



Number 11 of 2001

INDUSTRIAL RELATIONS (AMENDMENT) ACT 2001

REVISED

Updated to 1 February 2020

This Revised Act is an administrative consolidation of the *Industrial Relations (Amendment) 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 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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ARRANGEMENT OF SECTIONS

Section

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- 1A. Collective bargaining.
- 1B. Excepted body to which this Act applies.
2. Investigation of dispute by Court.
- 2A. Section 2: supplemental matters relating to number of members of trade union employed by employer.
3. Hearing as to whether requirements of section 2 have been met.
4. Amendment of section 21 of Industrial Relations Act, 1946.
5. Recommendation by Court on trade dispute.
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8. Effect of industrial action.
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ACTS REFERRED TO

Industrial Relations Act, 1946	1946, No. 26
Industrial Relations Act, 1990	1990, No. 19
Industrial Relations Acts, 1946 to 1990	
Trade Union Act, 1941	1941, No. 22

[No. 11.]

*Industrial Relations
(Amendment) Act 2001*

[2001.]

Trade Union Act, 1942

1942, No. 23



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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 1990, AND TO PROVIDE FOR RELATED MATTERS. [29th May, 2001]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation.

1.—(1) In this Act—

F1[‘collective bargaining’ shall be construed in accordance with section 1A;]

“Commission” means the Labour Relations Commission;

“Court” means the Labour Court;

F2[‘excepted body to which this Act applies’ shall be construed in accordance with section 1B;]

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

(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 is to that enactment as amended by or under any other enactment, including this Act.

F3[Collective bargaining

1A. For the purposes of this Act, ‘collective bargaining’ comprises voluntary engagements or negotiations between any employer or employers’ organisation on the one hand and a trade union of workers or excepted body to which this Act applies on the other, with the object of reaching agreement regarding working conditions or terms of employment, or non-employment, of workers.]

F4[Excepted body to which this Act applies

1B. For the purposes of this Act, ‘excepted body to which this Act applies’ means a body that is independent and not under the domination and control of an employer or trade union of employers, all the members of which body are employed by the same employer and which carries on engagements or negotiations with the object of reaching agreement regarding the wages or other conditions of employment of its own members (but of no other employees).]

Investigation of
dispute by Court.

2.—(1) Notwithstanding anything contained in the Industrial Relations Acts, 1946 to 1990, at the request of a trade union F5[...], the Court may F6[, subject to this Act,] investigate a trade dispute where the Court is satisfied that—

F7[(a) it is not the practice of the employer to engage in collective bargaining F5[...] 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,]

(c) the trade union F5[...] or the employees, as the case may be, have not acted in a manner which, in the opinion of the Court, has frustrated the employer in observing a provision of such code of practice, and

(d) the trade union F5[...] or the employees, as the case may be, have not had recourse to industrial action after the dispute in question was referred to the Commission in accordance with the provisions of such code of practice.

(2) In the course of an investigation under subsection (1) the Court shall have regard to the entirety of labour relations practices in the employment concerned including labour relations practices engaged in by the employer or an associated employer in another employment including an employment outside the State.

F8[(3) The Court shall decline to conduct an investigation of a trade dispute under subsection (1) where it is satisfied that the number of workers who are party to the trade dispute concerned is such as to be insignificant having regard to the total number of workers employed by the employer concerned in the grade, group or category to which the trade dispute concerned refers.

(4) Where the Court has determined, for the purpose of subsection (3), that the number of workers who are party to the trade dispute concerned is such as not to be insignificant having regard to the total number of workers employed by the employer concerned in the grade, group or category to which the trade dispute concerned refers, the Court shall determine whether the number of the workers who are party to the trade dispute is such as to be insignificant having regard to the total number of workers in the larger related group referred to in subsection (5)(c).

(5) For the purposes of subsection (4) —

(a) the Court shall consider whether the grade, group or category of worker to which the trade dispute refers is related to another grade, group or category of worker employed by the employer concerned,

(b) where the Court is satisfied that the grade, group or category of worker to which the trade dispute refers is related to another grade, group or category of worker also employed by the employer concerned, the Court shall

determine the total number of workers employed by the employer concerned in both—

- (i) the grade, group or category to which the trade dispute concerned refers, and
 - (ii) such related grade, group or category of worker,
- and
- (c) the Court shall, having regard to the total number of workers established pursuant to paragraph (b) (in this section referred to as the 'larger related group'), determine, for the purposes of the determination under subsection (4), whether the number of workers who are party to the trade dispute is such as to be insignificant having regard to such total number of workers in the larger related group.

(6) Where, pursuant to subsection (4), the Court determines that the number of workers who are party to the trade dispute concerned is such as to be insignificant having regard to the total number of workers in the larger related group referred to in that subsection, the Court shall decline to conduct an investigation of the trade dispute concerned under subsection (1) unless it is satisfied that exceptional and compelling circumstances exist which justify the conducting of an investigation of the trade dispute concerned.

(7) Subject to subsections (8) and (9), the Court shall not consider a request referred to in subsection (1) in respect of a grade, group or category of worker to which the trade dispute concerned applies, where the Court has made a recommendation under section 5, or a determination under section 6, in respect of the same grade, group or category of worker and the same employer in the 18 months preceding the making of that request.

(8) Where—

- (a) the Court made a recommendation under section 5 pursuant to a request under subsection (1),
- (b) the recommendation referred to in paragraph (a) was implemented by the employer following its making, and
- (c) at any time during a period of 18 months from the day on which the recommendation referred to in paragraph (a) was made, another request is made under subsection (1) by the same grade, group or category of worker,

notwithstanding subsection (7), the Court may investigate the trade dispute concerned if it is satisfied that following the implementation of such recommendation—

- (i) the employer concerned has resiled from that implemented recommendation referred to in paragraph (b), or
- (ii) there have been material and adverse changes to the totality of remuneration and conditions of employment of the grade, group or category of worker referred to in paragraph (c).

(9) Where—

- (a) the Court made a determination under section 6 pursuant to a request under subsection (1),
- (b) the determination referred to in paragraph (a) was complied with by the employer following its making,
- (c) at any time during a period of 18 months from the day on which the determination referred to in paragraph (a) was made, another request is

made under subsection (1) by the same grade, group or category of worker, and

(d) no application was made under section 10 in respect of such determination, notwithstanding subsection (7), the Court may investigate the trade dispute concerned if it is satisfied that following compliance with such determination—

- (i) the employer concerned has resiled from the determination referred to in paragraph (b), or
- (ii) there have been material and adverse changes to the totality of remuneration and conditions of employment of the grade, group or category of worker referred to in paragraph (c).

(10) For the purposes of subsection (1) (a), where an employer asserts that it is the practice of the employer to engage in collective bargaining with an excepted body to which this Act applies, when determining if the excepted body concerned is an excepted body to which this Act applies in respect of the grade, group or category of worker concerned, the Court shall have regard to the establishment, functioning and administration of that excepted body and shall, for such purposes, take into account—

- (a) the manner of the election of employees to the excepted body concerned,
- (b) the frequency of elections of employees referred to in paragraph (a),
- (c) any financing or resourcing of the excepted body concerned that exceeds minimum logistical support provided to it by or on behalf of the employer, and
- (d) the length of time the excepted body concerned has been in existence and any prior collective bargaining between the employer and that excepted body.

(11) Where an employer asserts to the Court that it is the practice of the employer to engage in collective bargaining with an excepted body to which this Act applies in respect of the grade, group or category of worker concerned, the employer shall satisfy the Court that it is the practice of that employer to engage in collective bargaining with the excepted body concerned in respect of the grade, group or category of worker concerned.]

F9[Section 2:
supplemental
matters relating
to number of
members of trade
union employed
by employer

2A. (1) For the purposes of subsection (3) of section 2 in respect of establishing the number of workers who are party to the trade dispute, a statutory declaration made by the chief officer of the trade union which made the request under subsection (1) of section 2, specifying—

- (a) the number of the members of that trade union who are in the employment of the employer concerned in the grade, group or category to which the trade dispute refers and who are party to the trade dispute, and
- (b) the period of membership of such members in that trade union,

shall be admissible in evidence without further proof, unless the contrary is shown, of such numbers and such period.

(2) Where an employer seeks to have the matters specified in a statutory declaration made pursuant to subsection (1) examined—

- (a) the employer may request the Court to satisfy itself that the matters specified in the statutory declaration are correct, and
- (b) the Court may, for the purposes of paragraph (a), examine the number of members of the trade union, specified in the statutory declaration as being in the employment of the employer concerned—

- (i) in the grade, group or category to which the trade dispute refers, and
- (ii) who are party to the trade dispute.

(3) When performing its functions under subsection (2) the Court shall ensure that the identities of the members of the trade union referred to in paragraph (a) of subsection (1) remain confidential for the purposes of subsection (3) of section 2.

(4) The Court shall, following the examination under subsection (2), inform the parties that it is satisfied, or as the case may be, is not satisfied, of the matters specified in paragraphs (a) and (b) of that subsection.

(5) In this section 'chief officer of the trade union' includes the general secretary of the trade union, the general president of the trade union and any person charged with a general executive authority in respect of the trade union.]

F10[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 21 of Industrial Relations Act, 1946.

4.—Section 21(1) of the *Industrial Relations Act, 1946*, is amended by the insertion after "under this Act" of "or any investigation under the *Industrial Relations (Amendment) Act, 2001*,".

Recommendation by Court on trade dispute.

5.—(1) The Court, having investigated a trade dispute under *section 2*, may make a recommendation giving its opinion in the matter and, where appropriate, its view as to the action that should be taken having regard to F11[the totality of remuneration and conditions of employment], and to dispute resolution and disciplinary procedures, in the employment concerned.

(2) A recommendation under *subsection (1)* shall not provide for arrangements for collective bargaining.

F12[(3) The Court shall not make a recommendation providing for an improvement in the remuneration and conditions of employment of a grade, group or category of worker unless it is satisfied that the totality of the remuneration and conditions of employment of the workers concerned provides a lesser benefit to the workers concerned having regard to the totality of remuneration and conditions of employment of comparable workers employed in similar employments.

(4) When considering if the totality of remuneration and conditions of employment of a grade, group or category of worker provides a lesser benefit to the workers concerned having regard to the totality of remuneration and conditions of employment of comparable workers employed in similar employments, the Court shall have regard to—

- (a) the totality of the remuneration and conditions of employment of comparable workers employed in similar employments (whether such comparable workers are represented by a trade union of workers or are not represented by a trade union of workers), and
- (b) the comparability of skills, responsibilities, physical and mental effort required to perform the work in which the workers are engaged.

(5) For the purposes of paragraph (a) of subsection (4), the Court may have regard to those in similar employments of an associated employer outside the State.

(6) Where collective agreements concerning the grade, group or category of worker are commonplace in similar employments to the employment which is the subject of

the trade dispute, the Court shall, in addition to other evidence presented by the parties, have due regard to the terms of such agreements for the time being in force.

(7) Where collective agreements concerning the grade, group or category of worker are not commonplace in similar employments to the employment which is the subject of the trade dispute, the Court shall have due regard to all evidence presented by the parties whether by way of collective agreements or established, to the satisfaction of the Court, by other means.

(8) The Court shall, for the purpose of making a recommendation, have regard to the effect such recommendation may have on the maintenance of employment and the long term sustainability of the business of the employer.]

Determination by
Court on trade
dispute.

6.—(1) Where, in the opinion of the Court, a dispute that is the subject of a recommendation under *section 5* has not been resolved, the Court may, at the request of a trade union F13[...] and following a review of all relevant matters, make a determination.

(2) A determination under *subsection (1)* F14[shall] have regard to F14[the totality of remuneration and conditions of employment and may have regard to] dispute resolution and disciplinary procedures, in the employment concerned but shall not provide for arrangements for collective bargaining.

(3) A determination under *subsection (1)* shall be in the same terms as a recommendation under *section 5* except where—

(a) the Court has agreed a variation with the parties, or

(b) the Court has decided that the recommendation concerned or a part of that recommendation was grounded on unsound or incomplete information.

F15[(4) Where, pursuant to paragraph (b) of subsection (3), the Court has decided that the recommendation concerned, or a part of that recommendation, was grounded on unsound or incomplete information, the determination shall be made in accordance with subsections (5) to (9).

(5) The Court shall not make a determination providing for an improvement in the remuneration, terms and conditions of employment of a grade, group or category of worker unless it is satisfied that the totality of remuneration and conditions of employment of the workers concerned provides a lesser benefit to the workers concerned having regard to the totality of remuneration and conditions of employment of comparable workers employed in similar employments.

(6) For the purposes of subsection (5) and the consideration of whether the totality of remuneration and conditions of employment of a grade, group or category of worker provides a lesser benefit to the workers concerned having regard to the totality of remuneration and conditions of employment of comparable workers employed in similar employments, subsections (4) and (5) of section 5 shall apply.

(7) Where collective agreements concerning the grade, group or category of worker are commonplace in similar employments to the employment which is the subject of the dispute, the Court shall, in addition to other evidence presented by the parties, have due regard to the terms of such agreements for the time being in force.

(8) Where collective agreements concerning the grade, group or category of worker are not commonplace in similar employments to the employment which is the subject of the trade dispute, the Court shall have due regard to all evidence presented by the parties whether by way of collective agreements or established, to the satisfaction of the Court, by other means.

(9) The Court shall, for the purpose of making a determination, have regard to the effect such determination may have on the maintenance of employment and the long term sustainability of the business of the employer.]

Determinations of Court. **7.**—(1) Every determination made by the Court under *section 6* shall be in writing and shall include a statement of the reasons for the determination.

(2) The Court may, as it thinks proper, by order give effect to any determination from such date as the Court specifies in the order.

(3) An order under *subsection (2)* shall be served on the parties to the dispute.

F16[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).]

Effect of industrial action.

8.—(1) Subject to *subsection (2)*, the Court shall cease its investigation or review under *section 6* and withdraw any recommendation where, either at the request of the employer or on its own initiative, the Court has satisfied itself that industrial action in relation to the dispute that is the subject of an investigation has taken place.

(2) If, having regard to all the circumstances, the Court is satisfied by a trade union F17[...] that it is reasonable to proceed with its investigation or review under *section 6*, it shall so proceed.

(3) *Subsection (1)* shall not apply where the procedures provided for by *sections 2, 5 and 6* have been exhausted.

Review of determination of Court.

9.—F18[...]

F19[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 F20[...] 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.]

Appeal to High Court on point of law.

11.—Where a determination is made by the Court under *section 6*, either party to the dispute may appeal to the High Court on a point of law.

F21[Interim relief pending determination of claim for unfair dismissal

11A. (1) Where a worker has made a claim under paragraph (aa) of *section 6(2)* of the *Unfair Dismissals Act 1977*, he or she may apply to the Circuit Court for interim relief pending determination of that claim.

(2) Schedule 1 (other than paragraph 1(1)) to the *Protected Disclosures Act 2014* shall apply to an application under *subsection (1)* with the following modifications:

(a) the references to ‘employee’ shall be construed as references to ‘worker or employee’;

(b) in paragraph 2(1) the reference to ‘the employee having made a protected disclosure’ shall be construed as a reference to ‘the grounds specified in paragraph (aa) of *section 6(2)* of the *Unfair Dismissals Act 1977*’.

(3) An application to the Circuit Court under this section shall be made to the Circuit Court sitting in the circuit in which the employer concerned carries on his or her business.]

Regulations. **12.**—(1) The Minister may make regulations for the purposes of reviews under *section 6* and *9* and for the purpose of enabling any other provisions of this Act to have full effect.

(2) Regulations under this Act may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary for the purposes of the regulations.

(3) Every regulations made under this Act 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.

Short
title, collective
citation, construction
and
commencement.

13.—(1) This Act may be cited as *the Industrial Relations (Amendment) Act, 2001*.

(2) This Act and the Industrial Relations Acts, 1946 to 1990, may be cited together as the Industrial Relations Acts, 1946 to 2001, and shall be construed together as one.

(3) This Act shall come into operation on such day as the Minister may appoint by order.



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About this Revised Act

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 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 1972, may be found linked from the page of the Act or statutory instrument at

www.irishstatutebook.ie.