The Act provides for exclusion by the Labour Court of an employment from the scope of an ERO for as long as a registered employment agreement with terms as good as, or better than, those provided for in the employment regulation order applies to that employment. The Labour Court will only give consideration to excluding an employment on the request of both the employer and the workers concerned. **(Section 46)**

REGISTERED EMPLOYMENT AGREEMENTS

A Registered Employment Agreement is a collective agreement relating to the remuneration or conditions of employment of a particular class, type or group of workers which has been registered with the Labour Court. The effect of such registration is to make the provisions of that agreement legally binding not only on the parties to it but also on others who are not parties to it but who are in the class, type or group to which the agreement applies. **(Industrial Relations Act, 1946)**

The new Act requires an employer to whom a registered employment agreement applies to keep records and retain them for three years to show compliance with the agreement. Failure to keep or retain records or the production of false records are both criminal offences and a fine not exceeding €634.87 (£500) may be imposed. The production of false records to an inspector is an offence subject to a fine not exceeding €1,269.74 (£1,000) and/or imprisonment for a period not exceeding three months. **(Section 51)**

The Act provides for powers of inspection in relation to the enforcement of registered employment agreements. **(Section 52)**

FINES AND REPEALS

The Act increases the level of fines in respect of various offences. **(Section 4 and First Schedule)**

The various repeals under this Act are set out in Appendix 2.

APPENDIX 1

Trade Union Deposits

Membership	Deposit
not exceeding 2,000	€25,394.76 (£20,000)
exceeding 2,000 but not exceeding 5,000	€25,394.76 (£20,000) + €1,015.79 (£800) for each additional 300 members or part of 300 members in excess of 2,000 members
exceeding 5,000 but not exceeding 10,000	€35,552.67 (£28,000) + €1,015.79 (£800) for each additional 500 members or part of 500 members in excess of 5,000 members
exceeding 10,000 but not exceeding 20,000	€45,710.57 (£36,000) + €1,015.79 (£800) for each additional 1,000 members or part of 1,000 members in excess of 10,000
exceeding 20,000	€55,868.48 (£44,000) + €1,015.79 (£800) for each additional 1,000 members or part of 1,000 members in excess of 20,000 members, but subject to an overriding maximum of €76,184.20 (£60,000) (Third Schedule)

APPENDIX 2

Repeals

Act	Extent of Repeal
The Conspiracy, and Protection of Property Act, 1875	In section 3, the first paragraph, and the paragraph inserted by 6 Edw. 7., c.47., Section 1.
Trade Disputes Act, 1906	The whole Act.
Trade Union Act, 1941	Section 11 Section 15.
Industrial Relations Act, 1946	Section 4 Section 23(2) Section 41 Section 43 (1) Section 64 Sections 67, 69, 71 and 72 Second Schedule.
Industrial Relations Act, 1969	Section 6 In Section 10(3) all words from “shall be liable on conviction” to “one hundred pounds and” Section 11 Section 17 Section 18.
Trade Union Act, 1971	Section 2(3).
Industrial Relations Act, 1976	Section 2 Section 5.
Trade Disputes (Amendment) Act, 1982	The Whole Act.