



**AN BILLE CAIDRIMH THIONSCAIL (LEASÚ) 2009
INDUSTRIAL RELATIONS (AMENDMENT) BILL 2009**

EXPLANATORY AND FINANCIAL MEMORANDUM

Introduction

The main purpose of the Bill is to strengthen the existing system for the making of both Employment Regulation Orders (ERO) and Registered Employment Agreements (REA) and to provide for their continued effective operation. The Bill also provides for the amendment of the definition of “worker” under Section 23 of the Industrial Relations Act 1990.

PART 1

PRELIMINARY AND GENERAL

Section 1 provides for the short title, collective citation, construction and commencement provisions of the Bill.

Section 2 provides for the definitions associated with the Bill.

PART 2

AMENDMENTS TO PART III OF INDUSTRIAL RELATIONS ACT 1946

Section 3 provides for a new definition of “registered employment agreement” to differentiate those made before the commencement of this Act (i.e. registered by the Labour Court) and those made after the commencement of this Act (i.e. those registered agreements that have been confirmed by Ministerial order).

Section 4 provides for the confirmation by order of a Registered Employment Agreement by the Minister. Following receipt of a copy of an agreement, the Minister shall make an order confirming the terms of the agreement. The standard legislative provision dealing with the laying of the order before the Oireachtas by the Minister will apply. *Section 4* also provides that the introduction of the new procedure will not detract from the validity of an existing REA made before the commencement of this Act.

Sections 5 and 6 provide for the same procedure as under Section 4 in respect of an order to vary an agreement or to cancel an agreement respectively.

PART 3

MISCELLANEOUS AMENDMENTS

Section 7 provides for a new definition of “employment regulation order” to differentiate those made before the commencement of this Act (i.e. orders made by the Labour Court) and those made after the commencement of this Act (i.e. by Ministerial order).

Section 8 provides for the “principles and policies” to which a Joint Labour Committee (JLC) must have regard when formulating proposals to submit to the Labour Court for Employment Regulation Orders.

In this context, a JLC must have regard to

- the legitimate interests of the workers,
- the legitimate interests of the employers,
- the prevailing economic circumstances,
- the prevailing employment circumstances of the workers,
- the prevailing commercial circumstances of the employers,
- the terms of any national agreement relating to pay and conditions, for the time being in force.

Section 8 also provides that where an employment regulation order has been in force for less than 6 months, a Joint Labour Committee may submit proposals for revoking or amending the order where it is satisfied that—

- (a) the order contains an error, or
- (b) exceptional circumstances exist which warrant the revocation or amendment.

Section 9 provides for the making of an ERO by the Minister. Following adoption of a proposal for an ERO by the Labour Court, the proposals will be forwarded to the Minister who shall make an order giving effect to the proposals. The standard legislative provision dealing with the laying of the order before the Oireachtas by the Minister will apply. *Section 9* also provides that the introduction of the new procedure will not detract from the validity of an existing ERO made before the commencement of this Act.

Section 10 provides for the amendment of the definition of “worker” under Section 23 of the Industrial Relations Act 1990.

Access to the dispute settling agencies — Labour Relations Commission, Labour Court and Rights Commissioner Service — is governed by the definition of “worker” in Section 23. At present, vocational education committee (VEC) officers do not have access to these agencies as they are specifically excluded from the definition of “worker”. Up to now these officers have been served by a scheme of Conciliation and Arbitration, but they now wish to be able to access the dispute settling agencies like workers generally. This amendment would allow officers of VECs, other than teachers, access to the dispute settling agencies.

Section 10 also provides for the deletion of Sections 23 (2), (5) and (6) of the 1990 Act. Section 23(5) provides that the Government may by order amend the definition of “worker” in subsection (1) of Section 23 and may by order revoke or amend any such order.

Section 23(6) deals with the laying of such orders before the Houses of the Oireachtas. The effect of these amendments is to remove the power to make changes in the definition of worker by Ministerial order and to ensure, in line with the decision in the case of *Mulcreavy v the Minister for Environment and Local Government* [2004] 1 IR 72, that future changes in the definition of worker will be made by primary legislation.

Moreover, the Industrial Relations Act of 1990 (Definition of “Worker”) Order of 1998 (S.I. No. 264 of 1998) amended the definition of “worker” in Section 23(1) of the Industrial Relations Act of 1990 in order to give officers of local authorities (including health boards) access to the Labour Relations Commission, Labour Court and Rights Commissioners. Since it is considered unsafe to rely on changes made to statute by secondary legislation, it is now proposed to make the amendment in primary legislation. The definition of “local authority” contained in Section 23(2) of the 1990 Act should be deleted in consequence.

Section 11 provides for improved procedures to be followed when formulating proposals for an ERO. The High Court challenge concerning the Hotels Joint Labour Committee was determined on procedural grounds following acceptance that the JLC had failed to forward to the Labour Court a submission made to it by the Irish Hotels Federation. The current legislation merely requires that, when proposals for the making of an ERO are being forwarded to the Labour Court, the JLC Chairman must submit a report to the Court on the circumstances surrounding their adoption by the JLC. The Bill provides that, in future, the Chairman of the JLC shall forward to the Labour Court, in addition to a report on the circumstances surrounding their adoption, copies of all written submissions and any other documentation considered by the JLC in formulating its proposals. The Labour Court will consider the material forwarded to it in considering the JLC’s proposals and may hold a hearing where there are objections to the proposals.

Section 12 provides that the term of office of a Chairman of a JLC shall not exceed 5 years and shall cease to hold office on attaining the age of 65. An existing JLC Chairman shall hold office for no longer than 3 years following the enactment of the Act.

Section 13 provides for consequential amendments to the Employment Permits Act 2006 and the Organisation of Working Time Act 1997.

Financial Implications of the Bill

The Bill has no direct financial implications for the Exchequer.

*An Roinn Fiontar, Trádála agus Fostaíochta,
Lúnasa, 2009.*