



Number 4 of 2004

INDUSTRIAL RELATIONS (MISCELLANEOUS PROVISIONS) ACT 2004

REVISED

Updated to 1 February 2020

This Revised Act is an administrative consolidation of the *Industrial Relations (Miscellaneous Provisions) Act 2004*. 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 the *Consumer Insurance Contracts Act 2019 (53/2019)*, enacted 26 December 2019, and all statutory instruments up to and including the *Industrial Relations (Amendment) Act 2019 (Commencement) Order 2020 (S.I. No. 24 of 2020)*, made 29 January 2020, 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

Industrial Relations Acts 1946 to 2019: this Act is one of a group of Acts included in this collective citation to be construed together as one (*Industrial Relations (Amendment) Act 2019*, s. 5(2)). The Acts in the group are:

- *Industrial Relations Act 1946* (26/1946)
- *Industrial Relations (Amendment) Act 1955* (19/1955) (repealed)
- *Industrial Relations Act 1969* (14/1969)
- *Industrial Relations Act 1976* (15/1976)
- *Industrial Relations Act 1990* (19/1990), other than Part II (ss. 8-22)
- *Industrial Relations (Amendment) Act 2001* (11/2001)
- *Industrial Relations (Miscellaneous Provisions) Act 2004* (4/2004), in so far as it relates to the *Industrial Relations Acts 1946 to 2001*
- *Industrial Relations (Amendment) Act 2012* (32/2012), other than ss. 16, 17 and 18
- *Industrial Relations (Amendment) Act 2015* (27/2015), other than ss. 24 and 36 (collectively cited *Industrial Relations Acts 1946 to 2015* and Part 3, other than s. 36, to be construed as one)
- *Industrial Relations (Amendment) Act 2019* (21/2019)

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

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Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked.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.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Industrial Relations (Amendment) Act 2015 (27/2015)*
- *National Minimum Wage (Low Pay Commission) Act 2015 (22/2015)*
- *Workplace Relations Act 2015 (16/2015)*
- *Industrial Relations Act 1990 (19/1990)*

All Acts up to and including *Consumer Insurance Contracts Act 2019 (53/2019)*, enacted 26 December 2019, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *Industrial Relations (Miscellaneous Provisions) Act 2004 (Commencement) Order 2004 (S.I. No. 138 of 2004)*

All statutory instruments up to and including *Industrial Relations (Amendment) Act 2019 (Commencement) Order 2020 (S.I. No. 24 of 2020)*, made 29 January 2020, were considered in the preparation of this revision.



Number 4 of 2004

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ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
2. Amendment of section 2 of Act of 2001.
3. Amendment of section 3 of Act of 2001.
4. Amendment of section 10 of Act of 2001.
5. Transitional provision.
6. Limitation of application of section 2(1)(d) of Act of 2001.
7. Priority for matters dealt with under Act of 2001.
8. Prohibition on victimisation.
9. Complaints of victimisation.
10. [Decision of Labour Court on appeal from decision referred to in *section 9.*]
11. Power of Court to administer oaths and compel witnesses.
12. Referral to High Court.
13. Enforcement by Circuit Court.
14. Amendment of Industrial Relations Act 1990.
15. Amendment of Protection of Employees (Employers' Insolvency) Act 1984.
16. Repeal.
17. Short title, collective citation, construction and commencement.

ACTS REFERRED TO

Bankruptcy Act 1988	1988, No. 27
Companies Act 1963	1963, No. 33
Companies Act 1990	1990, No. 33
Companies (Amendment) Act 1982	1982, No. 10
Industrial Relations Act 1990	1990, No. 19



Number 4 of 2004

INDUSTRIAL RELATIONS (MISCELLANEOUS PROVISIONS) ACT 2004

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AN ACT TO MAKE FURTHER AND BETTER PROVISION FOR PROMOTING HARMONIOUS RELATIONS BETWEEN WORKERS AND EMPLOYERS, TO AMEND AND EXTEND THE INDUSTRIAL RELATIONS ACTS 1946 TO 2001, TO AMEND THE PROTECTION OF EMPLOYEES (EMPLOYERS' INSOLVENCY) ACT 1984, AND TO PROVIDE FOR RELATED MATTERS.

[9th March 2004]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Annotations

Modifications (not altering text):

- C1** Application of collectively cited *Industrial Relations Acts* extended by *Industrial Relations Act 1990* (19/1990), s. 23(1)-(1D) and sch. 6, as inserted (1.02.2020) by *Industrial Relations (Amendment) Act 2019* (21/2019), ss. 3, 4, S.I. No. 24 of 2020.

“worker”.

23.—(1) In the Industrial Relations Acts, 1946 to 1976, and this Part, “worker” means [a member of the Garda Síochána referred to in subsection (1A) and] any person aged 15 years or more who has entered into or works under [(or, where the employment has ceased, worked under)] a contract with an employer, whether the contract be for manual labour, clerical work or otherwise, whether it be expressed or implied, oral or in writing, and whether it be a contract of service or of apprenticeship or a contract personally to execute any work or labour including, in particular, a psychiatric nurse employed by a health board and any person designated for the time being under subsection (3) but does not include—

[(1A) For the purposes of subsection (1) and subject to subsections (1B), (1C) and (1D), the Industrial Relations Acts 1946 to 2019 and this Part shall apply to a member of the Garda Síochána.

(1B) Subject to subsections (1C) and (1D), for the purposes of subsections (1) and (1A), references to all or any of the following, in relation to a member of the Garda Síochána, shall be construed as follows:

(a) a reference to an employer shall be read as a reference to the Garda Commissioner;

(b) a reference to a—

- (i) contract of employment,
- (ii) contract with an employer,
- (iii) employment contract, or
- (iv) any similar term,

[No. 4.] *Industrial Relations (Miscellaneous Provisions) Act 2004* [2004.]

shall be read as a reference to any enactment, Garda code, instrument, decision, circular, instruction, any other document or any combination thereof that provides for or specifies the terms and conditions on which that member of the Garda Síochána serves;

(c) a reference to a trade union shall be read as a reference to an association established under and in accordance with section 18 of the Act of 2005;

(d) a reference to an employer organisation, a trade union of employers or an employer association shall be read as a reference to the Garda Commissioner;

(e) without prejudice to section 3 of the Industrial Relations Act 1946, a reference to a trade dispute shall be read as a reference to any dispute or difference between members of the Garda Síochána and the Garda Commissioner that is connected with the appointment or non-appointment of any such member, or with the terms and conditions on which such members serve, and includes any such dispute or difference between retired members and the Garda Commissioner.

(1C) (a) Nothing in *subsections (1), (1A) or (1B)* shall affect the operation of section 18(3) of the Act of 2005.

(b) Nothing in *subsections (1), (1A) or (1B)* shall operate to apply the Trade Union Acts 1871 to 1990 to the Garda Síochána and those subsections shall not apply to the interpretation of any terms used in those Acts.

(1D) The enactments specified in column (3) of the *Sixth Schedule* shall not apply to a worker who is a member of the Garda Síochána to the extent specified in column (4) of that Schedule.]

...

SIXTH SCHEDULE

Section 23(1D)

Enactments to which sections 23(1A) and 23(1B) shall not apply to members of the Garda Síochána

Reference (1)	Number and Year (2)	Short Title (3)	Extent of Disapplication (4)
...
2.	No. 4 of 2004	Industrial Relations (Miscellaneous Provisions) Act 2004	The whole Act
...

C2 Application of collectively cited *Industrial Relations Acts 1946 to 2012* restricted by *Unfair Dismissals Act 1977 (10/1977)*, s. 8(10), as substituted (1.10.2015) by *National Minimum Wage (Low Pay Commission) Act 2015 (22/2015)*, s. 14(1)(f), commenced by S.I. No. 410 of 2015 as per subs. (4).

Determination of claims for unfair dismissal.

8. — ...

[(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.]

...

Interpretation. **1.—(1)** In this Act—

“Act of 2001” means the Industrial Relations (Amendment) Act 2001;

“Court” means the Labour Court;

“employee” has the same meaning as “worker” has in section 23 of the Industrial Relations Act 1990;

F1[...]

(2) In this Act—

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

Annotations

Amendments:

- F1** Deleted (1.8.2015) by *Industrial Relations (Amendment) Act 2015 (27/2015)*, s. 35, S.I. No. 329 of 2015.

Amendment of section 2 of Act of 2001.

2.—Section 2 of the Act of 2001 is amended by substituting the following for paragraphs (a) and (b) of subsection (1):

“(a) it is not the practice of the employer to engage in collective bargaining negotiations in respect of the grade, group or category of workers who are party to the trade dispute and the internal dispute resolution procedures (if any) normally used by the parties concerned have failed to resolve the dispute,

(b) either—

(i) the employer has failed to observe—

(I) a provision of the Code of Practice on Voluntary Dispute Resolution under section 42 of the Industrial Relations Act 1990 specifying the period of time for the doing of any thing (or such a provision of any code of practice amending or replacing that code), or

(II) any agreement by the parties extending that period of time,

or

(ii) the dispute having been referred to the Commission for resolution in accordance with the provisions of such code, no further efforts on the part of the Commission will, in the opinion of the Commission, advance the resolution of the dispute and the Court has received a report from the Commission to that effect.”.

Amendment of section 3 of Act of 2001.

3.—The Act of 2001 is amended by substituting the following for section 3:

“Hearing as to whether requirements of section 2 have been met.

3.—Any question as to whether the requirements specified in section 2 have been met may, as the Court considers appropriate, be determined by the Court either by way of a hearing preliminary to the Court's investigation under that section or as part of that investigation.”.

Amendment of section 10 of Act of 2001.

4.—The Act of 2001 is amended by substituting the following for section 10:

“Enforcement of determination by civil proceedings.

10.—(1) Where an employer fails to comply with the terms of a determination under section 6 within the period specified in the determination for those terms to be complied with (or, if no such period is so specified, as soon as may be after the determination is communicated to the parties) a trade union or excepted body may make an application under this section to the Circuit Court for an order under subsection (2).

(2) On application being made to it in that behalf, the Circuit Court shall, without hearing the employer or any evidence (other than in relation to the matters referred to in subsection (1)) make an order directing the employer to carry out the determination in accordance with its terms.”.

Transitional provision.

5.—(1) This section applies to a request for an investigation under section 2 of the Act of 2001 made before the commencement of *section 2*.

(2) A request to which this section applies shall, as regards its substance, be dealt with under section 2 of the Act of 2001 as if that section 2 had not been amended by this Act.

Limitation of application of section 2(1)(d) of Act of 2001.

6.—(1) If a trade dispute was, by reason of circumstances prevailing on or before 26 March 2003, not capable, by virtue of paragraph (d) of subsection (1) of the relevant section, of being investigated by the Court under the relevant section, that dispute shall, on and from the commencement of this section, be capable of being so investigated, notwithstanding that paragraph (d), but subject to the other requirements of that subsection (1) being met.

(2) In *subsection (1)*—

“circumstances prevailing on or before 26 March 2003” includes circumstances that continued to prevail after that date but which have ceased when this provision comes into operation;

“relevant section” means section 2 of the Act of 2001;

the reference to subsection (1) of the relevant section, where it secondly occurs, is a reference to that subsection (1) as if it had not been amended by this Act.

Priority for matters dealt with under Act of 2001.

7.—The following section is inserted after section 7 of the Act of 2001:

“Priority to be given to business under Act.

7A.—An investigation under section 2 and the dealing with a request under section 6 shall be given such priority over the other business of the Court as the Court considers reasonable (but having regard to the priority which, by virtue of any other enactment, it is required to give to any other class of business).”.

Prohibition on victimisation.

8.—(1) This section applies where it is not the practice of the employer to engage in collective bargaining F2[...] and the internal dispute resolution procedures (if any) normally used by the parties concerned have failed to resolve the dispute and—

(a) a trade union F2[...] takes steps to invoke the procedures under the Code of Practice on Voluntary Dispute Resolution under section 42 of the Industrial Relations Act 1990 (or any code of practice amending or replacing that code) in relation to a trade dispute, or

(b) such procedures have been invoked by a trade union F2[...] in relation to a trade dispute, or

(c) an employee intends to request the trade union F2[...] of which the employee is a member to make a request under section 2 of the Act of 2001 in relation to a trade dispute, or a trade union F2[...] intends to make such a request, or

(d) such a request by a trade union F2[...] has been made but the Court determines that the requirements specified in that section for the carrying out of an investigation of the trade dispute have not been met, or

(e) the Court determines that those requirements have been met and either—

(i) that investigation is being or has been carried out, or

(ii) any other procedure under the Act of 2001 consequent on or subsequent to that investigation is being or has been carried out.

(2) Where this section applies, none of the following—

(a) the employer,

(b) an employee, or

(c) a trade union F2[...] of which an employee is a member,

shall victimise an employee or (as the case may be) another employee in the employment concerned on account of—

(i) the employee’s being or not being a member of a trade union F2[...], or

(ii) the employee’s engaging or not engaging in any activities on behalf of a trade union F2[...].

(3) In this section “victimise”, in relation to an employee, means to do any act (whether of commission or omission) that, on objective grounds, adversely affects the interests of the employee or his or her well being and includes any act specified in a code of practice, prepared under section 42 of the Industrial Relations Act 1990 in relation to conduct prohibited by this section, to be an act falling within the foregoing expression but does not include any act constituting a dismissal of the employee within the meaning of the Unfair Dismissals Acts 1977 to 2001.

(4) For the avoidance of doubt, “employee” in this section includes any person in the employment concerned the duties of whom consist of or include managing the business or activity to which the employment relates.

F3[(5) In this section, ‘collective bargaining’ has the meaning assigned to it by section 1A of the Act of 2001 and that section shall apply to this section in the same manner as it applies to that Act.]

Annotations

Amendments:

- F2** Deleted (1.8.2015) by *Industrial Relations (Amendment) Act 2015 (27/2015)*, s. 36(a)-(h), S.I. No. 329 of 2015.
- F3** Inserted (1.8.2015) by *Industrial Relations (Amendment) Act 2015 (27/2015)*, s. 36(i), S.I. No. 329 of 2015.

Editorial Notes:

- E1** Redress and appeal procedures for purpose of section provided (1.10.2015) by *Workplace Relations Act 2015 (16/2015)*, ss. 41, 44 and sch. 5 part 1 item 13, sch. 6 part 1 item 19, sch. 6 part 2 item 19, S.I. No. 410 of 2015.
- E2** Section included in definitions of “employment enactment” and “relevant enactment” (1.08.2015) by *Workplace Relations Act 2015 (16/2015)*, s. 2 and sch. 1 part 2 item 6, S.I. No. 338 of 2015, with the following effects:
- Authorised officers or inspectors under employment enactments deemed to be appointed under *Workplace Relations Act 2015 (16/2015)*, s. 26(2) and subject to termination under s. 26(4).
 - Powers of inspectors for purposes of relevant enactments defined in *Workplace Relations Act 2015 (16/2015)*, s. 27.
 - Workplace Relations Commission, an inspector or an adjudication officer authorised to disclose employer’s registered number or employee’s PPSN to enable Labour Court to perform functions under relevant enactments by *Workplace Relations Act 2015 (16/2015)* s. 31(5).
 - Power of Workplace Relations Commission and official body to disclose information to each other concerning the commission of offence under relevant enactment provided by *Workplace Relations Act 2015 (16/2015)*, s. 32.
 - Power of Workplace Relations Commission and contracting authority to disclose information to each other concerning the commission of offence under employment enactment/ relevant enactment provided by *Workplace Relations Act 2015 (16/2015)*, s. 33.
 - Powers of Minister to prosecute under relevant enactments transferred to Workplace Relations Commission and references construed by *Workplace Relations Act 2015 (16/2015)*, s. 37.
 - Functions of EAT to hear claims under employment enactments transferred to Workplace Relations Commission and references to EAT construed by *Workplace Relations Act 2015 (16/2015)* s. 66(1), (2), not commenced as of date of revision.

Complaints of victimisation.

9.—(1) F4[...]

(2) F4[...]

(3) F4[...]

(4) F4[...]

F5[(5) 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 8* shall do one or more of the following, namely—

(a) declare whether the complaint was or was not well founded,

(b) direct that the conduct the subject of the complaint cease, or

(c) require the respondent to pay to the complainant compensation of such amount (if any) as the adjudication officer considers just and equitable in the circumstances, but not exceeding 2 years' remuneration in respect of the employee's employment.]

(6) F4[...]

(7) F4[...]

(8) F4[...]

(9) F4[...]

(10) In this section "employee" shall be construed in accordance with *section 8 (4)*.

Annotations

Amendments:

F4 Repealed (1.10.2015) by *Workplace Relations Act 2015* (16/2015), s. 8(1) and sch. 2 part 1 ref. 18, S.I. No. 410 of 2015, subject to transitional provision in subs. (2).

F5 Substituted (1.10.2015) by *Workplace Relations Act 2015* (16/2015), s. 52(1) and sch. 7 part 1 ref. 19, S.I. No. 410 of 2015, subject to transitional provision in subs. (3).

Editorial Notes:

E3 Previous affecting provision: subs. (1) amended (1.08.2015) by *Industrial Relations (Amendment) Act 2015* (27/2015), s. 37, S.I. No. 329 of 2015; repealed as per F-note above.

F6[Decision of Labour Court on appeal from decision referred to in *section 9*

10. 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 *subsection (5) of section 9*, shall affirm, vary or set aside the decision of the adjudication officer.]

Annotations

Amendments:

F6 Substituted (1.10.2015) by *Workplace Relations Act 2015* (16/2015), s. 52(1) and sch. 7 part 1 ref. 19, S.I. No. 410 of 2015, subject to transitional provision in subs. (3).

Power of Court to administer oaths and compel witnesses.

11.—F7[...]

Annotations

Amendments:

F7 Repealed (1.10.2015) by *Workplace Relations Act 2015* (16/2015), s. 8(1) and sch. 2 part 1 ref. 18, S.I. No. 410 of 2015, subject to transitional provision in subs. (2).

Referral to High Court. 12.—F8[...]

Annotations

Amendments:

- F8** Repealed (1.10.2015) by *Workplace Relations Act 2015* (16/2015), s. 8(1) and sch. 2 part 1 ref. 18, S.I. No. 410 of 2015, subject to transitional provision in subs. (2).

Enforcement by Circuit Court. 13.—F9[...]

Annotations

Amendments:

- F9** Repealed (1.10.2015) by *Workplace Relations Act 2015* (16/2015), s. 8(1) and sch. 2 part 1 ref. 18, S.I. No. 410 of 2015, subject to transitional provision in subs. (2).

Editorial Notes:

- E4** Previous affecting provision: subs. (1)(b) amended (1.08.2015) by *Industrial Relations (Amendment) Act 2015* (27/2015), s. 38, S.I. 320 of 2015; repealed as per F-note above.

Amendment of Industrial Relations Act 1990. 14.—The First Schedule to the Industrial Relations Act 1990 is amended by substituting in column (3), at reference number 7, “€3,000” for “£1,000” and “€1,000” for “£200”.

Amendment of Protection of Employees (Employers' Insolvency) Act 1984. 15.—The Protection of Employees (Employers' Insolvency) Act 1984 is amended in section 10 by inserting after subsection (2) the following subsection:

“(2A) Where the Minister makes a payment to an employee under section 6(2)(a)(iii)(II) (inserted by section 15 of the Redundancy Payments Act 2003) of this Act, that payment shall be recoverable by the Minister as a debt to be paid in priority to all other debts under—

(a) section 81 of the Bankruptcy Act 1988, or

(b) section 285 (as amended by section 10 of the Companies (Amendment) Act 1982 and section 134 of the Companies Act 1990) of the Companies Act 1963,

and any amount of that payment which would, but for the limit set by section 6(4)(a) (as may be varied by regulations under section 11(5)), be payable to an employee, shall be treated for all purposes as if it were a payment required to be paid by virtue of an award under section 12(1) of the Act of 1973.”.

Repeal. 16.—Section 9 of the Act of 2001 is repealed.

Short title, collective citation, construction and commencement. 17.—(1) This Act may be cited as the Industrial Relations (Miscellaneous Provisions) Act 2004.

(2) In so far as it relates to the Industrial Relations Acts 1946 to 2001, this Act and those Acts shall be construed together as one and may be cited together as the Industrial Relations Acts 1946 to 2004.

(3) In so far as it relates to the Protection of Employees (Employers' Insolvency) Acts 1984 to 2001, *section 15*, this subsection and those Acts shall be construed together as one and may be cited together as the Protection of Employees (Employers' Insolvency) Acts 1984 to 2004.

(4) 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.