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*Number 10 of 1977*

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**UNFAIR DISMISSALS ACT 1977**

**REVISED**

**Updated to 1 September 2017**

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This Revised Act is an administrative consolidation of the *Unfair Dismissals Act 1977*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975 (3/1975)* to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *National Shared Services Office Act 2017 (26/2017)*, enacted 26 July 2017, and all statutory instruments up to and including *Education Support Centres (Appointment and Secondment of Directors) Regulations 2017 (S.I. No. 394 of 2017)*, made 1 September 2017, were considered in the preparation of this Revised Act.

Disclaimer: While every care has been taken in the preparation of this Revised Act, the Law Reform Commission can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions. Please notify any errors, omissions and comments by email to [revisedacts@lawreform.ie](mailto:revisedacts@lawreform.ie).





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**Introduction**

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

**Related legislation**

***Unfair Dismissals Acts 1977 to 2015***: this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Industrial Relations (Amendment) Act 2015* (27/2015), s. 1(4)). The Acts in this group are:

- *Unfair Dismissals Act 1977* (10/1977)
- *Worker Protection (Regular Part-Time Employees) Act 1991* (5/1991), in so far as it relates to the *Unfair Dismissals Acts 1977 and 1991* (repealed)
- *Unfair Dismissals (Amendment) Act 1993* (22/1993)
- *Protection of Employees (Part-Time Work) Act 2001* (45/2001), in so far as it relates to the *Unfair Dismissals Acts 1977 to 1993*
- *Civil Service Regulation (Amendment) Act 2005* (18/2005) (Part 6)
- *Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007* (27/2007)
- *Industrial Relations (Amendment) Act 2015* (27/2015), s. 39

***Terms of Employment (Information) Acts 1994 to 2014***: this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Local Government Reform Act 2014* (1/2014), s. 1(21)). The Acts in this group are:

- *Unfair Dismissals Acts 1977 to 2007*
- *Local Government Reform Act 2014* (1/2014), s. 1(21), the amendments to the *Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007* and the *Unfair Dismissals Act 1977* provided for in section 5(6) and Part 6 of Schedule 2 (Note: it appears that the reference to section 5(6) is intended to be to section 5(8))

**Annotations**

This Revised Act is not annotated and only shows textual amendments. An annotated version of this revision is also available which shows textual and non-textual amendments and their sources. It also shows editorial notes including statutory instruments made pursuant to the Act and previous affecting provisions.

**Material not updated in this revision**

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available. A list of legislative changes to any Act, and to statutory instruments from 1994, may be found linked from the page of the Act or statutory instrument at [www.irishstatutebook.ie](http://www.irishstatutebook.ie).



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ARRANGEMENT OF SECTIONS

Section

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20. Amendment of First Schedule to Minimum Notice and Terms of Employment Act, 1973.

[No. 10.]

*Unfair Dismissals Act 1977*

[1977.]

Section

21. Expenses.
22. Short title and commencement.



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Number 10 of 1977

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**UNFAIR DISMISSALS ACT 1977**

**REVISED**

**Updated to 1 September 2017**

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AN ACT TO PROVIDE FOR REDRESS FOR EMPLOYEES UNFAIRLY DISMISSED FROM THEIR EMPLOYMENT, TO PROVIDE FOR THE DETERMINATION OF CLAIMS FOR SUCH REDRESS BY RIGHTS COMMISSIONERS AND BY THE TRIBUNAL ESTABLISHED, FOR THE PURPOSE OF DETERMINING CERTAIN APPEALS, BY THE REDUNDANCY PAYMENTS ACT, 1967, TO PROVIDE THAT THAT TRIBUNAL SHALL BE KNOWN AS THE EMPLOYMENT APPEALS TRIBUNAL, TO MAKE PROVISION FOR OTHER MATTERS CONNECTED WITH THE MATTERS AFORESAID AND TO AMEND THE MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACT, 1973. [6th April, 1977]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Definitions.

1.—In this Act—

[‘Act of 2015’ means the Workplace Relations Act 2015;

‘adjudication officer’ has the same meaning as it has in the Act of 2015;]

[‘adopting parent’ means an employee who is an adopting parent within the meaning of the Adoptive Leave Act 1995;]

“contract of employment” means a contract of service or of apprenticeship, whether it is express or implied and (if it is express) whether it is oral or in writing;

“date of dismissal” means—

- (a) where prior notice of the termination of the contract of employment is given and it complies with the provisions of that contract and of the Minimum Notice and Terms of Employment Act, 1973, the date on which that notice expires.
- (b) where either prior notice of such termination is not given or the notice given does not comply with the provisions of the contract of employment or the Minimum Notice and Terms of Employment Act, 1973, the date on which such a notice would have expired, if it had been given on the date of such termination and had been expressed to expire on the later of the following dates—
  - (i) the earliest date that would be in compliance with the provisions of the contract of employment,
  - (ii) the earliest date that would be in compliance with the provisions of the Minimum Notice and Terms of Employment Act, 1973,

- (c) where a contract of employment for a fixed term expires without its being renewed under the same contract or, in the case of a contract for a specified purpose (being a purpose of such a kind that the duration of the contract was limited, but was, at the time of its making, incapable of precise ascertainment), there is a cesser of the purpose, the date of the expiry or cesser;

[‘Director General’ means the Director General of the Workplace Relations Commission;]

“dismissal”, in relation to an employee, means—

- (a) the termination by his employer of the employee’s contract of employment with the employer, whether prior notice of the termination was or was not given to the employee,
- (b) the termination by the employee of his contract of employment with his employer, whether prior notice of the termination was or was not given to the employer, in circumstances in which, because of the conduct of the employer, the employee was or would have been entitled, or it was or would have been reasonable for the employee, to terminate the contract of employment without giving prior notice of the termination to the employer, or
- (c) the expiration of a contract of employment for a fixed term without its being renewed under the same contract or, in the case of a contract for a specified purpose (being a purpose of such a kind that the duration of the contract was limited but was, at the time of its making, incapable of precise ascertainment), the cesser of the purpose;

“employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment and, in relation to redress for a dismissal under this Act, includes, in the case of the death of the employee concerned at any time following the dismissal, his personal representative;

“employer”, in relation to an employee, means the person by whom the employee is (or, in a case where the employment has ceased, was) employed under a contract of employment and an individual in the service of a local authority for the purposes of the [Local Government Act 2001 (as amended by the Local Government Reform Act 2014)], shall be deemed to be employed by the local authority;

“industrial action” means lawful action taken by any number or body of employees acting in combination or under a common understanding, in consequence of a dispute, as a means of compelling their employers or any employee or body of employees, or to aid other employees in compelling their employer or any employee or body of employees, to accept or not to accept terms or conditions of or affecting employment;

[‘Minister’ means the Minister for Enterprise, Trade and Employment;]

[‘protected disclosure’ has the meaning given by the Protected Disclosures Act 2014;]

“redundancy” means any of the matters referred to in paragraphs (a) to (e) of section 7 (2) of the Redundancy Payments Act, 1967, as amended by the Redundancy Payments Act, 1971;

[‘relevant wrongdoing’ has the meaning given by the Protected Disclosures Act 2014;]

“statutory apprenticeship” means an apprenticeship in a designated industrial activity within the meaning of the Industrial Training Act, 1967, and includes any apprenticeship in a trade to which an order, rule or notice referred to in paragraph (a) or (b) of section 49 (1) of that Act applies;

“strike” means the cessation of work by any number or body of employees acting in combination or a concerted refusal or a refusal under a common understanding of



any number of employees to continue to work for an employer, in consequence of a dispute, done as a means of compelling their employer or any employee or body of employees, or to aid other employees in compelling their employer or any employee or body of employees, to accept or not to accept terms or conditions of or affecting employment;

['trade union' means a trade union which is the holder of a negotiation licence under Part II of the Trade Union Act, 1941;]

['the Tribunal' means the Tribunal established by section 39 of the Redundancy Payments Act, 1967, and known, by virtue of section 18 of this Act, as the Employment Appeals Tribunal.]

[(2) Where on the date of an award to an employee of re-instatement under this Act—

(a) the terms or conditions on which are employed other employees of the same employer who occupy positions similar to that from which the employee was dismissed, or

(b) if there are no such employees, the terms or conditions on which are employed employees generally of the same employer,

are more favourable to the employees concerned than they were at the date of the dismissal, then, the references in sections 5 (4) and 7 (1) (a) of this Act to the terms and conditions on which an employee was employed immediately before his dismissal shall, in the case of the first-mentioned employee, be construed as references to terms and conditions corresponding to those on which the other employees concerned are employed on the date of the award.

(3) In this Act a reference to any enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment including this Act.]

Exclusions.

2.—(1) [Except in so far as any provision of this Act otherwise provides] This Act shall not apply in relation to any of the following persons:

(a) an employee (other than a person referred to in section 4 of this Act) who is dismissed, who, at the date of his dismissal, had less than one year's continuous service with the employer who dismissed him [...],

(b) an employee who is dismissed and who, on or before the date of his dismissal, had reached the normal retiring age for employees of the same employer in similar employment [or who on that date had not attained the age of 16 years],

(c) a person who is employed by his spouse [, civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010], father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, granddaughter, step-son, step-daughter, brother, sister, half-brother or half-sister, is a member of his employer's household and whose place of employment is a private dwellinghouse or a farm in or on which both the employee and the employer reside,

(d) a person in employment as a member of the Defence Forces, the Judge Advocate-General, the chairman of the Army Pensions Board or the ordinary member thereof who is not an officer of the Medical Corps of the Defence Forces,

(e) a member of the Garda Síochána,

(f) a person (other than a person employed under a contract of employment) who is receiving a training allowance from or undergoing instruction by An

Chomhairle Oiliúna or is receiving a training allowance from and undergoing instruction by that body,

(g) a person who is employed by An Chomhairle Oiliúna under a contract of apprenticeship,

[(h) subject to the provisions of this subsection a person who was employed by or under the State who was dismissed by the Government,]

[(i) a chief executive of a local authority for the purposes of section 144 of the Local Government Act 2001 (as amended by the Local Government Reform Act 2014),]

(j) [...]

[(k) the Director General of the Health Service Executive for the purposes of section 17 of the Health Act 2004,

(l) the chief executive officer of the Child and Family Agency appointed under section 28 of the Child and Family Agency Act 2013.]

(2) [Subject to subsection (2A), this Act] shall not apply in relation to—

(a) dismissal where the employment was under a contract of employment for a fixed term made before the 16th day of September, 1976, and the dismissal consisted only of the expiry of the term without its being renewed under the same contract, or

(b) dismissal where the employment was under a contract of employment for a fixed term or for a specified purpose (being a purpose of such a kind that the duration of the contract was limited but was, at the time of its making, incapable of precise ascertainment) and the dismissal consisted only of the expiry of the term without its being renewed under the said contract or the cesser of the purpose and the contract is in writing, was signed by or on behalf of the employer and by the employee and provides that this Act shall not apply to a dismissal consisting only of the expiry or cesser aforesaid.

[...]

[, or

[(c) dismissal where the employee's employer at the commencement of the employment informs the employee in writing that the employment will terminate on the return to work with that employer of another employee who is absent from work while on protective leave or natal care absence, within the meaning of Part IV of the Maternity Protection Act 1994, or is absent from work attending ante-natal classes in accordance with section 15A (inserted by section 8 of the Maternity Protection (Amendment) Act 2004), or for breastfeeding in accordance with section 15B (inserted by section 9 of the Maternity Protection (Amendment) Act 2004), of the first-mentioned Act, and the dismissal of the first-mentioned employee duly occurs for the purpose of facilitating the return to work of that other employee.]]

[(d) dismissal where—

(i) the employee's employer at the commencement of the employment informs the employee in writing that the employment will terminate on the return to work with that employer of an adopting parent who is absent from work in accordance with the Adoptive Leave Acts 1995 and 2005 during a period of adoptive leave or additional adoptive leave or a period of time off from work while attending certain pre-adoption classes or meetings, and

- (ii) the dismissal of the employee duly occurs for the purpose of facilitating the return to work of the adopting parent [, or
- (e) dismissal where the employer at the commencement of the employment informs the employee in writing that the employment will terminate on the return to work with that employer of an employee who is absent from work while on carer's leave under the Carer's Leave Act, 2001, and the dismissal of the employee duly occurs for the purpose of facilitating the return to work of the employee who has been on carer's leave.]]
- [(2A) Where, following dismissal consisting only of the expiry of the term of a contract of employment of a kind mentioned in subsection (2) ('the prior contract') without the term being renewed under the contract or the cesser of the purpose of the contract—
- (a) the employee concerned is re-employed by the employer concerned within 3 months of the dismissal under a contract of employment of that kind made between the employer and the employee ('the subsequent contract') and the nature of the employment is the same as or similar to that of the employment under the prior contract,
- (b) the employee is dismissed from the employment,
- (c) the dismissal consisted only of the expiry of the term of the subsequent contract without the term being renewed under the contract or the cesser of the purpose of the contract, and
- (d) in the opinion of [the adjudication officer or the Labour Court], as the case may be, the entry by the employer into the subsequent contract was wholly or partly for, or was connected with, the purpose of the avoidance of liability under this Act,
- then—
- (i) this Act shall, subject to its other provisions, apply to the dismissal, and
- (ii) the term of the prior contract and of any antecedent contracts shall be added to that of the subsequent contract for the purpose of the ascertainment under this Act of the period of service of the employee with the employer and the period so ascertained shall be deemed for those purposes to be one of continuous service.
- (2B) In subsection (2A), 'antecedent contract', in relation to a prior contract, means—
- (a) a contract of employment of the kind mentioned in subsection (2) the term of which expired not more than 3 months before the commencement of the prior contract, or
- (b) each of a series of contracts the term of the last of which expired not more than 3 months before the commencement of that of the prior contract and the term of the other or of each of the other contracts in the series expired not more than 3 months before the commencement of that of the other, or the next, contract in the series,
- being a contract or contracts made between the employer and the employee who were parties to the prior contract and the nature of the employment under which was the same as or similar to that of the employment under the prior contract.]
- (3) (a) This Act shall not apply in relation to the dismissal of an employee who, under the relevant contract of employment, ordinarily worked outside the State unless—
- (i) he was ordinarily resident in the State during the term of the contract, or

(ii) he was domiciled in the State during the term of the contract, and the employer—

(I) in case the employer was an individual, was ordinarily resident in the State, during the term of the contract, or

(II) in case the employer was a body corporate or an unincorporated body of persons, had its principal place of business in the State during the term of the contract.

(b) In this subsection “term of the contract” means the whole of the period from the time of the commencement of work under the contract to the time of the relevant dismissal.

(4) The First Schedule to the Minimum Notice and Terms of Employment Act, 1973, as amended by section 20 of this Act, shall apply for the purpose of ascertaining for the purposes of this Act the period of service of an employee and whether that service has been continuous.

[(5) Notwithstanding subsection (4) of this section, the dismissal (not being a dismissal referred to in the [subsection (2A)] of an employee followed by his re-employment by the same employer not later than 26 weeks after the dismissal shall not operate to break the continuity of service of the employee with the employer if the dismissal was wholly or partly for or was connected with the purpose of the avoidance of liability under this Act.]

[Application of Act to certain civil servants.

**2A.—**(1) For the purposes of this Act, as respects the dismissal of a person who prior to such dismissal was a civil servant a reference in this Act to an ‘employee’ shall be construed as including a civil servant who held office in the Civil Service of the Government or in the Civil Service of the State.

(2) Subject to subsection (4), for the purposes of this Act, as respects the dismissal of a person who prior to such dismissal was a civil servant a reference in this Act to an ‘employer’ shall be construed as including the State, a Minister of the Government, a Department or a Scheduled Office (which term has the same meaning as it has in the Civil Service Regulation Act 1956) in which the civil servant concerned held office prior to the dismissal.

(3) As respects a civil servant to whom this Act applies, for the purposes of this Act, ‘contract of employment’ means such arrangements as are made by the Minister for Finance under section 17 of the Civil Service Regulation Act 1956, together with such further terms and conditions of service which apply to the civil servant concerned, made in respect of a particular Department or Scheduled Office which extend or alter the arrangements under the said section 17.

(4) For the purposes of this section and the First Schedule—

(a) ‘Department’ includes such bodies or organisations (whether established by or under statute, or otherwise) other than a Scheduled Office, for which the Minister having charge of the Department concerned is responsible, and

(b) ‘Scheduled Office’ includes such bodies or organisations (whether established by or under statute or otherwise) for which the Minister of the Government having charge of the Scheduled Office is responsible.

(5) Where, as respects a person who was dismissed as a civil servant, the dismissal is found to be an unfair dismissal, and [the adjudication officer or the Labour Court], as the case may be, considers, pursuant to section 7, that it is appropriate that such person be re-engaged or re-instated, the right of re-instatement or re-engagement shall be construed to be a right to be re-instated or re-engaged, as the case may be, in the grade or rank held by that civil servant prior to his dismissal.

(6) Nothing in this section shall be construed as affecting the status of a civil servant as an officer.]

Dismissal during probation or training.

**3.—(1)** [Except in so far as any provision of this Act otherwise provides] This Act shall not apply in relation to the dismissal of an employee during a period starting with the commencement of the employment when he is on probation or undergoing training—

- (a) if his contract of employment is in writing, the duration of the probation or training is 1 year or less and is specified in the contract, or
- (b) if his contract of employment was made before the commencement of this Act and was not in writing and the duration of the probation or training is 1 year or less.

(2) This Act shall not apply in relation to the dismissal of an employee during a period starting with the commencement of the employment when he is undergoing training for the purpose of becoming qualified or registered, as the case may be, as a nurse, pharmacist, health inspector, medical laboratory technician, occupational therapist, physiotherapist, speech therapist, radiographer or social worker.

Dismissal during apprenticeship.

**4.—**[Except in so far as any provision of this Act otherwise provides] This Act shall not apply in relation to the dismissal of a person who is or was employed under a statutory apprenticeship if the dismissal takes place within 6 months after the commencement of the apprenticeship or within 1 month after the completion of the apprenticeship.

Dismissal by way of lock-out or for taking part in strike.

**5.—**[(1) For the purposes of this Act (other than section 2 (4)), the lock-out of an employee shall be deemed to be a dismissal and the dismissal shall be deemed to be an unfair dismissal if, after the termination of the lock-out—

- (a) the employee was not permitted to resume his employment on terms and conditions at least as favourable to the employee as those specified in paragraph (a) or (b) of subsection (1) of section 7 of this Act, and
- (b) one or more other employees in the same employment were so permitted.

(2) The dismissal of an employee for taking part in a strike or other industrial action shall be deemed for the purposes of this Act to be an unfair dismissal if—

- (a) one or more employees of the same employer who took part in the strike or other industrial action were not dismissed for so taking part, or
- (b) one or more of such employees who were dismissed for so taking part were subsequently permitted to resume their employment on terms and conditions at least as favourable to the employees as those specified in the said paragraph (a) or (b) and the employee was not.

[(2A) Without prejudice to the applicability of any of the provisions of section 6 to the case, where—

- (a) an employee—
  - (i) is deemed by subsection (1) to have been dismissed by reason of a lock-out, or
  - (ii) is dismissed for taking part in a strike or other industrial action,
 and
- (b) none of those who were locked out, or took part in the strike or industrial action, were re-engaged,

in determining whether, in those circumstances, the dismissal is an unfair dismissal, [the adjudication officer or the Labour Court], as the case may be, shall have regard, for that purpose only, to—

- (i) the reasonableness or otherwise of the conduct (whether by act or omission) of the employer or employee in relation to the dismissal,
- (ii) the extent (if any) of the compliance or failure to comply by the employer with the procedure referred to in section 14(1),
- (iii) the extent (if any) of the compliance or failure to comply by the employer or the employee with provisions of any code of practice referred to in section 7(2)(d), and
- (iv) whether the parties have adhered to any agreed grievance procedures applicable to the employment in question at the time of the lock-out, strike or industrial action.]

(3) The said section 7 shall be construed in relation to an unfair dismissal specified in subsection (1) or (2) of this section as if it contained a requirement that the terms or conditions on which the person the subject of the unfair dismissal is, if appropriate, to be re-instated under paragraph (a) of subsection (1) of that section or re-engaged under paragraph (b) of that subsection included a term that the re-instatement or re-engagement should be deemed to have commenced on such day as is agreed upon by the employer concerned and by or on behalf of the employees or, in the absence of such agreement, on the earliest date from which re-instatement or re-engagement, as the case may be, was offered to a majority of the other employees of the same employer who were the subject of the lock-out concerned or took part in the strike or other industrial action concerned.]

(4) In this section a reference to an offer of re-instatement or re-engagement, in relation to an employee, is a reference to an offer (made either by the original employer or by a successor of that employer or by an associated employer) to re-instate that employee in the position which he held immediately before his dismissal on the terms and conditions on which he was employed immediately before his dismissal together with a term that the re-instatement shall be deemed to have commenced on the day of the dismissal, or to re-engage him, either in the position which he held immediately before his dismissal or in a different position which would be reasonably suitable for him, on such terms and conditions as are reasonable having regard to all the circumstances.

(5) In this section—

“lock-out” means an action which, in contemplation or furtherance of a trade dispute (within the meaning of the Industrial Relations Act, 1946), is taken by one or more employers, whether parties to the dispute or not, and which consists of the exclusion of one or more employees from one or more factories, offices or other places of work or of the suspension of work in one or more such places or of the collective, simultaneous or otherwise connected termination or suspension of employment of a group of employees;

“the original employer” means, in relation to the employee, the employer who dismissed the employee.

Unfair dismissal. **6.—**(1) Subject to the provisions of this section, the dismissal of an employee shall be deemed, for the purposes of this Act, to be an unfair dismissal unless, having regard to all the circumstances, there were substantial grounds justifying the dismissal.

(2) Without prejudice to the generality of subsection (1) of this section, the dismissal of an employee shall be deemed, for the purposes of this Act, to be an unfair dismissal if it results wholly or mainly from one or more of the following:

- (a) 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 body under the Trade Union Acts, 1941 and 1971, 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,
- [(aa) without prejudice to paragraph (a), the employee—
- (i) being a member of a trade union which made a request referred to in section 2(1) of the Industrial Relations (Amendment) Act 2001,
  - (ii) being in the employment of the employer concerned in the grade, group or category to which the trade dispute, referred to in that section, relates, and
  - (iii) having provided evidence or other information or assistance to any person, for the purposes of the examination of that request by the Labour Court or in respect of an investigation made by it under that Act pursuant to that request,]
- (b) the religious or political opinions of the employee,
- [(ba) the employee having made a protected disclosure,]
- (c) civil proceedings whether actual, threatened or proposed against the employer to which the employee is or will be a party or in which the employee was or is likely to be a witness,
- (d) criminal proceedings against the employer, whether actual, threatened or proposed, in relation to which the employee has made, proposed or threatened to make a complaint or statement to the prosecuting authority or to any other authority connected with or involved in the prosecution of the proceedings or in which the employee was or is likely to be a witness,
- [(dd) the exercise or proposed exercise by the employee of the right to parental leave, *force majeure* leave under and in accordance with the Parental Leave Act, 1998, or carer's leave under and in accordance with the Carer's Leave Act, 2001,]
- [(e) the race, colour or sexual orientation of the employee,
- (ee) the age of the employee,
- (eee) the employee's membership of the travelling community,]
- [(f) the employee's pregnancy, attendance at ante-natal classes, giving birth or breastfeeding or any matters connected therewith,]
- [(g) the exercise or proposed exercise by the employee of the right under the Maternity Protection Act 1994 to any form of protective leave or natal care absence, within the meaning of Part IV of that Act, or to time off from work to attend ante-natal classes in accordance with section 15A (inserted by section 8 of the Maternity Protection (Amendment) Act 2004), or to time off from work or a reduction of working hours for breastfeeding in accordance with section 15B (inserted by section 9 of the Maternity Protection (Amendment) Act 2004), of the first-mentioned Act,]
- [(h) the exercise or contemplated exercise by an adoptive parent of the parent's right under the Adoptive Leave Acts 1995 and 2005 to adoptive leave or additional adoptive leave or a period of time off to attend certain pre-adoption classes or [meetings,]]



[(i) the exercise or proposed exercise by the employee of the right under the Paternity Leave and Benefit Act 2016 to paternity leave or transferred paternity leave within the meaning of that Act,]

[(2A) Sections 3 and 4 of this Act do not apply to a case falling within paragraph (f), (g) [, (h) or (i)] of subsection (2) of this section and, for the purposes of those paragraphs, 'employee' and 'adopting parent' include a person who would otherwise be excluded from this Act by paragraph (a), (c), (f) or (g) of section 2 (1) of this Act.]

[(2B) Sections 3 and 4 do not apply to a case falling within subsection (2)(dd) and, for the purpose of that paragraph, 'employee' includes a person who would otherwise be excluded from this Act by paragraph (a), (c), (f) or (g) of section 2(1).]

[(2C) Sections 3 and 4 do not apply to a case falling within subsection (2)(dd) and, for the purpose of that paragraph, 'employee' includes a person who would otherwise be excluded from this Act by paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i) or (j) of section 2(1).]

[(2D) Sections 3 and 4 do not apply to a case falling within paragraph (ba) of subsection (2) and that paragraph applies to a person who would otherwise be excluded from this Act by any of paragraphs (a) to (c) and (e) to (k) of section 2(1).]

(3) Without prejudice to the generality of subsection (1) of this section, if an employee was dismissed due to redundancy but the circumstances constituting the redundancy applied equally to one or more other employees in similar employment with the same employer who have not been dismissed, and either—

- (a) the selection of that employee for dismissal resulted wholly or mainly from one or more of the matters specified in subsection (2) of this section or another matter that would not be a ground justifying dismissal, or
- (b) he was selected for dismissal in contravention of a procedure (being a procedure that has been agreed upon by or on behalf of the employer and by the employee or a trade union, or an excepted body under the Trade Union Acts, 1941 and 1971, representing him or has been established by the custom and practice of the employment concerned) relating to redundancy and there were no special reasons justifying a departure from that procedure,

then the dismissal shall be deemed, for the purposes of this Act, to be an unfair dismissal.

(4) Without prejudice to the generality of subsection (1) of this section, the dismissal of an employee shall be deemed, for the purposes of this Act, not to be an unfair dismissal, if it results wholly or mainly from one or more of the following:

- (a) the capability, competence or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
- (b) the conduct of the employee,
- (c) the redundancy of the employee, and
- (d) the employee being unable to work or continue to work in the position which he held without contravention (by him or by his employer) of a duty or restriction imposed by or under any statute or instrument made under statute.

(5) (a) Without prejudice to the generality of subsection (1) of this section, the dismissal by the Minister for Defence of a civilian employed with the Defence Forces under section 30 (1) (g) of the Defence Act, 1954, shall be deemed for the purposes of this Act not to be an unfair dismissal if it is shown that the dismissal was for the purpose of safeguarding national security.

- (b) A certificate purporting to be signed by the Minister for Defence and stating that a dismissal by the Minister for Defence of a civilian named in the



certificate from employment with the Defence Forces under section 30 (1) (g) of the Defence Act, 1954, was for the purpose of safeguarding national security shall be evidence, for the purposes of this Act, of the facts stated in the certificate without further proof.

(6) In determining for the purposes of this Act whether the dismissal of an employee was an unfair dismissal or not, it shall be for the employer to show that the dismissal resulted wholly or mainly from one or more of the matters specified in subsection (4) of this section or that there were other substantial grounds justifying the dismissal.

[(7) Without prejudice to the generality of subsection (1) of this section, in determining if a dismissal is an unfair dismissal, regard may be had, if [the adjudication officer or the Labour Court], as the case may be, considers it appropriate to do so—

- (a) to the reasonableness or otherwise of the conduct (whether by act or omission) of the employer in relation to the dismissal, and
- (b) to the extent (if any) of the compliance or failure to comply by the employer, in relation to the employee, with the procedure referred to in section 14 (1) of this Act or with the provisions of any code of practice referred to in paragraph (d) (inserted by the Unfair Dismissals (Amendment) Act, 1993) of section 7 (2) of this Act.]

Redress for unfair dismissal.

7.—(1) Where an employee is dismissed and the dismissal is an unfair dismissal, the employee shall be entitled to redress consisting of whichever of the following [the adjudication officer or the Labour Court], as the case may be, considers appropriate having regard to all the circumstances:

- (a) re-instatement by the employer of the employee in the position which he held immediately before his dismissal on the terms and conditions on which he was employed immediately before his dismissal together with a term that the re-instatement shall be deemed to have commenced on the day of the dismissal, or
- (b) re-engagement by the employer of the employee either in the position which he held immediately before his dismissal or in a different position which would be reasonably suitable for him on such terms and conditions as are reasonable having regard to all the circumstances, or
- [(c) (i) if the employee incurred any financial loss attributable to the dismissal, payment to him by the employer of such compensation in respect of the loss (not exceeding in amount 104 weeks remuneration in respect of the employment from which he was dismissed calculated in accordance with regulations under section 17 of this Act) as is just and equitable having regard to all the circumstances, or
- (ii) if the employee incurred no such financial loss, payment to the employee by the employer of such compensation (if any, but not exceeding in amount 4 weeks remuneration in respect of the employment from which he was dismissed calculated as aforesaid) as is just and equitable having regard to all the circumstances,

and the references in the foregoing paragraphs to an employer shall be construed, in a case where the ownership of the business of the employer changes after the dismissal, as references to the person who, by virtue of the change, becomes entitled to such ownership.]

[(1A) In relation to a case falling within section 6(2)(ba) the reference in subsection (1)(c)(i) to 104 weeks has effect as if it were a reference to 260 weeks.]

(2) Without prejudice to the generality of subsection (1) of this section, in determining the amount of compensation payable under that subsection regard shall be had to—

- (a) the extent (if any) to which the financial loss referred to in that subsection was attributable to an act, omission or conduct by or on behalf of the employer,
- (b) the extent (if any) to which the said financial loss was attributable to an action, omission or conduct by or on behalf of the employee,
- (c) the measures (if any) adopted by the employee or, as the case may be, his failure to adopt measures, to mitigate the loss aforesaid, [...]
- [(d) the extent (if any) of the compliance or failure to comply by the employer, in relation to the employee, with the procedure referred to in subsection (1) of section 14 of this Act or with the provisions of any code of practice relating to procedures regarding dismissal approved of by the Minister,
- (e) the extent (if any) of the compliance or failure to comply by the employer, in relation to the employee, with the said section 14, and
- (f) the extent (if any) to which the conduct of the employee (whether by act or omission) contributed to the dismissal.]

[(2A) In calculating financial loss for the purposes of subsection (1), payments to the employee—

- (a) under the Social Welfare Acts, 1981 to 1993, in respect of any period following the dismissal concerned, or
- (b) under the Income Tax Acts arising by reason of the dismissal,

shall be disregarded.]

[(2B) Where—

- (a) the dismissal of an employee results wholly or mainly from the employee having made a protected disclosure, and
- (b) the investigation of the relevant wrongdoing concerned was not the sole or main motivation for making the disclosure,

the amount of compensation that is just and equitable may be up to 25 per cent less than the amount that it would otherwise be.]

(3) In this section—

“financial loss”, in relation to the dismissal of an employee, includes any actual loss and any estimated prospective loss of income attributable to the dismissal and the value of any loss or diminution, attributable to the dismissal, of the rights of the employee under the Redundancy Payments Acts, 1967 to 1973, or in relation to superannuation;

“remuneration” includes allowances in the nature of pay and benefits in lieu of or in addition to pay.

Determination of claims for unfair dismissal.

8.—[(1) (a) A claim by an employee against an employer for redress under this Act for unfair dismissal may be referred by the employee to the Director General and, where such a claim is so referred, the Director General shall, subject to section 39 of the Act of 2015, refer the claim to an adjudication officer for adjudication by that officer.

(b) Section 39 of the Act of 2015 shall apply to a claim for redress referred to the Director General under paragraph (a) as it applies to a complaint presented

or dispute referred to the Director General under section 41 of that Act, subject to the modification that references, in the said section 39, to a complaint or dispute shall be construed as references to a claim for redress so referred.

(c) An adjudication officer to whom a claim for redress is referred under this section shall—

(i) inquire into the claim,

(ii) give the parties to the claim an opportunity to be heard by the adjudication officer and to present to the adjudication officer any evidence relevant to the claim,

(iii) make a decision in relation to the claim consisting of an award of redress in accordance with section 7 or the dismissal of the claim, and

(iv) give the parties to the claim a copy of that decision in writing.]

[[1A) A decision of an adjudication officer under subsection (1) consisting of an award of redress in accordance with section 7 shall include a statement of the reasons for the award of such redress and the reasons for the adjudication officer's deciding not to award other redress under that section.]

[(1B) Subsection (14) of section 41 of the Act of 2015 applies to a decision of an adjudication officer under subsection (1) as it applies to a decision of an adjudication officer under that section subject to the modification that the words 'subsection (1) of section 8 of the Act of 1977' shall be substituted for the words 'this section'.]

(2) A claim for redress under this Act shall be initiated by giving a notice in writing (containing such particulars (if any) as may be specified in [regulations under subsection (17) of section 41 of the Act of 2015]) to [the Director General]—

(a) within the period of 6 months beginning on the date of the relevant dismissal, or

[(b) within such period not exceeding 12 months from the date of the relevant dismissal as the adjudication officer considers appropriate, in circumstances where the adjudication officer is satisfied that the giving of the notice within the period referred to in paragraph (a) was prevented due to reasonable cause,]

and a copy of the notice shall be given by [the Director General] [...] to the employer concerned as soon as may be after the receipt of the notice by [the Director General].

(3) [...]

(4) [...]

(5) [...]

(6) Proceedings under this section before [an adjudication officer] shall be conducted otherwise than in public.

[(7) An adjudication officer shall notify the Labour Court of any decision he makes under this section.]

(8) [...]

(9) [...]

[[10) (a) A dispute relating to a dismissal shall not be referred to an adjudication officer under the Industrial Relations Acts 1946 to 2012 if, in relation to the dismissal—

- (i) a recommendation has been made by a rights commissioner under this Act, or a hearing by the Tribunal under this Act has commenced,
  - (ii) a decision (other than a decision consisting of a dismissal of the claim concerned) has been made by an adjudication officer under this Act,
  - (iii) a decision has been made by the Labour Court in accordance with subsection (2) of section 8A affirming a decision (consisting of a dismissal of the claim concerned) of an adjudication officer under this Act, or
  - (iv) a decision has been made by the Labour Court in accordance with the said subsection (2) —
    - (I) setting aside a decision to which subparagraph (ii) applies, and
    - (II) not awarding any redress under section 7.
- (b) An employee shall not be entitled to redress under this Act in respect of a dismissal if, in relation to the dismissal—
- (i) a recommendation has been made by a rights commissioner or an adjudication officer under the Industrial Relations Acts 1946 to 2012, or
  - (ii) a hearing by the Labour Court under those Acts has commenced.]

(11) Where the dismissal of an employee is an unfair dismissal and a term or condition of the contract of employment concerned contravened any provision of or made under the Income Tax Acts or the Social Welfare Acts, 1981 to 1993, the employee shall, notwithstanding the contravention, be entitled to redress under this Act, in respect of the dismissal.

(12) Where, in proceedings under this Act, it is shown that a term or condition of a contract of employment contravened any such provision as aforesaid, [the adjudication officer or the Labour Court, as may be appropriate] shall notify the Revenue Commissioners or the Minister for Social Welfare, as may be appropriate, of the matter.]

[Application of provisions of Act of 2015 to claim for redress

**8A.** (1) Sections 42 and 43 of the Workplace Relations Act 2015 shall apply to a claim referred to an adjudication officer under section 8 as they apply to a complaint or dispute referred to an adjudication officer under *section 41* of that Act, subject to the following modifications:

- (a) references to a complaint or dispute shall be construed as references to a claim referred to an adjudication officer under section 8 of this Act;
- (b) the reference to section 41 shall be construed as a reference to section 8 of this Act; and
- (c) any other necessary modifications.

[(2) Section 44 of the Workplace Relations Act 2015 shall apply to a decision of an adjudication officer given in respect of a claim for redress under this Act by an employee as it applies to a decision of an adjudication officer given in proceedings under section 41 of that Act, subject to the following modifications:

- (a) the substitution of the following subsection for subsection (1) :
  - ‘(1) (a) A party to a claim for redress under the Act of 1977 may appeal a decision of an adjudication officer given in relation to that claim to the Labour Court and, where the party does so, the Labour Court shall—
    - (i) give the parties to the appeal an opportunity to be heard by it and to present to it any evidence relevant to the appeal,

(ii) make a decision in relation to the appeal affirming, varying or setting aside the decision of the adjudication officer to which the appeal relates, and

(iii) give the parties to the appeal a copy of that decision in writing.

(b) A decision of the Labour Court under paragraph (a), may include an award of redress under section 7 of the Act of 1977.;

and

(b) any other necessary modifications.]]

[Disposal of claims by written submission only

**8B.** (1) The Director General may, where he or she considers that a claim for redress under this Act may be dealt with by written submissions only, inform the parties to the claim, by notification in writing, of his or her intention to deal with the claim in that manner.

(2) Where a party to a claim for redress under this Act is given a notification under subsection (1) and, not later than 42 days after having been given the notification, that party informs the Director General that he or she objects to the claim being dealt with in the manner specified in the notification, the Director General shall not deal with the claim in that manner.]

[Striking out of claims that are not pursued

**8C.** (1) Where a claim for redress under this Act is referred to the Director General under section 8, the Director General may strike out the claim if he or she is satisfied that the claim has not been pursued by the employee during the period of one year (or such other period as may be prescribed by regulations made by the Minister) immediately preceding its being struck out.

(2) The Director General shall, as soon as may be after he or she strikes out a claim for redress under this Act in accordance with this section, notify the parties to the claim in writing of the striking out of the claim.

(3) Where a claim for redress under this Act is struck out under this section, the employee who brought the claim shall not be entitled to prosecute the claim any further.]

Appeal from recommendation of rights commissioner.

**9.—[...]**

Proceedings in Circuit Court for redress under Act.

**10.—[...]**

[Appeal to High Court on point of law

**10A.** A party to proceedings before the Labour Court under this Act may, not later than 42 days from the service on that party of notice of the decision of the Labour Court in those proceedings, appeal that decision to the High Court on a point of law, and the decision of the High Court in relation thereto shall be final and conclusive.]

Service of documents on bodies.

**[11.** (1) A notice or other document that is required to be served on or given to a person under this Act shall be addressed to the person concerned by name, and may be so served on or given to the person in one of the following ways:

(a) by delivering it to the person;

(b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address;

(c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address; or

(d) by electronic means, in a case in which the person has given notice in writing to the person serving or giving the notice or document concerned of his or her consent to the notice or document (or notices or documents of a class to which the notice or document belongs) being served on, or given to, him or her in that manner.

(2) For the purpose of this section, a company within the meaning of the Companies Acts [or the Companies Act 2014] shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business.]

Provisions relating to winding up and bankruptcy.

**12.**—(1) There shall be included among the debts which, under section 285 of the Companies Act, 1963, are, in the distribution of the assets of a company being wound up, to be paid in priority to all other debts, all compensation payable under this Act by the company to an employee, and that Act shall have effect accordingly, and formal proof of the debts to which priority is given under this subsection shall not be required except in cases where it may otherwise be provided by rules made under that Act.

(2) There shall be included among the debts which, under section 4 of the Preferential Payments in Bankruptcy (Ireland) Act, 1889, are, in the distribution of the property of a bankrupt or arranging debtor, to be paid in priority to all other debts, all compensation payable under this Act by the bankrupt or arranging debtor, as the case may be, to an employee, and that Act shall have effect accordingly, and formal proof of the debts to which priority is given under this subsection shall not be required except in cases where it may otherwise be provided by general orders made under the said Act.

Voidance of certain provisions in agreements.

**13.**—A provision in an agreement (whether a contract of employment or not and whether made before or after the commencement of this Act) shall be void in so far as it purports to exclude or limit the application of, or is inconsistent with, any provision of this Act.

Notice to employees of procedure for, and grounds of, dismissal.

**14.**—(1) An employer shall, not later than 28 days after he enters into a contract of employment with an employee, give to the employee a notice in writing setting out the procedure which the employer will observe before and for the purpose of dismissing the employee.

(2) Where there is an alteration in the procedure referred to in subsection (1) of this section, the employer concerned shall, within 28 days after the alteration takes effect, give to any employee concerned a notice in writing setting out the procedure as so altered.

[(3) The reference in subsection (1) of this section to a procedure is a reference to a procedure that has been agreed upon by or on behalf of the employer concerned and by the employee concerned or a trade union or an excepted body within the meaning of the Trade Union Act, 1941, representing him or has been established by the custom and practice of the employment concerned, and the references in subsection (2) of this section to an alteration in the said procedure are references to an alteration that has been agreed upon by the employer concerned or a person representing him and by the employee concerned or a trade union, or an excepted body, within the meaning aforesaid, representing him.

(4) Where an employee is dismissed, the employer shall, if so requested, furnish to the employee within 14 days of the request, particulars in writing of the principal grounds for dismissal, but, in determining for the purposes of this Act whether, in

accordance with the provisions of this Act, the dismissal was an unfair dismissal, there may be taken into account any other grounds which, subject to the provisions of this Act and having regard to all the circumstances, are substantial grounds justifying the dismissal.]

Alternative remedies of employee. **15.**—(1) Nothing in this Act, apart from this section, shall prejudice the right of a person to recover damages at common law for wrongful dismissal.

[(2) Where a [decision has been made by an adjudication officer] in respect of a claim by an employee for redress under this Act [...], the employee shall not be entitled to recover damages at common law for wrongful dismissal in respect of the dismissal concerned.

(3) Where the hearing by a court of proceedings for damages at common law for wrongful dismissal of an employee has commenced, the employee shall not be entitled to redress under this Act in respect of the dismissal to which the proceedings relate.]

(4) A person who accepts redress awarded under section 9 or 10 of the Anti-Discrimination (Pay) Act, 1974, in respect of any dismissal shall not be entitled to accept redress awarded under section 7 of this Act in respect of that dismissal and a person who accepts redress awarded under the said section 7 in respect of any dismissal shall not be entitled to accept redress awarded under the said section 9 or 10 in respect of that dismissal.

Amendment of Act by order of Minister.

**16.**—(1) The Minister may by order amend section 2 (1) of this Act so as to extend the application of the Act to any class of employee specified in that section or part (defined in such manner and by reference to such matters as the Minister considers appropriate) of any such class.

(2) The Minister may by order amend paragraph (c) of section 7 (1) of this Act so as to vary the maximum amount of compensation referred to in the said paragraph (c).

(3) The Minister may by order amend section 2 (2), 3 or 4 of this Act so as to vary—

(a) the application of this Act in relation to dismissals where the employment was under a contract of employment for a fixed term or a specified purpose,

(b) the periods of 1 year specified in the said section 3, or

(c) the periods of 6 months and 1 month specified in the said section 4 or either of them.

(4) The Minister may, by order, made with the consent of the Minister for Health, amend subsection (2) of section 3 of this Act so as to extend the application of the subsection to other employments connected with medicine or health.

(5) The Minister may by order amend any provision of this Act so as to comply with any international obligations in relation to dismissals that the State has decided to assume.

(6) An order under this section may contain such supplementary and ancillary provisions as the Minister considers necessary or expedient.

(7) The Minister may by order revoke or amend an order under this section including an order under this subsection.

(8) Where an order is proposed to be made under this section, a draft thereof shall be laid before both Houses of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.

- Regulations. **17.**—(1) The Minister may make regulations for the purposes of sections 7 (1) (c) and 8 (8) of this Act and for the purpose of enabling any other provisions of this Act to have full effect.
- (2) Regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary for the purposes of the regulations.
- (3) Every regulation made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made, and if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.
- Employment Appeals Tribunal. **18.**—The tribunal established by section 39 of the Redundancy Payments Act, 1967, shall be known as the Employment Appeals Tribunal and references in that Act and any other Act of the Oireachtas and any instrument made under any Act of the Oireachtas to the Redundancy Appeals Tribunal shall be construed as references to the Employment Appeals Tribunal.
- Repayment of moneys paid under Redundancy Payments Acts, 1967 and 1973. **19.**—Where an employee is re-instated or re-engaged by an employer in pursuance of a determination or order under this Act in relation to the dismissal of the employee by the employer, any payments made under the Redundancy Payments Acts, 1967 and 1973, in relation to the dismissal shall be repaid by the person to whom they were made to the person by whom they were made and may be recovered by the latter from the former as a simple contract debt in any court of competent jurisdiction and any moneys due and owing to any person under those Acts in relation to the dismissal shall cease to be due or owing.
- Amendment of First Schedule to Minimum Notice and Terms of Employment Act, 1973. **20.**—The First Schedule to the Minimum Notice and Terms of Employment Act, 1973, is hereby amended by the substitution of the following paragraphs for paragraphs 5 and 7:
- “5. An employee who claims and receives redundancy payment in respect of lay-off or short time shall be deemed to have voluntarily left his employment.
7. Where the whole or part of a trade, business or undertaking was or is transferred to another person either before or after the passing of this Act, the service of an employee in the trade, business or undertaking, or the part thereof, so transferred shall be reckoned as part of the service of the employee with the transferee and the transfer shall not operate to break the continuity of the service of the employee.”.
- Expenses. **21.**—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.
- Short title and commencement. **22.**—(1) This Act may be cited as the Unfair Dismissals Act, 1977.
- (2) This Act shall come into operation on such day as the Minister may appoint by order.



[1977.]

*Unfair Dismissals Act 1977*

[No. 10.]

ACTS REFERRED TO

Agriculture Act, 1931	1931, No. 8
Anti-Discrimination (Pay) Act, 1974	1974, No. 15
Companies Act, 1963	1963, No. 33
Defence Act, 1954	1954, No. 18
Industrial Relations Act, 1946	1946, No. 26
Industrial Relations Act, 1969	1969, No. 14
Industrial Training Act, 1967	1967, No. 5
Local Government Act, 1941	1941, No. 23
Minimum Notice and Terms of Employment Act, 1973	1973, No. 4
Preferential Payments in Bankruptcy (Ireland) Act, 1889	1889, c. 60
Redundancy Payments Act, 1967	1967, No. 21
Redundancy Payments Act, 1971	1971, No. 20
Vocational Education Act, 1930	1930, No. 29