



Number 45 of 2001

PROTECTION OF EMPLOYEES (PART-TIME WORK) ACT 2001

REVISED

Updated to 1 September 2017

This Revised Act is an administrative consolidation of the *Protection of Employees (Part-Time Work) Act 2001*. 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.

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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

Minimum Notice and Terms of Employment Acts 1973 to 2005: in so far as it relates to them, this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Civil Service Regulation (Amendment) Act 2005* (18/2005), s. 1(4)). The Acts in the group are:

- *Minimum Notice and Terms of Employment Act 1973* (4/1973)
- *Protection Of Employees (Employers' Insolvency) Act 1984* (21/1984), s. 18(3) and s.13
- *Worker Protection (Regular Part-Time Employees) Act 1991* (5/1991), s. 8(3) (repealed)
- *Protection of Employees (Part-Time Work) Act 2001* (45/2001), s. 1(2)
- *Civil Service Regulation (Amendment) Act 2005* (18/2005), Part 7

Protection of Employees (Employers' Insolvency) Acts 1984 to 2012: in so far as it relates to them, this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Industrial Relations (Amendment) Act 2012* (32/2012), s. 1(4)). The Acts in the group are:

- *Protection of Employees (Employers' Insolvency) Act 1984* (21/1984)
- *Social Welfare Act 1990* (5/1990), s. 1(5) and s. 28
- *Worker Protection (Regular Part-Time Employees) Act 1991* (5/1991), s. 8(8) (repealed)
- *Protection of Employees (Part-Time Work) Act 2001* (45/2001), s. 1(3)
- *Industrial Relations (Miscellaneous Provisions) Act 2004* (4/2004), ss. 15 and 17(3)
- *Industrial Relations (Amendment) Act 2012* (32/2012), ss. 1(4) and 17

Protection of Employment Acts 1977 to 2014: in so far as it relates to them, 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(17)). The Acts in the group are:

- *Protection of Employment Act 1977* (7/1977)
- *Protection of Employees (Part-Time Work) Act 2001* (45/2001), in so far as it applies to the *Protection of Employment Act 1977*

- *Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007* (27/2007), in so far as it applies to the *Protection of Employment Act 1977*
- *Local Government Reform Act 2014* (1/2014), s. 1(17) and the amendments to the *Protection of Employees (Part-Time Work) Act 2001* and the *Protection of Employment Act 1977* provided for in s. 5(6) and sch. 2 part 6 (Note: the reference to s. 5(6) appears to refer to s. 5(8))

Redundancy Payments Acts 1967 to 2014: in so far as it relates to them, 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(19)). The Acts in the group are:

- *Redundancy Payments Act 1967* (21/1967)
- *Redundancy Payments Act 1971* (20/1971)
- *Redundancy Payments Act 1973* (11/1973)
- *Redundancy Payments Act 1979* (7/1979)
- *Protection of Employees (Employers' Insolvency) Act 1984* (21/1984), s. 12 (citation only)
- *Social Welfare Act 1990* (5/1990), ss. 26, 27 and 29
- *Social Welfare Act 1991* (7/1991), s. 39 other than subs. (2)
- *Worker Protection (Regular Part-Time Employees) Act 1991* (5/1991), s. 8(2) in so far as it relates to the *Redundancy Payments Acts 1967 to 1990* (repealed)
- *Protection of Employees (Part-Time Work) Act 2001* (45/2001), in so far as it relates to the *Redundancy Payments Acts 1967 to 1990*
- *Redundancy Payments Act 2003* (14/2003) s. 17(3)
- *Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007* (27/2007), in so far as it relates to *Redundancy Payments Acts 1967 to 2003*
- *Social Welfare Act 2011* (37/2011), s. 1(3) and Part 3
- *Social Welfare Act 2012* (43/2012), s. 1(3) and Part 3
- *Local Government Reform Act 2014* (1/2014), s. 1(19) and the amendment to the *Redundancy Payments Act 1967* provided for in section 5(6) and sch. 2 part 6 (Note: the reference to s. 5(6) appears to refer to s. 5(8))

Terms of Employment (Information) Acts 1994 to 2014: in so far as it relates to them, 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 the group are:

- *Unfair Dismissals Acts 1977 to 2007*
- *Terms of Employment (Information) Act 1994* (5/1994)
- *Protection of Employees (Part-Time Work) Act 2001* (45/2001), in so far as it relates to *Terms of Employment (Information) Act 1994*
- *Industrial Relations (Amendment) Act 2012* (32/2012), s. 1(5) and s. 18
- *Local Government Reform Act 2014* (1/2014), s. 1(21) and the amendment to the *Terms of Employment (Information) Act 1994* provided for in section 5(6) and sch. 2 part 6 (Note: the reference to s. 5(6) appears to refer to s. 5(8))

Unfair Dismissals Acts 1977 to 2015: in so far as it relates to them, 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 the 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 Act 1977* (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 *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), in so far as it relates to *Unfair Dismissals Acts 1977 to 2005*
- *Industrial Relations (Amendment) Act 2015* (27/2015), s. 39

Worker Participation (State Enterprises) Acts 1977 to 2001: in so far as it relates to them, this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Protection of Employees (Part-Time Work) Act 2001* (45/2001), s. 1(7)). The Acts in the group are:

- *Worker Participation (State Enterprises) Act 1977* (6/1977)
- *Worker Participation (State Enterprises) Act 1988* (13/1988)
- *Worker Protection (Regular Part-Time Employees) Act 1991* (5/1991), s. 8(5) (repealed)
- *Air Companies (Amendment) Act 1993* 38/1993), ss. 8(2) and (3), 13 and 19(2)(b) (repealed)
- *Protection of Employees (Part-Time Work) Act 2001* (45/2001), in so far as it relates to *Worker Participation (State Enterprises) Acts 1977 to 1993*

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.



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ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title, collective citation and construction.
2. Commencement.
3. Interpretation (generally).
4. Regulations and orders.
5. Repeal.
6. Expenses.

PART 2

PART-TIME WORK AND THE RIGHTS OF PART-TIME EMPLOYEES

7. Interpretation (*Part 2*).
8. Application of relevant enactments.
9. Conditions of employment for part-time employees.
10. Proportionate provision of certain conditions of employment.
11. Part-time employees who work on a casual basis.
12. Objective grounds for less favourable treatment.
13. Review of obstacles to the performance of part-time work.
14. Voidance of certain provisions.
15. Prohibition of penalisation of employee by employer.
16. [Decision of adjudication officer under section 41 of the Workplace Relations Act 2015.]
17. [Decision of Labour Court on appeal from a decision referred to in section 16.]
18. Enforcement of determinations of Labour Court.

19. Non-application of *sections 16 to 18*.

PART 3

MISCELLANEOUS

20. Clarification of effect of certain enactments in relation to posted workers and other persons having an employment relationship in the State.
21. Amendment of section 14(2) of Protection of Employment Act, 1977.

SCHEDULE

 ACTS REFERRED TO

Carer's Leave Act, 2001	2001, No. 19
Civil Service Regulation Act, 1956	1956, No. 46
Courts Act, 1981	1981, No. 11
Employment Agency Act, 1971	1971, No. 27
Local Government Act, 1941	1941, No. 23
Minimum Notice and Terms of Employment Acts, 1973 and 1984	
Organisation of Working Time Act, 1997	1997, No. 20
Protection of Employees (Employers' Insolvency) Acts, 1984 and 1990	
Protection of Employment Act, 1977	1977, No. 7
Redundancy Payments Act, 1967	1967, No. 21
Redundancy Payments Acts, 1967 to 1990	
Terms of Employment (Information) Act, 1994	1994, No. 5
Trade Union Act, 1941	1941, No. 22
Unfair Dismissals Acts, 1977 to 1993	
Worker Participation (State Enterprises) Acts, 1977 to 1993	
Worker Protection (Regular Part-Time Employees) Act, 1991	1991, No. 5



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AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF DIRECTIVE 97/81/EC OF 15 DECEMBER, 1997, OF THE COUNCIL OF THE EUROPEAN COMMUNITIES CONCERNING THE FRAMEWORK AGREEMENT ON PART-TIME WORK CONCLUDED BY UNICE, CEEP AND THE ETUC¹, TO CLARIFY THE EFFECT CERTAIN ENACTMENTS RELATING TO EMPLOYEES HAVE IN CASES WHERE THE EMPLOYEE CONCERNED IS A POSTED WORKER (WITHIN THE MEANING OF DIRECTIVE 96/71/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 16 DECEMBER, 1996, CONCERNING THE POSTING OF WORKERS IN THE FRAMEWORK OF THE PROVISION OF SERVICES²) OR OTHERWISE HAS AN EMPLOYMENT RELATIONSHIP IN THE STATE, TO AMEND SECTION 14(2) OF THE PROTECTION OF EMPLOYMENT ACT, 1977, AND TO PROVIDE FOR RELATED MATTERS. [15th December, 2001]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

Short title,
collective citation
and construction.

1.—(1) This Act may be cited as the Protection of Employees (Part-Time Work) Act, 2001.

(2) In so far as it relates to the Minimum Notice and Terms of Employment Acts, 1973 and 1984, this Act and those Acts shall be construed together as one and may be cited together as the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

(3) In so far as it relates to the Protection of Employees (Employers' Insolvency) Acts, 1984 and 1990, this Act and those Acts shall be construed together as one and may be cited together as the Protection of Employees (Employers' Insolvency) Acts, 1984 to 2001.

(4) In so far as it relates to the Redundancy Payments Acts, 1967 to 1990, this Act and those Acts shall be construed together as one and may be cited together as the Redundancy Payments Acts, 1967 to 2001.

(5) In so far as it relates to the Terms of Employment (Information) Act, 1994, this Act and that Act shall be construed together as one and may be cited together as the Terms of Employment (Information) Acts, 1994 and 2001.

¹ O.J. No. L14, 20.1.1998, p. 9

² O.J. No. L018, 21.1.1997, p. 1

(6) In so far as it relates to the Unfair Dismissals Acts, 1977 to 1993, this Act and those Acts shall be construed together as one and may be cited together as the Unfair Dismissals Acts, 1977 to 2001.

(7) In so far as it relates to the Worker Participation (State Enterprises) Acts, 1977 to 1993, this Act and those Acts shall be construed together as one and may be cited together as the Worker Participation (State Enterprises) Acts, 1977 to 2001.

Commencement. **2.**—This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Interpretation (generally).

3.—(1) In this Act, unless the context otherwise requires—

“collective agreement” means an agreement by or on behalf of an employer on the one hand, and by or on behalf of a body or bodies representative of the employees to whom the agreement relates on the other hand;

“conditions of employment” includes conditions in respect of remuneration and matters related thereto (and, in relation to any pension scheme or arrangement, includes conditions for membership of the scheme or arrangement and entitlement to rights thereunder and conditions related to the making of contributions to the scheme or arrangement);

“contract of employment” means—

(a) a contract of service or apprenticeship, and

(b) any other contract whereby an individual agrees with another person, who is carrying on the business of an employment agency within the meaning of the Employment Agency Act, 1971, and is acting in the course of that business, to do or perform personally any work or service for a third person (whether or not the third person is a party to the contract),

whether the contract is express or implied and, if express, whether it is oral or in writing;

“employee” means a person of any age who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and references, in relation to an employer, to an employee shall be construed as references to an employee employed by that employer; and for the purposes of this Act, a person holding office under, or in the service of, the State (including a civil servant within the meaning of the Civil Service Regulation Act, 1956) shall be deemed to be an employee employed by the State or Government, as the case may be, and an officer or servant of a local authority for the purposes of the [Local Government Act 2001 (as amended by the Local Government Reform Act 2014)], or of a harbour authority, [or health board, or a member of staff of an education and training board] shall be deemed to be an employee employed by the authority [or board], as the case may be;

“employer” means, in relation to an employee, the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment, subject to the qualification that the person who under a contract of employment referred to in *paragraph (b)* of the definition of “contract of employment” is liable to pay the wages of the individual concerned in respect of the work or service concerned shall be deemed to be the individual’s employer;

“Framework Agreement” means the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC annexed to Directive 97/81/EC of 15 December, 1997 of the Council of the European Communities;

“Minister” means the Minister for Enterprise, Trade and Employment;

“prescribed” means prescribed by regulations made by the Minister under this Act;

“relevant enactment” means—

- (a) the Carer’s Leave Act, 2001,
- (b) the Minimum Notice and Terms of Employment Acts, 1973 and 1984,
- (c) the Protection of Employees (Employers’ Insolvency) Acts, 1984 and 1990,
- (d) the Redundancy Payments Acts, 1967 to 1990,
- (e) the Terms of Employment (Information) Act, 1994,
- (f) the Unfair Dismissals Acts, 1977 to 1993, or
- (g) the Worker Participation (State Enterprises) Acts, 1977 to 1993;

“remuneration”, in relation to an employee, includes—

- (a) any consideration, whether in cash or in kind, which the employee receives, directly or indirectly, from the employer in respect of the employment, and
- (b) any amounts the employee will be entitled to receive on foot of any pension scheme or arrangement.

(2) In this Act—

- (a) a reference to a Part or section is a reference to a Part or section of this Act unless it is indicated that reference to some other enactment is intended,
- (b) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended, and
- (c) a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment (including this Act).

Regulations and orders.

4.—(1) The Minister may make regulations prescribing any matter or thing which is referred to in this Act as prescribed or to be prescribed or for the purpose of enabling any provision of this Act to have full effect.

(2) Regulations under this Act may make different provisions in relation to different classes of employees or employers, different areas or otherwise by reference to the different circumstances of the matter.

(3) A regulation or order under this Act may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient.

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

(5) A regulation or order under this Act (other than an order under *section 2*) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling that regulation or order is passed by either such House within the next 21 days on which that House has sat after the regulation or order is laid before it, the regulation or order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Repeal.

5.—The Worker Protection (Regular Part-Time Employees) Act, 1991, is repealed.

Expenses.

6.—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.

PART 2

PART-TIME WORK AND THE RIGHTS OF PART-TIME EMPLOYEES

Interpretation
(Part 2).

7.—(1) In this Part—

“agency worker” means an employee whose contract of employment is of the kind mentioned in *paragraph (b)* of the definition of “contract of employment” in *section 3*;

“associated employer” shall be construed in accordance with *subsection (5)*;

“comparable employee” shall be construed in accordance with *subsection (2)*;

“full-time employee” means an employee who is not a part-time employee;

“normal hours of work” means, in relation to an employee, the average number of hours worked by the employee each day during a reference period;

“part-time employee” means an employee whose normal hours of work are less than the normal hours of work of an employee who is a comparable employee in relation to him or her;

“reference period” means a period which complies with the following conditions:

- (a) the period is of not less than 7 days nor more than 12 months duration,
- (b) the period is the same period by reference to which the normal hours of work of the other employee referred to in the definition of “part-time employee” in this section is determined, and
- (c) the number of hours worked by the employee concerned in the period constitutes the normal number of hours worked by the employee in a period of that duration;

“relevant part-time employee” shall be construed in accordance with *subsection (2)*.

(2) For the purposes of this Part, an employee is a comparable employee in relation to the employee firstly mentioned in the definition of “part-time employee” in this section (the “relevant part-time employee”) if—

- (a) the employee and the relevant part-time employee are employed by the same employer or associated employers and one of the conditions referred to in *subsection (3)* is satisfied in respect of those employees,
- (b) in case *paragraph (a)* does not apply (including a case where the relevant part-time employee is the sole employee of the employer), the employee is specified in a collective agreement, being an agreement that for the time being has effect in relation to the relevant part-time employee, to be a type of employee who is to be regarded for the purposes of this Part as a comparable employee in relation to the relevant part-time employee, or
- (c) in case neither *paragraph (a)* nor *(b)* applies, the employee is employed in the same industry or sector of employment as the relevant part-time employee is employed in and one of the conditions referred to in *subsection (3)* is satisfied in respect of those employees,

and references in this Part to a comparable full-time employee in relation to a part-time employee shall be construed accordingly.

(3) The following are the conditions mentioned in *subsection (2)*—

- (a) both of the employees concerned perform the same work under the same or similar conditions or each is interchangeable with the other in relation to the work,
- (b) the work performed by one of the employees concerned is of the same or a similar nature to that performed by the other and any differences between the work performed or the conditions under which it is performed by each, either are of small importance in relation to the work as a whole or occur with such irregularity as not to be significant, and
- (c) the work performed by the relevant part-time employee is equal or greater in value to the work performed by the other employee concerned, having regard to such matters as skill, physical or mental requirements, responsibility and working conditions.

(4) If the relevant part-time employee is an agency worker then the application of *subsection (3)* shall not result in any employee, other than another agency worker, being regarded, for the purposes of this Part, as a comparable employee in relation to him or her (and likewise, if the relevant part-time employee is a non-agency worker, the application of that subsection shall not result in an agency worker being regarded, for the purposes of this Part, as a comparable employee in relation to the relevant part-time employee).

(5) For the purposes of this Part, 2 employers shall be taken to be associated if one is a body corporate of which the other (whether directly or indirectly) has control or if both are bodies corporate of which a third person (whether directly or indirectly) has control.

Application of relevant enactments.

8.—Each relevant enactment shall apply to a part-time employee in the same manner, and subject to the like exceptions not inconsistent with this section, as it applies, other than by virtue of this Act, to an employee to whom that enactment relates.

Conditions of employment for part-time employees.

9.—(1) Subject to *subsection (2)* and (4) and *section 11(2)*, a part-time employee shall not, in respect of his or her conditions of employment, be treated in a less favourable manner than a comparable full-time employee.

(2) Without prejudice to *section 11(2)*, if treating a part-time employee, in respect of a particular condition of employment, in a less favourable manner than a comparable full-time employee can be justified on objective grounds then that employee may, notwithstanding *subsection (1)*, be so treated.

(3) Nothing in *subsection (2)* shall be construed as affecting the application of a relevant enactment, by virtue of *section 8*, to a part-time employee.

(4) *Subsection (1)* shall, in so far, but only in so far, as it relates to any pension scheme or arrangement, not apply to a part-time employee whose normal hours of work constitute less than 20 per cent of the normal hours of work of a comparable full-time employee.

(5) For the avoidance of doubt, the reference in this section to a comparable full-time employee is a reference to such an employee either of the opposite sex to the part-time employee concerned or of the same sex as him or her.

Proportionate provision of certain conditions of employment.

10.—(1) The extent to which any condition of employment referred to in *subsection (2)* is provided to a part-time employee for the purposes of complying with *section 9(1)* shall be related to the proportion which the normal hours of work of that

employee bears to the normal hours of work of the comparable full-time employee concerned.

(2) The condition of employment mentioned in *subsection (1)* is a condition of employment the amount of the benefit of which (in case the condition is of a monetary nature) or the scope of the benefit of which (in any other case) is dependent on the number of hours worked by the employee.

(3) For the avoidance of doubt, neither this section nor any other provision of this Act affects the operation of Part III of the Organisation of Working Time Act, 1997.

Part-time employees who work on a casual basis.

11.—(1) This section applies to a part-time employee who—

(a) works on a casual basis, and

(b) does not fall within a class of employee prescribed under *subsection (7)*.

(2) Notwithstanding *section 9(1)*, a part-time employee to whom this section applies may, if such less favourable treatment can be justified on objective grounds, be treated, in respect of a particular condition of employment, in a less favourable manner than a comparable full-time employee.

(3) Nothing in *subsection (2)* shall be construed as affecting the application of a relevant enactment, by virtue of *section 8*, to a part-time employee.

(4) For the purposes of this section, a part-time employee shall, at a particular time, be regarded as working on a casual basis if—

(a) at that time—

(i) he or she has been in the continuous service of the employer for a period of less than 13 weeks, and

(ii) that period of service and any previous period of service by him or her with the employer are not of such a nature as could reasonably be regarded as regular or seasonal employment,

or

(b) by virtue of his or her fulfilling, at that time, conditions specified in an approved collective agreement that has effect in relation to him or her, he or she is regarded for the purposes of that agreement as working on such a basis.

(5) In *subsection (4)(b)*, “approved collective agreement” means a collective agreement that stands approved of by the Labour Court under the *Schedule* to this Act.

(6) For the purposes of *subsection (4)(a)*, the service of an employee in his or her employment shall be deemed to be continuous unless that service is terminated by—

(a) the dismissal of him or her by the employer, or

(b) the employee voluntarily leaving his or her employment.

(7) The Minister shall from time to time cause to be reviewed, in such manner as he or she determines, the operation of this section in relation to part-time employees and may, following such a review, subject to *subsection (9)*, prescribe a class or classes of such employee to be a class or classes of employee to whom this section shall not apply.

(8) In determining the manner in which such a review shall be carried out, the Minister shall consult with such organisations representative of employers, such organisations representative of employees, and such other bodies as the Minister considers appropriate and, before making regulations under this section, the Minister

shall consult with such organisations and bodies in relation to the terms of the proposed regulations.

(9) The Minister shall not make regulations under this section unless the results of the review concerned referred to in *subsection (7)*, in the Minister's opinion, show that there cannot, in ordinary circumstances, be objective grounds for treating the class or classes of employees to whom the regulations relate in a less favourable manner than a comparable full-time employee.

Objective grounds for less favourable treatment.

12.—(1) A ground shall not be regarded as an objective ground for the purposes of any provision of this Part unless it is based on considerations other than the status of the employee concerned as a part-time employee and the less favourable treatment which it involves for that employee is for the purpose of achieving a legitimate objective of the employer and such treatment is appropriate and necessary for that purpose.

(2) For the avoidance of doubt, a ground which does not constitute an objective ground for the purposes of *section 9(2)* may be capable of constituting an objective ground for the purposes of *section 11(2)*.

Review of obstacles to the performance of part-time work.

13.—(1) The Commission may, and at the request of the Minister shall, study every industry and sector of employment for the purposes of identifying obstacles that may exist in that industry or sector to persons being able to perform part-time work in that industry or sector and make recommendations as to how any such obstacles so identified could be eliminated.

(2) The Commission shall report to the Minister in relation to any study and recommendations made by it under *subsection (1)* (whether that study and those recommendations have been made of its own volition or not) and shall publish, in such manner as it thinks appropriate, that study and those recommendations.

(3) Any such publication may include such practical guidance for the industries and sectors of employment concerned with regard to the steps that may be taken to implement the recommendations of the Commission as the Commission thinks appropriate.

(4) In formulating recommendations under *subsection (1)*, the Commission shall invite such organisations representative of employers, such organisations representative of employees, and such other bodies as the Commission considers appropriate, to make submissions, whether orally or in writing, to it in relation to the proposed recommendations, and shall have regard to any submissions made to it, in response to the invitation, by such organisations or bodies.

(5) The Commission shall, after consultation with organisations and bodies of the kind referred to in *subsection (4)*, determine the extent to which the preparation of a code of practice under this subsection with respect to the steps that could be taken by employers for the purposes of Clause 5.3 of the Framework Agreement would, in its opinion, be of practical benefit to employees and employers and may, if in its opinion the preparation of such code would be of sufficient practical benefit to those persons, prepare and publish such a code accordingly.

(6) The Commission may, after consultation with the organisations and bodies referred to in *subsection (5)*, amend or revoke, or replace with another code of practice thereunder, a code of practice under *subsection (5)*; the Commission shall publish any such replacement code or, as appropriate, publish notice of the making of any such amendment and its nature or any such revocation, as the case may be.

(7) In this section—

“Commission” means the Labour Relations Commission;

“obstacles” includes obstacles arising by virtue of the operation of any enactment and the following of any practice;

“part-time work” means work which, if it were performed, would result in the person performing it being regarded as a part-time employee for the purposes of this Act.

Voidance of certain provisions.

14.—Save as expressly provided otherwise in this Act, a provision in an agreement (whether a contract of employment or not and whether made before or after the commencement of the provision concerned 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.

Prohibition of penalisation of employee by employer.

15.—(1) An employer shall not penalise an employee—

(a) for invoking any right of the employee to be treated, in respect of the employee’s conditions of employment, in the manner provided for by this Part, or

(b) for having in good faith opposed by lawful means an act which is unlawful under this Act, or

(c) for refusing to accede to a request by the employer to transfer from performing—

(i) full-time work to performing part-time work, or

(ii) part-time work to performing full-time work,

or

(d) for giving evidence in any proceedings under this Act or giving notice of his or her intention to do so or to do any other thing referred to in *paragraph (a), (b) or (c)*.

(2) For the purposes of this section, an employee is penalised if he or she—

(a) is dismissed, suffers any unfavourable change in his or her conditions of employment or any unfair treatment (including selection for redundancy), or

(b) is the subject of any other action prejudicial to his or her employment,

but, where any such action with regard to the employee is in respect of the matter referred to in *subsection (1)(c)*, that action shall not constitute a penalisation of the employee if both of the following conditions are complied with—

(i) having regard to all the circumstances, there were substantial grounds both to justify the employer’s making the request concerned and the employer’s taking that action consequent on the employee’s refusal, and

(ii) the taking of that action is in accordance with the employee’s contract of employment and the provisions of any other enactment of the kind to which *section 20(2)* applies.

(3) If a penalisation of an employee, in contravention of *subsection (1)*, constitutes a dismissal of the employee within the meaning of the Unfair Dismissals Acts, 1977 to 1993, relief may not be granted to the employee in respect of that penalisation both **[under Part 4 of the Workplace Relations Act 2015]** and under those Acts.

(4) In this section—

“full-time work” means work which, if it were performed, would result in the person performing it being regarded as a full-time employee for the purposes of this Act;

“part-time work” has the same meaning as it has in *section 13*.

[Decision of adjudication officer under section 41 of the Workplace Relations Act 2015

16. A decision of an adjudication officer under section 41 of the Workplace Relations Act 2015 in relation to a complaint of a contravention of section 9 or 15 shall do one or more of the following, namely—

- (a) declare that the complaint was or, as the case may be, was not well founded,
- (b) require the employer to comply with the relevant provision,
- (c) require the employer to pay to the employee compensation of such amount (if any) as the adjudication officer considers just and equitable having regard to all of the circumstances, but not exceeding 2 years’ remuneration in respect of the employee’s employment.]

[Decision of Labour Court on appeal from a decision referred to in section 16

17. A decision of the Labour Court under section 44 of the Workplace Relations Act 2015, on appeal from a decision of an adjudication officer referred to in section 16, shall affirm, vary or set aside the decision of the adjudication officer.]

Enforcement of determinations of Labour Court.

18.—[...]

Non-application of sections 16 to 18.

19.—Sections 16 to 18 shall not apply to a member of the Defence Forces.

PART 3

MISCELLANEOUS

Clarification of effect of certain enactments in relation to posted workers and other persons having an employment relationship in the State.

20.—(1) In this section, the “Directive” means Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

(2) For the avoidance of doubt, every enactment referred to in *subsection (3)* that confers rights or entitlements on an employee applies and shall be deemed always to have applied to—

- (a) a posted worker (within the meaning of the Directive), and
- (b) a person, irrespective of his or her nationality or place of residence, who—
 - (i) has entered into a contract of employment that provides for his or her being employed in the State,
 - (ii) works in the State under a contract of employment, or
 - (iii) where the employment has ceased, entered into a contract of employment referred to in *subparagraph (i)* or worked in the State under a contract of employment,

in the same manner, and subject to the like exceptions not inconsistent with this subsection, as it applies and applied to any other type of employee.

(3) The enactment mentioned in *subsection (2)* is one the principal functions under which are vested (disregarding functions vested in the Labour Court, the Employment Appeals Tribunal or any other person who is not a Minister of the Government or a Minister of State) in—

- (a) the Minister or a Minister of State at the Department of Enterprise, Trade and Employment, or

(b) the Minister for Justice, Equality and Law Reform or a Minister of State at the Department of Justice, Equality and Law Reform.

Amendment of section 14(2) of Protection of Employment Act, 1977.

21.—Section 14(2) of the Protection of Employment Act, 1977, is amended by the substitution for “£3,000” of “€12,500”.

SCHEDULE

Approval of Collective Agreements for Purposes of *section 11(4)*

1. In this Schedule, "collective agreement" means a collective agreement referred to in *section 11(5)*.

2. (1) On an application being made in that behalf by any of the parties thereto, the Labour Court may, subject to the provisions of this Schedule, approve of a collective agreement.

(2) On receipt of an application under this paragraph, the Labour Court shall consult such representatives of employees and employers as it considers to have an interest in the matters to which the collective agreement, the subject of the application, relates.

(3) The Labour Court shall not approve of a collective agreement unless the following conditions are fulfilled as respects that agreement, namely—

(a) the Labour Court is satisfied that it is appropriate to approve of the agreement having regard to Clause 2.2 of the Framework Agreement,

(b) the agreement has been concluded in a manner usually employed in determining the pay or other conditions of employment of employees in the employment concerned,

(c) the body which negotiated the agreement on behalf of the employees concerned is the holder of a negotiation licence under the Trade Union Act, 1941, or is an excepted body within the meaning of that Act which is sufficiently representative of the employees concerned,

(d) the agreement is in such form as appears to the Labour Court to be suitable for the purposes of the agreement being approved of under this section.

(4) Where the Labour Court is not satisfied that the condition referred to in *clause (a)* or *(d)* of *subparagraph (3)* is fulfilled in relation to a collective agreement, the subject of an application under this paragraph (but is satisfied that the other conditions referred to in *subparagraph (3)* are fulfilled in relation to the agreement), it may request the parties to the agreement to vary the agreement in such manner as will result in the said condition being fulfilled and if those parties agree so to vary the agreement and vary it, accordingly, the Labour Court shall approve of the agreement as so varied.

3. Where a collective agreement which has been approved of under this Schedule is subsequently varied by the parties thereto, any of the said parties may apply to the Labour Court to have the agreement, as so varied, approved of by the Labour Court under this Schedule and the provisions of this Schedule shall apply to such an application as they apply to an application under *paragraph 2*.

4. The Labour Court may withdraw its approval of a collective agreement under this Schedule where it is satisfied that there are substantial grounds for so doing.

5. The Labour Court shall determine the procedures to be followed by a person in making an application under *paragraph 2* or *3*, by the Labour Court in considering any such application or otherwise performing any of its functions under this Schedule and by persons generally in relation to matters falling to be dealt with under this Schedule.

6. The Labour Court shall publish, in such manner as it thinks fit, particulars of the procedures referred to in *paragraph 5*.

7. The Labour Court shall establish and maintain a register of collective agreements standing approved of by it under this Schedule and such a register shall be made available for inspection by members of the public at all reasonable times.