



Number 10 of 1977

UNFAIR DISMISSALS ACT 1977

REVISED

Updated to 31 July 2013

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

All Acts up to and including *Protection of Life During Pregnancy Act 2013* (35/2013), enacted 30 July 2013, and all statutory instruments up to and including *Companies Act 1963 and Irish Bank Resolution Corporation Act, 2013 (Statement of Affairs) Order 2013* (S.I. No. 304 of 2013), made 6 August 2013, were considered in the preparation of this Revised Act.

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



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Introduction

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

Related legislation

Unfair Dismissals Acts 1977 to 2007: this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007* (27/2007), s. 1(4)). The Acts in this group are:

- *Unfair Dismissals Act 1977* (10/1977)
- *Worker Protection (Regular Part-Time Employees) Act 1991* (5/1991) (in so far as it relates to the *Unfair Dismissals Acts 1977 and 1991* (repealed))
- *Unfair Dismissals (Amendment) Act 1993* (22/1993) (not amended)
- *Protection of Employees (Part-Time Work) Act 2001* (45/2001) (in so far as it relates to the *Unfair Dismissals Acts 1977 to 1993*)
- *Civil Service Regulation (Amendment) Act 2005* (18/2005) (Part 6)
- *Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007* (27/2007) (not amended)

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 2000, may be found in the Legislation Directory at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Education and Training Boards Act 2013* (11/2013)
- *Protection of Employees (Temporary Agency Work) Act 2012* (13/2012)
- *Property Services (Regulation) Act 2011* (40/2011)
- *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011)
- *Criminal Justice Act 2011* (22/2011)
- *Credit Institutions (Stabilisation) Act 2010* (36/2010)
- *Prevention of Corruption (Amendment) Act 2010* (33/2010)
- *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010)
- *Inland Fisheries Act 2010* (10/2010)
- *Labour Services (Amendment) Act 2009* (38/2009)
- *National Asset Management Agency Act 2009* (34/2009)
- *Charities Act 2009* (6/2009)
- *Anglo Irish Bank Corporation Act 2009* (1/2009)
- *Chemicals Act 2008* (13/2008)
- *Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007* (27/2007)
- *Health Act 2007* (23/2007)
- *Consumer Protection Act 2007* (19/2007)
- *Employment Permits Act 2006* (16/2006)
- *Parental Leave (Amendment) Act 2006* (13/2006)
- *Employees (Provision of Information and Consultation) Act 2006* (9/2006)
- *Adoptive Leave Act 2005* (25/2005)
- *Civil Service Regulation (Amendment) Act 2005* (18/2005)
- *Safety, Health and Welfare at Work Act 2005* (10/2005)
- *Health Act 2004* (42/2004)
- *Maternity Protection (Amendment) Act 2004* (28/2004)
- *Equality Act 2004* (24/2004)
- *Protection of Employees (Fixed-Term Work) Act 2003* (29/2003)
- *Competition Act 2002* (14/2002)
- *Protection of Employees (Part-Time Work) Act 2001* (45/2001)
- *Local Government Act 2001* (37/2001)
- *Prevention of Corruption (Amendment) Act 2001* (27/2001)
- *Carer's Leave Act 2001* (19/2001)
- *National Minimum Wage Act 2000* (5/2000)
- *Protections for Persons Reporting Child Abuse Act 1998* (49/1998)
- *Parental Leave Act 1998* (30/1998)
- *Employment Equality Act 1998* (21/1998)
- *Organisation of Working Time Act 1997* (20/1997)
- *Health (Amendment) (No. 3) Act 1996* (32/1996)
- *Adoptive Leave Act 1995* (2/1995)
- *Maternity Protection Act 1994* (34/1994)
- *Unfair Dismissals (Amendment) Act 1993* (22/1993)
- *Worker Protection (Regular Part-Time Employees) Act 1991* (5/1991)
- *Industrial Relations Act 1990* (19/1990)
- *Labour Services Act 1987* (15/1987)
- *Protection of Employees (Employers' Insolvency) Act 1984* (21/1984)
- *Maternity Protection of Employees Act 1981* (2/1981)
- *Employment Equality Act 1977* (16/1977)

All Acts up to and including *Protection of Life During Pregnancy Act 2013* (35/2013), enacted 30 July 2013, were considered in the preparation of this revision.

Statutory Instruments which affect or previously affected this revision:

- *European Communities (Cross-Border Mergers) Regulations 2008* (S.I. No. 157 of 2008)
- *European Communities (European Aviation Safety Agency) (Amendment) Regulations 2008* (S.I. No. 95 of 2008)
- *European Communities (Occurrence Reporting in Civil Aviation) Regulations 2007* (S.I. No. 285 of 2007)

- *European Communities (European Cooperative Society) (Employee Involvement) Regulations 2007* (S.I. N. 259 of 2007)
- *European Communities (European Public Limited-Liability Company) (Employee Involvement) Regulations 2006* (S.I. No. 623 of 2006)
- *European Communities (European Aviation Safety Agency) Regulations 2003* (S.I. No. 469 of 2003)
- *European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003* (S.I. No. 131 of 2003)
- *European Communities (Burden of Proof in Gender Discrimination Cases) Regulations 2001* (S.I. No. 337 of 2001)
- *Industrial Relations Act 1990 Code of Practice on Employee Representatives (Declaration) Order 1993* (S.I. No. 169 of 1993)
- *Maternity Protection (Disputes and Appeals) Regulations 1981* (S.I. No. 357 of 1981)
- *Unfair Dismissals (Calculation of Weekly Remuneration) Regulations 1977* (S.I. No. 287 of 1977)
- *Unfair Dismissals (Claims and Appeals) Regulations 1977* (S.I. No. 286 of 1977)
- *Unfair Dismissals Act 1977 (Commencement) Order 1977* (S.I. No. 133 of 1977)

All statutory instruments up to and including *Companies Act 1963 and Irish Bank Resolution Corporation Act 2013 (Statement of Affairs) Order 2013* (S.I. No. 304 of 2013), made 6 August 2013, were considered in the preparation of this revision.



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ARRANGEMENT OF SECTIONS

Section

1. Definitions.
2. Exclusions.
- 2A. Application of Act to certain civil servants.
3. Dismissal during probation or training.
4. Dismissal during apprenticeship.
5. Dismissal by way of lock-out or for taking part in strike.
6. Unfair dismissal.
7. Redress for unfair dismissal.
8. Determination of claims for unfair dismissal.
9. Appeal from recommendation of rights commissioner.
10. Proceedings in Circuit Court for redress under Act.
11. Service of documents on bodies.
12. Provisions relating to winding up and bankruptcy.
13. Voidance of certain provisions in agreements.
14. Notice to employees of procedure for, and grounds of, dismissal.
15. Alternative remedies of employee.
16. Amendment of Act by order of Minister.
17. Regulations.
18. Employment Appeals Tribunal.
19. Repayment of moneys paid under Redundancy Payments Acts, 1967 and 1973.
20. Amendment of First Schedule to Minimum Notice and Terms of Employment Act, 1973.
21. Expenses.
22. Short title and commencement.



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

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Annotations:

Modifications (not altering text):

- C1** Act included in collective citation and construction (8.05.2007) by *Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007* (27/2007), s. 1(4), commenced on enactment.

Short title, construction and collective citation.

1. — ...

(4) The Unfair Dismissals Acts 1977 to 2005 and this Act (insofar as it relates to those Acts) shall be construed together as one and may be cited together as the Unfair Dismissals Acts 1977 to 2007.

...

Act also included or previously included in the collective citation and construction:

- (4.07.2006) by *Civil Service Regulation (Amendment) Act 2005* (18/2005), s. 1(3), S.I. No. 363 of 2006.
- (20.12.2001) by *Protection of Employees (Part-Time Work) Act 2001* (45/2001), s. 1(6), S.I. No. 636 of 2001.
- (1.10.1993) by *Unfair Dismissals (Amendment) Act 1993* (22/1993), s. 17(2) and (3), commenced as per s. 17(4).
- (6.04.1991) by *Worker Protection (Regular Part-Time Employees) Act 1991* (5/1991), s. 8(6), S.I. No. 75 of 1991.

- C2** The application of the collectively cited *Unfair Dismissals Acts* is potentially restricted where there is an alternative remedy in the provisions listed below. The following is one version of the wording used, but there are many variations:

(3) If the 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 2007*), relief may not be granted to the employee in respect of that penalisation both under Schedule 4 of this Act and under the *Unfair Dismissals Acts 1977 to 2007*.

Employees are restricted to availing of one of alternative remedies provided by the *Unfair Dismissals Acts* and other legislation:

- by *Charities Act 2009* (6/2009), s. 62(3), not commenced as of 4.07.2011.
- (6.07.2012) by *Property Services (Regulation) Act 2011* (40/2011), s. 67(5) & sch. 4, para. 8(b), commenced on enactment.
- (16.05.2012) by *Protection of Employees (Temporary Agency Work) Act 2012* (13/2012), s. 24(2), commenced on enactment.
- (16.05.2012) by *Protection of Employees (Temporary Agency Work) Act 2012* (13/2012), s. 23(2), commenced on enactment.
- (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 70(3)(b) and (b), S.I. No. 548 of 2011.
- (9.08.2011) by *Criminal Justice Act 2011* (22/2011), s. 20(4)(a) and (b), S.I. No. 411 of 2011.
- (21.12.2010) by *Credit Institutions (Stabilisation) Act 2010* (36/2010), ss. 23(3)(b) and 44(6)(b), S.I. No. 623 of 2010.
- by *Prevention of Corruption (Amendment) Act 2001* (27/2001), s. 8A(5) and sch. 1 para. 3(8), as inserted (15.12.2010) by *Prevention of Corruption (Amendment) Act 2010* (33/2010), ss. 4 and 6, commenced on enactment.
- (1.06.2010) by *Inland Fisheries Act 2010* (10/2010), s. 38(3), commenced on enactment.
- by *Labour Services Act 1987* (15/1987), s. 13B(3), as inserted (20.01.2010) by *Labour Services (Amendment) Act 2009* (38/2009), s. 7, S.I. No. 12 of 2010.
- (21.12.2009) by *National Asset Management Agency Act 2009* (34/2009), s. 223(5), S.I. No. 545 of 2009.
- by *Health Act 2004* (42/2004), s. 55M(4), as inserted (1.03.2009) by *Health Act 2007* (23/2007), s. 103(1), S.I. No. 27 of 2009.
- (21.01.2009) by *Anglo Irish Bank Corporation Act 2009* (1/2009), s. 19(5)(b), commenced on enactment.
- (15.07.2008) by *Chemicals Act 2008* (13/2008), s. 26(3), S.I. No. 273 of 2008.
- (27.05.2008) by *European Communities (Cross-Border Mergers) Regulations 2008* (S.I. No. 157 of 2008), reg. 39(9).
- by *European Communities (European Aviation Safety Agency) Regulations 2003* (S.I. No. 469 of 2003), reg. 10(4), as inserted (8.04.2008) by *European Communities (European Aviation Safety Agency) (Amendment) Regulations 2008* (S.I. No. 95 of 2008), reg. 3(d).
- (13.06.2007) by *European Communities (Occurrence Reporting in Civil Aviation) Regulations 2007* (S.I. No. 285 of 2007), reg. 9(7).
- (29.05.2007) by *European Communities (European Cooperative Society) (Employee Involvement) Regulations 2007* (S.I. No. 259 of 2007), reg. 20(8).
- (1.05.2007) by *Consumer Protection Act 2007* (19/2007), s. 87(4) and sch. 6, para. 4(2), S.I. No. 178 of 2007.
- (1.01.2007) by *Employment Permits Act 2006* (16/2006), s. 26(5), S.I. No. 682 of 2006.
- (14.12.2006) by *European Communities (European Public Limited-Liability Company) (Employee Involvement) Regulations 2006* (S.I. No. 623 of 2006), reg. 19(8).

- (24.07.2006) by *Employees (Provision of Information and Consultation) Act 2006* (9/2006), s. 13(7), S.I. No. 382 of 2006.
- by *Parental Leave Act 1998* (30/1998), s. 16A(3) as inserted (18.05.2006) by *Parental Leave (Amendment) Act 2006* (13/2006), s. 11, commenced on enactment.
- (1.09.2005) by *Safety, Health and Welfare at Work Act 2005* (10/2005), s. 27(5), S.I. No. 328 of 2005.
- by *Employment Equality Act 1998* (21/1998), s. 101(2)(b), as substituted (18.07.2004) by *Equality Act 2004* (24/2004), s. 46 and sch. para. 30, commenced on enactment.
- (14.07.2003) by *Protection of Employees (Fixed-Term Work) Act 2003* (29/2003), s. 18(1), commenced on enactment.
- (11.04.2003) by *European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003* (S.I. No. 131 of 2003), reg. 5(4).
- (1.07.2002) by *Competition Act 2002* (14/2002), s. 50(3) and sch. 3, para. 3, S.I. No. 199 of 2002.
- (20.12.2001) by *Protection of Employees (Part-Time Work) Act 2001* (45/2001), s. 15(3), S.I. No. 636 of 2001.
- (2.07.2001) by *Carer's Leave Act 2001* (19/2001), s. 16(3), commenced on enactment.
- (18.10.1999) by *Employment Equality Act 1998* (21/1998), s. 101(4)(b), S.I. No. 320 of 1999.
- (23.01.1999) by *Protections for Persons Reporting Child Abuse Act 1998* (49/1998), s. 4(3), commenced as per s. 7(2).
- (30.09.1997) by *Organisation of Working Time Act 1997* (20/1997), s. 26(2), S.I. No. 392 of 1997.

C3 Application of Act extended (20.12.2001) by *Protection of Employees (Part-Time Work) Act 2001* (45/2001), ss. 3(1) and 8, S.I. No. 636 of 2001.

Interpretation (generally).

3. — ...

“relevant enactment” means— ...

(f) the Unfair Dismissals Acts, 1977 to 1993, or

...

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.

C4 Application of collectively cited *Unfair Dismissals Acts 1977 to 1993* not restricted (20.12.2001) by *Protection of Employees (Part-Time Work) Act 2001* (45/2001), ss. 3(1), 9(3) and 11(3), S.I. No. 636 of 2001.

Interpretation (generally).

3. — ...

“relevant enactment” means— ...

(f) the Unfair Dismissals Acts, 1977 to 1993, or

...

9. — ...

(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.

...

11. — ...

(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.

...

- C5** Application of collectively cited *Unfair Dismissals Acts 1977 to 1993* extended with modifications (1.04.2000) by *National Minimum Wage Act 2000* (5/2000), s. 36(2), S.I. No. 96 of 2000.

Prohibition of victimisation of employee by employer.

36. — ...

(2) Dismissal of an employee in contravention of subsection (1) shall be deemed to be an unfair dismissal of the employee within the meaning and for the purposes of section 6(1) of the Unfair Dismissals Acts, 1977 to 1993 (but without prejudice to sections 2 to 5 of the Unfair Dismissals Act, 1977, except that it is not necessary for the employee to have at least one year's continuous service with the employer and that Act shall apply as if the Worker Protection (Regular Part-Time Employees) Act, 1991, were repealed in relation to the number of hours an employee is normally expected to work for the purposes of that Act) and those Acts, with the necessary modifications, shall apply accordingly.

...

- C6** Application of Act extended (30.01.1995) by *Maternity Protection Act 1994* (34/1994), s. 28(3), S.I. No. 16 of 1995.

Notification of intention to return to work.

28.— ...

(3) In the absence of reasonable grounds—

(a) failure to give notification under subsection (1), or

(b) the giving of such notification otherwise than within the specified time limits,

are matters that may be taken into account by a rights commissioner, the Tribunal or the Circuit Court in determining the employee's rights under the 1977 Act, this Act or any other relevant enactment, so far as the remedies of re-instatement, re-engagement or compensation are concerned.

- C7** Application of Act confirmed (1.10.1993) by *Unfair Dismissals (Amendment) Act 1993* (22/1993), s. 13, commenced as per s. 17(4).

Employment agencies.

13.—Where, whether before, on or after the commencement of this Act, 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 and whether or not the third person pays the wages or salary of the individual in respect of the work or service), then, for the purposes of the Principal Act, as respects a dismissal occurring after such commencement—

(a) the individual shall be deemed to be an employee employed by the third person under a contract of employment,

(b) if the contract was made before such commencement, it shall be deemed to have been made upon such commencement, and

(c) any redress under the Principal Act for unfair dismissal of the individual under the contract shall be awarded against the third person.

- C8** Application of collectively cited *Unfair Dismissals Acts 1977 and 1991* not restricted (25.06.1993) by *Industrial Relations Act 1990 Code of Practice on Employee Representatives (Declaration) Order 1993* (S.I. No. 169 of 1993), reg. 8.

Protection of Employee Representatives

7. Employee representatives who carry out their duties and responsibilities in accordance with paragraph 3 of this draft Code should not—

(a) be dismissed or suffer any unfavourable change in their conditions of employment or unfair treatment, including selection for redundancy, because of their status or activities as employee representatives, or

(b) suffer any action prejudicial to their employment because of their status or activities as employee representatives,

without prior consultation taking place between the management and the relevant trade union.

Where it is established that an employee representative has been dismissed in contravention of the provision at (a) above such representative should normally be re-instated.

8. Section 7 of this draft Code is without prejudice to the provisions of the *Unfair Dismissals Acts, 1977 and 1991*.

...

- C9** Term “continuous service” construed under certain conditions (6.04.1991) by *Worker Protection (Regular Part-Time Employees) Act 1991* (5/1991), s. 2(3)(b)(iii), S.I. No. 75 of 1991. The “said First Schedule” refers to the First Schedule of the *Minimum Notice and Terms of Employment Act 1973* (4/1973), and para. 8 as amended and applied below provides that any week in which an employee is not normally expected to work for at least eight hours or more will not count in computing a period of service.

Continuous service.

2.— ...

(3) (a) Where, for the purpose of the application of any relevant enactment or part thereof, a period of continuous service (being service in accordance with the provisions, however expressed, of that enactment) of not less than 13 weeks is required, then in ascertaining the period under that enactment the 13 weeks continuous service referred to in subsection (1) of this section shall be included as if it were 13 weeks continuous service in accordance with the provisions, however expressed, of that enactment.

(b) For the purpose of calculating the part of a period of continuous service to which paragraph (a) of this subsection relates, but which is not calculable in accordance with subsection (1) of this section, that part shall— ...

(iii) in respect of the *Unfair Dismissals Act, 1977*, be calculated as if the reference in the said paragraph 8 of the said First Schedule (as so amended and as applied for the purposes of the said Act by virtue of section 2 (4) thereof) to “eighteen hours” were a reference to “8 hours”.

...

- C10** Construction of references to rights commissioner modified (18.07.1990) by *Industrial Relations Act 1990* (19/1990), s. 35(1), commenced on enactment.

The Rights Commissioner Service.

35.—(1) The rights commissioners shall operate as a service of the Commission and references to rights commissioners in the *Industrial Relations Act, 1969*, the *Unfair Dismissals Act, 1977*, and the *Maternity Protection of Employees Act, 1981*, shall be taken to be references to rights commissioners so operating.

...

Editorial Notes:

- E1** Previous affecting provision: application of Act potentially excluded by alternative avenue of redress (18.10.1999) by *Employment Equality Act 1998* (21/1998), s. 101(5)(b), S.I. No. 320 of 1999; subs. (5) subsequently substituted (18.07.2004) by *Equality Act 2004* (24/2004), s. 42(b), commenced on enactment.
- E2** Previous affecting provision: power to modify Act by regulations vested in Minister (6.04.1981) by *Maternity Protection of Employees Act 1981* (2/1981), s. 27(4), commenced as per s. 1; subsequently repealed (30.01.1995) by *Maternity Protection Act 1994* (34/1994), s. 6, S.I. No. 16 of 1995.

Definitions.

1.—In this Act—

F1[‘adopting parent’ means an employee who is an employed adopting mother, an adopting father or sole male adopter within the meaning of *section 2 (1) of the Adoptive Leave Act, 1995*;

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

“date of dismissal” means—

- (a) where prior notice of the termination of the contract of employment is given and it complies with the provisions of that contract and of the Minimum Notice and Terms of Employment Act, 1973, the date on which that notice expires.
- (b) where either prior notice of such termination is not given or the notice given does not comply with the provisions of the contract of employment or the Minimum Notice and Terms of Employment Act, 1973, the date on which such a notice would have expired, if it had been given on the date of such termination and had been expressed to expire on the later of the following dates—
 - (i) the earliest date that would be in compliance with the provisions of the contract of employment,
 - (ii) the earliest date that would be in compliance with the provisions of the Minimum Notice and Terms of Employment Act, 1973,
- (c) where a contract of employment for a fixed term expires without its being renewed under the same contract or, in the case of a contract for a specified purpose (being a purpose of such a kind that the duration of the contract was limited, but was, at the time of its making, incapable of precise ascertainment), there is a cesser of the purpose, the date of the expiry or cesser;

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

- (a) the termination by his employer of the employee’s contract of employment with the employer, whether prior notice of the termination was or was not given to the employee,
- (b) the termination by the employee of his contract of employment with his employer, whether prior notice of the termination was or was not given to the employer, in circumstances in which, because of the conduct of the employer, the employee was or would have been entitled, or it was or would have been reasonable for the employee, to terminate the contract of employment without giving prior notice of the termination to the employer, or
- (c) the expiration of a contract of employment for a fixed term without its being renewed under the same contract or, in the case of a contract for a specified

purpose (being a purpose of such a kind that the duration of the contract was limited but was, at the time of its making, incapable of precise ascertainment), the cesser of the purpose;

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

“employer”, in relation to an employee, means the person by whom the employee is (or, in a case where the employment has ceased, was) employed under a contract of employment and an individual in the service of a local authority for the purposes of the Local Government Act, 1941, shall be deemed to be employed by the local authority;

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

F2[‘Minister’ means the Minister for Enterprise, Trade and Employment;]

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

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

“strike” means the cessation of work by any number or body of employees acting in combination or a concerted refusal or a refusal under a common understanding of any number of employees to continue to work for an employer, in consequence of a dispute, done as a means of compelling their employer or any employee or body of employees, or to aid other employees in compelling their employer or any employee or body of employees, to accept or not to accept terms or conditions of or affecting employment;

F3[‘trade union’ means a trade union which is the holder of a negotiation licence under Part II of the Trade Union Act, 1941;]

F3[‘the Tribunal’ means the Tribunal established by section 39 of the Redundancy Payments Act, 1967, and known, by virtue of section 18 of this Act, as the Employment Appeals Tribunal.]

F4[(2) Where on the date of an award to an employee of re-instatement under this Act—

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

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

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

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

Annotations

Amendments:

- F1** Inserted (20.03.1995) by the *Adoptive Leave Act 1995* (2/1995), s. 22, S.I. No. 64 of 1995.
- F2** Substituted (8.05.2007) by the *Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007* (27/2007), s. 24, commenced on enactment.
- F3** Substituted (1.10.1993) by the *Unfair Dismissals (Amendment) Act 1993* (22/1993), s. 2, commenced as per s. 17(4).
- F4** Inserted (1.10.1993) by the *Unfair Dismissals Act 1993* (22/1993) s. 2, commenced as per s. 17(4).

Editorial Notes:

- E3** Previous affecting provision: construction of section modified (23.10.1981) by *Maternity Protection (Disputes and Appeals) Regulations 1981* (S.I. No. 357 of 1981), reg. 3; these regulations lapsed on repeal of parent Act (30.01.1995) by *Maternity Protection Act 1994* (34/1994), s. 6(1), S.I. No. 16 of 1995, subject to transitional and continuation provisions.

Exclusions.

2.—(1) F5[Except in so far as any provision of this Act otherwise provides] This Act shall not apply in relation to any of the following persons:

- (a) an employee (other than a person referred to in section 4 of this Act) who is dismissed, who, at the date of his dismissal, had less than one year's continuous service with the employer who dismissed him F6[...],
- (b) an employee who is dismissed and who, on or before the date of his dismissal, had reached the normal retiring age for employees of the same employer in similar employment F7[or who on that date had not attained the age of 16 years],
- (c) a person who is employed by his spouse F8[, civil partner within the meaning of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*], father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, granddaughter, step-son, step-daughter, brother, sister, half-brother or half-sister, is a member of his employer's household and whose place of employment is a private dwellinghouse or a farm in or on which both the employee and the employer reside,
- (d) a person in employment as a member of the Defence Forces, the Judge Advocate-General, the chairman of the Army Pensions Board or the ordinary member thereof who is not an officer of the Medical Corps of the Defence Forces,
- (e) a member of the Garda Síochána,
- (f) a person (other than a person employed under a contract of employment) who is receiving a training allowance from or undergoing instruction by An Chomhairle Oiliúna or is receiving a training allowance from and undergoing instruction by that body,
- (g) a person who is employed by An Chomhairle Oiliúna under a contract of apprenticeship,

F9[(h) subject to the provisions of this subsection a person who was employed by or under the State who was dismissed by the Government,]

F10[(i) a manager for a local authority for the purposes of *section 144* of the *Local Government Act, 2001*,]

(j) F11[...]

F12[(k) the chief executive officer of the Health Service Executive for the purposes of *section 17* of the *Health Act 2004*.]

(2) F13[Subject to subsection (2A), this Act] shall not apply in relation to—

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

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

F14[...]

F15[, or

F16[(c) dismissal where the employee's employer at the commencement of the employment informs the employee in writing that the employment will terminate on the return to work with that employer of another employee who is absent from work while on protective leave or natal care absence, within the meaning of Part IV of the *Maternity Protection Act 1994*, or is absent from work attending ante-natal classes in accordance with *section 15A* (inserted by *section 8* of the *Maternity Protection (Amendment) Act 2004*), or for breastfeeding in accordance with *section 15B* (inserted by *section 9* of the *Maternity Protection (Amendment) Act 2004*), of the first-mentioned Act, and the dismissal of the first-mentioned employee duly occurs for the purpose of facilitating the return to work of that other employee.]]

F17[(d) dismissal where—

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

(ii) the dismissal of the employee duly occurs for the purpose of facilitating the return to work of the adopting parentF18[, or

(e) dismissal where the employer at the commencement of the employment informs the employee in writing that the employment will terminate on the return to work with that employer of an employee who is absent from work while on carer's leave under the *Carer's Leave Act, 2001*, and the dismissal of the employee duly occurs for the purpose of facilitating the return to work of the employee who has been on carer's leave.]]

F19[(2A) Where, following dismissal consisting only of the expiry of the term of a contract of employment of a kind mentioned in subsection (2) ('the prior contract') without the term being renewed under the contract or the cesser of the purpose of the contract—

- (a) the employee concerned is re-employed by the employer concerned within 3 months of the dismissal under a contract of employment of that kind made between the employer and the employee ('the subsequent contract') and the nature of the employment is the same as or similar to that of the employment under the prior contract,
- (b) the employee is dismissed from the employment,
- (c) the dismissal consisted only of the expiry of the term of the subsequent contract without the term being renewed under the contract or the cesser of the purpose of the contract, and
- (d) in the opinion of the rights commissioner, the Tribunal or the Circuit Court, as the case may be, the entry by the employer into the subsequent contract was wholly or partly for, or was connected with, the purpose of the avoidance of liability under this Act,

then—

- (i) this Act shall, subject to its other provisions, apply to the dismissal, and
 - (ii) the term of the prior contract and of any antecedent contracts shall be added to that of the subsequent contract for the purpose of the ascertainment under this Act of the period of service of the employee with the employer and the period so ascertained shall be deemed for those purposes to be one of continuous service.
- (2B) In subsection (2A), 'antecedent contract', in relation to a prior contract, means—
- (a) a contract of employment of the kind mentioned in subsection (2) the term of which expired not more than 3 months before the commencement of the prior contract, or
 - (b) each of a series of contracts the term of the last of which expired not more than 3 months before the commencement of that of the prior contract and the term of the other or of each of the other contracts in the series expired not more than 3 months before the commencement of that of the other, or the next, contract in the series,

being a contract or contracts made between the employer and the employee who were parties to the prior contract and the nature of the employment under which was the same as or similar to that of the employment under the prior contract.]

(3) (a) This Act shall not apply in relation to the dismissal of an employee who, under the relevant contract of employment, ordinarily worked outside the State unless—

- (i) he was ordinarily resident in the State during the term of the contract, or
- (ii) he was domiciled in the State during the term of the contract, and the employer—
 - (I) in case the employer was an individual, was ordinarily resident in the State, during the term of the contract, or
 - (II) in case the employer was a body corporate or an unincorporated body of persons, had its principal place of business in the State during the term of the contract.

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

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

F20[(5) Notwithstanding subsection (4) of this section, the dismissal (not being a dismissal referred to in the F21[subsection (2A)] of an employee followed by his re-employment by the same employer not later than 26 weeks after the dismissal shall not operate to break the continuity of service of the employee with the employer if the dismissal was wholly or partly for or was connected with the purpose of the avoidance of liability under this Act.]

Annotations

Amendments:

- F5** Inserted (30.01.1995) by *Maternity Protection Act 1994* (34/1994), s. 38(1), S.I. No. 16 of 1995.
- F6** Deleted (30.01.1995) by *Maternity Protection Act 1994* (34/1994), s. 38(1), S.I. No. 16 of 1995.
- F7** Substituted by *Employment Equality Act 1998* (21/1998), s. 6(3)(d), as substituted (18.07.2004) by *Equality Act 2004* (24/2004), s. 4(c), commenced on enactment.
- F8** Inserted (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010), s. 170 and sch. pt. 5, item 7, S.I. No. 648 of 2010.
- F9** Substituted (4.07.2006) by *Civil Service Regulation (Amendment) Act 2005* (18/2005), s. 22(a), S.I. No. 363 of 2006.
- F10** Substituted (1.01.2002) by *Local Government Act 2001* (37/2001), s. 164, S.I. No. 588 of 2001.
- F11** Repealed (1.07.2013) by *Education and Training Boards Act 2013* (11/2013), s. 64, S.I. No. 211 of 2013.
- F12** Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 6, pt. 6, S.I. No. 887 of 2004.
- F13** Substituted (8.05.2007) by *Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007* (27/2007), s. 25(1)(a), commenced on enactment.
- F14** Deleted (8.05.2007) by *Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007* (27/2007), s. 25(1)(b), commenced on enactment.
- F15** Inserted (6.04.1981) by *Maternity Protection of Employees Act 1981* (2/1981), s. 24, commenced as per s. 1.
- F16** Substituted (18.10.2004) by *Maternity Protection (Amendment) Act 2004* (28/2004), s. 23(a), S.I. No. 652 of 2004.
- F17** Inserted by *Adoptive Leave Act 1995* (2/1995), s. 23, as substituted (28.11.2005) by *Adoptive Leave Act 2005* (25/2005), s. 18, S.I. No. 724 of 2005.
- F18** Inserted (2.07.2001) by *Carer’s Leave Act 2001* (19/2001), s. 27(1), commenced on enactment.
- F19** Inserted (8.05.2007) by *Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007* (27/2007), s. 25(2), commenced on enactment
- F20** Inserted (1.10.1993) by *Unfair Dismissals (Amendment) Act 1993* (22/1993), s. 3(c), commenced as per s. 17(4).
- F21** Substituted (8.05.2007) by *Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007* (27/2007), s. 25(3), commenced on enactment.

Modifications (not altering text):

- C11** Application of section restricted (1.10.1993) by *Unfair Dismissals (Amendment) Act 1993* (22/1993), s. 14, commenced as per s. 17(4).

Dismissal of persons during apprenticeship, training, etc., or during first year of service, for trade union membership or activities.

14.—Sections 2 (1), 3 and 4 and subsections (1) and (6) of section 6 of the Principal Act shall not apply to a person referred to in paragraph (a) or (b) of the said section 2 (1) or the said section 3 or 4 who is dismissed if the dismissal results wholly or mainly from one or more of the matters referred to in subsection (2) (a) of the said section 6.

- C12** Reference in s. 2(4) construed (30.11.1984) by *Protection of Employees (Employers' Insolvency) Act 1984* (21/1984), s. 11(6), commenced on enactment.

Power to amend Act.

11. — ...

(6) The reference in section 2 (4) of the Act of 1977 to the First Schedule to the Act of 1973 shall be construed as being a reference—

(a) in case an order under this section amending that Schedule is for the time being in force, that Schedule as amended by section 20 of the Act of 1977, by section 13 of this Act and by the order,

(b) in case no such order is so in force, that Schedule as amended both by the said section 20 and the said section 13.

...

- C13** Application of section restricted (6.11.1996) by *Health (Amendment) (No. 3) Act 1996* (32/1996), s. 14(6), commenced on enactment.

Appointment and removal from office of chief executive officer.

14.— ...

(6) A person appointed as chief executive officer in accordance with this section shall not be deemed to be a temporary officer of a health board for the purposes of section 2 (1) (j) (as amended by section 3 (a) of the *Unfair Dismissals (Amendment) Act, 1993*) of the *Unfair Dismissals Act, 1977*.

Editorial Notes:

- E4** Previous affecting provision: subs. 2(1)(j) substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 6, pt. 6, S.I. No. 887 of 2004; subsequently repealed as per F note above.
- E5** Previous affecting provision: subs. (2)(d) inserted (20.03.1995) by *Adoptive Leave Act 1995* (2/1995), s. 23, S.I. No. 64 of 1995; subsequently substituted as per F note above.
- E6** Previous affecting provision: subs. (1)(j) substituted (1.10.1993) by *Unfair Dismissals (Amendment) Act 1993* (22/1993), s. 3(a), commenced as per s. 17(4); subsequently substituted as per F note above.
- E7** Previous affecting provision: proviso inserted after s. 2(2)(b) (1.10.1993) by *Unfair Dismissals (Amendment) Act 1993* (22/1993), s. 3(b), commenced as per s. 17(4), subsequently deleted as per F note above.
- E8** Previous affecting provision: application of section restricted (23.10.1981) by *Maternity Protection (Disputes and Appeals) Regulations 1981* (S.I. No. 357 of 1981), reg. 4; these regulations lapsed on repeal of parent Act (30.01.1995) by *Maternity Protection Act 1994* (34/1994), s. 6(1), S.I. No. 16 of 1995, subject to transitional and continuation provisions.
- E9** Previous affecting provision: subs. (2)(c) inserted (6.04.1981) by *Maternity Protection of Employees Act 1981* (2/1981), s. 24, commenced as per s. 1; substituted (30.01.1995) by *Maternity Protection Act 1994* (34/1994), s. 38(2), S.I. No. 16 of 1995; subsequently substituted as per F note above.

F22[Application of Act to certain civil servants.

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

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

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

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

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

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

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

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

Annotations

Amendments:

F22 Inserted (4.07.2006) by *Civil Service Regulation (Amendment) Act 2005* (18/2005), s. 22(b), S.I. No. 363 of 2006.

Dismissal during probation or training.

3.—(1) F23[Except in so far as any provision of this Act otherwise provides] This Act shall not apply in relation to the dismissal of an employee during a period starting with the commencement of the employment when he is on probation or undergoing training—

(a) if his contract of employment is in writing, the duration of the probation or training is 1 year or less and is specified in the contract, or

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

(2) This Act shall not apply in relation to the dismissal of an employee during a period starting with the commencement of the employment when he is undergoing training for the purpose of becoming qualified or registered, as the case may be, as

a nurse, pharmacist, health inspector, medical laboratory technician, occupational therapist, physiotherapist, speech therapist, radiographer or social worker.

Annotations

Amendments:

F23 Inserted (30.01.1995) by *Maternity Protection Act 1994* (34/1994), s. 38(3), S.I. No. 16 of 1995.

Modifications (not altering text):

C14 Application of section restricted (1.10.1993) by *Unfair Dismissals (Amendment) Act 1993* (22/1993), s. 14, commenced as per s. 17(4).

Dismissal of persons during apprenticeship, training, etc., or during first year of service, for trade union membership or activities.

14.—Sections 2 (1), 3 and 4 and subsections (1) and (6) of section 6 of the Principal Act shall not apply to a person referred to in paragraph (a) or (b) of the said section 2 (1) or the said section 3 or 4 who is dismissed if the dismissal results wholly or mainly from one or more of the matters referred to in subsection (2) (a) of the said section 6.

Dismissal during apprenticeship.

4.—F24[**Except in so far as any provision of this Act otherwise provides**] This Act shall not apply in relation to the dismissal of a person who is or was employed under a statutory apprenticeship if the dismissal takes place within 6 months after the commencement of the apprenticeship or within 1 month after the completion of the apprenticeship.

Annotations

Amendments:

F24 Inserted (30.01.1995) by *Maternity Protection Act 1994* (34/1994), s. 38(3), S.I. No. 16 of 1995.

Modifications (not altering text):

C15 Application of section restricted (1.10.1993) by *Unfair Dismissals (Amendment) Act 1993* (22/1993), s. 14, commenced as per s. 17(4).

Dismissal of persons during apprenticeship, training, etc., or during first year of service, for trade union membership or activities.

14.—Sections 2 (1), 3 and 4 and subsections (1) and (6) of section 6 of the Principal Act shall not apply to a person referred to in paragraph (a) or (b) of the said section 2 (1) or the said section 3 or 4 who is dismissed if the dismissal results wholly or mainly from one or more of the matters referred to in subsection (2) (a) of the said section 6.

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

5.—F25[(1) For the purposes of this Act (other than section 2 (4)), the lock-out of an employee shall be deemed to be a dismissal and the dismissal shall be deemed to be an unfair dismissal if, after the termination of the lock-out—

(a) the employee was not permitted to resume his employment on terms and conditions at least as favourable to the employee as those specified in paragraph (a) or (b) of subsection (1) of section 7 of this Act, and

(b) one or more other employees in the same employment were so permitted.

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

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

F26[(2A) Without prejudice to the applicability of any of the provisions of section 6 to the case, where—

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

in determining whether, in those circumstances, the dismissal is an unfair dismissal, the rights commissioner, the Tribunal or the Circuit Court, as the case may be, shall have regard, for that purpose only, to—

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

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

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

(5) In this section—

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

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

Annotations

Amendments:

F25 Substituted (1.10.1993) by *Unfair Dismissals (Amendment) Act 1993* (22/1993), s. 4, commenced as per s. 17(4).

F26 Inserted (8.05.2007) by *Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007* (27/2007), s. 26, commenced on enactment.

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

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

(a) the employee’s membership, or proposal that he or another person become a member, of, or his engaging in activities on behalf of, a trade union or excepted body under the Trade Union Acts, 1941 and 1971, where the times at which he engages in such activities are outside his hours of work or are times during his hours of work in which he is permitted pursuant to the contract of employment between him and his employer so to engage,

(b) the religious or political opinions of the employee,

(c) civil proceedings whether actual, threatened or proposed against the employer to which the employee is or will be a party or in which the employee was or is likely to be a witness,

(d) criminal proceedings against the employer, whether actual, threatened or proposed, in relation to which the employee has made, proposed or threatened to make a complaint or statement to the prosecuting authority or to any other authority connected with or involved in the prosecution of the proceedings or in which the employee was or is likely to be a witness,

F27[(dd) the exercise or proposed exercise by the employee of the right to parental leave, *force majeure* leave under and in accordance with the Parental Leave Act, 1998, or carer’s leave under and in accordance with the *Carer’s Leave Act, 2001*,]

F28[(e) the race, colour or sexual orientation of the employee,

(ee) the age of the employee,

(eee) the employee’s membership of the travelling community,]

F29[(f) the employee's pregnancy, attendance at ante-natal classes, giving birth or breastfeeding or any matters connected therewith,]

F29[(g) the exercise or proposed exercise by the employee of the right under the Maternity Protection Act 1994 to any form of protective leave or natal care absence, within the meaning of Part IV of that Act, or to time off from work to attend ante-natal classes in accordance with section 15A (inserted by section 8 of the *Maternity Protection (Amendment) Act 2004*), or to time off from work or a reduction of working hours for breastfeeding in accordance with section 15B (inserted by section 9 of the *Maternity Protection (Amendment) Act 2004*), of the first-mentioned Act,]

F30[(h) the exercise or contemplated exercise by an adoptive parent of the parent's right under the *Adoptive Leave Acts 1995 and 2005* to adoptive leave or additional adoptive leave or a period of time off to attend certain pre-adoption classes or meetings.]

F31[(2A) Sections 3 and 4 of this Act do not apply to a case falling within paragraph (f), (g) or (h) of subsection (2) of this section and, for the purposes of those paragraphs, 'employee' and 'adopting parent' include a person who would otherwise be excluded from this Act by paragraph (a), (c), (f) or (g) of section 2 (1) of this Act.]

F32[(2B) Sections 3 and 4 do not apply to a case falling within subsection (2)(dd) and, for the purpose of that paragraph, 'employee' includes a person who would otherwise be excluded from this Act by paragraph (a), (c), (f) or (g) of section 2(1).]

F33[(2C) Sections 3 and 4 do not apply to a case falling within subsection (2)(dd) and, for the purpose of that paragraph, 'employee' includes a person who would otherwise be excluded from this Act by paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i) or (j) of section 2(1).]

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

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

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

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

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

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

(b) A certificate purporting to be signed by the Minister for Defence and stating that a dismissal by the Minister for Defence of a civilian named in the certificate from employment with the Defence Forces under section 30 (1) (g) of the Defence Act, 1954, was for the purpose of safeguarding national security shall be evidence, for the purposes of this Act, of the facts stated in the certificate without further proof.

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

F28[(7) Without prejudice to the generality of subsection (1) of this section, in determining if a dismissal is an unfair dismissal, regard may be had, if the rights commissioner, the Tribunal or the Circuit Court, as the case may be, considers it appropriate to do so—

(a) to the reasonableness or otherwise of the conduct (whether by act or omission) of the employer in relation to the dismissal, and

(b) to the extent (if any) of the compliance or failure to comply by the employer, in relation to the employee, with the procedure referred to in section 14 (1) of this Act or with the provisions of any code of practice referred to in paragraph (d) (inserted by the *Unfair Dismissals (Amendment) Act, 1993*) of section 7 (2) of this Act.]

Annotations

Amendments:

F27 Substituted (2.07.2001) by *Carer's Leave Act 2001* (19/2001), s. 27(2)(a), commenced on enactment.

F28 Substituted (1.10.1993) by *Unfair Dismissals (Amendment) Act 1993* (22/1993), s. 5(a) and (b), commenced as per s. 17(4).

F29 Substituted (18.10.2004) by *Maternity Protection (Amendment) Act 2004* (28/2004), s. 23(b), S.I. No. 652 of 2004.

F30 Inserted (28.11.2005) by *Adoptive Leave Act 1995* (2/1995), s. 24, as substituted by *Adoptive Leave Act 2005* (25/2005), s. 19, S.I. No. 724 of 2005.

F31 Substituted (20.03.1995) by *Adoptive Leave Act 1995* (2/1995), s. 25, S.I. No. 64 of 1995.

F32 Inserted (3.12.1998) by *Parental Leave Act 1998* (30/1998) s. 25(2)(b), commenced as per s. 1(2).

F33 Inserted (2.07.2001) by *Carer's Leave Act 2001* (19/2001), s. 27(2)(b), commenced on enactment.

Modifications (not altering text):

C16 Application of subs. (2)(a) continued in certain circumstances (11.04.2003) by *European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003* (S.I. No. 131 of 2003), reg. 7(3).

Representation of employees.

7. ...

(3) If the term of office of the representatives of the employees affected by the transfer expires as a result of the transfer, the former representatives of the employees shall continue to enjoy the protection provided by section 6(2)(a) of the Unfair Dismissals Act 1977 (No. 10 of 1977) and any other enactment.

- C17** Application of subs. (2)(f) extended (10.12.2001) by *Standards in Public Office Act 2001* (31/2001), s. 5(3), S.I. No. 576 of 2001 and resolutions of both Houses of the Oireachtas.

Immunity etc., for complainants.

5.— ...

(3) Where an employer dismisses an employee to whom the Unfair Dismissals Act, 1977, applies and the dismissal constitutes disciplinary action taken in contravention of subsection (1) in relation to the employee, the dismissal is a dismissal deemed for the purposes of that Act, by virtue of section 6(2)(f) thereof, to be an unfair dismissal.

...

- C18** Application of subs. (6) not restricted (18.07.2001) by *European Communities (Burden of Proof in Gender Discrimination Cases) Regulations 2001* (S.I. No. 337 of 2001), reg. 3(2).

Burden of proof in gender discrimination cases

3. ...

(2) This Regulation is without prejudice to section 6(6) of the Act of 1977 or any other enactment or rule of law in relation to the burden of proof in proceedings which may be more favourable to such a person.

...

- C19** Requirement for one year's continuous employment excluded in certain circumstances (1.04.2000) by *National Minimum Wage Act 2000* (5/2000), s. 36(2), S.I. No. 96 of 2000.

Prohibition of victimisation of employee by employer.

36.— ...

(2) Dismissal of an employee in contravention of subsection (1) shall be deemed to be an unfair dismissal of the employee within the meaning and for the purposes of section 6(1) of the Unfair Dismissals Acts, 1977 to 1993 (but without prejudice to sections 2 to 5 of the Unfair Dismissals Act, 1977, except that it is not necessary for the employee to have at least one year's continuous service with the employer and that Act shall apply as if the Worker Protection (Regular Part-Time Employees) Act, 1991, were repealed in relation to the number of hours an employee is normally expected to work for the purposes of that Act) and those Acts, with the necessary modifications, shall apply accordingly.

...

- C20** Application of subss. (1) and (6) restricted (1.10.1993) by *Unfair Dismissals (Amendment) Act 1993* (22/1993), s. 14, commenced as per s. 17(4).

Dismissal of persons during apprenticeship, training, etc., or during first year of service, for trade union membership or activities.

14.—Sections 2 (1), 3 and 4 and subsections (1) and (6) of section 6 of the Principal Act shall not apply to a person referred to in paragraph (a) or (b) of the said section 2 (1) or the said section 3 or 4 who is dismissed if the dismissal results wholly or mainly from one or more of the matters referred to in subsection (2) (a) of the said section 6.

Editorial Notes:

- E10** Previous affecting provision: subss. (2)(dd) and (2B) inserted (3.12.1998) by *Parental Leave Act 1998* (30/1998), s. 25(2)(a), commenced as per s. 1(2); subsequently superseded as per F note above.

E11 Previous affecting provisions: subs. (2)(f)(g) substituted and subs. (2A) inserted (30.01.1995) by *Maternity Protection Act 1994* (34/1994), s. 38(5), S.I. No. 16 of 1995; subsequently superseded as per F note above.

Redress for unfair dismissal.

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

(a) re-instatement by the employer of the employee in the position which he held immediately before his dismissal on the terms and conditions on which he was employed immediately before his dismissal together with a term that the re-instatement shall be deemed to have commenced on the day of the dismissal, or

(b) re-engagement by the employer of the employee either in the position which he held immediately before his dismissal or in a different position which would be reasonably suitable for him on such terms and conditions as are reasonable having regard to all the circumstances, or

F34[(c) (i) if the employee incurred any financial loss attributable to the dismissal, payment to him by the employer of such compensation in respect of the loss (not exceeding in amount 104 weeks remuneration in respect of the employment from which he was dismissed calculated in accordance with regulations under section 17 of this Act) as is just and equitable having regard to all the circumstances, or

(ii) if the employee incurred no such financial loss, payment to the employee by the employer of such compensation (if any, but not exceeding in amount 4 weeks remuneration in respect of the employment from which he was dismissed calculated as aforesaid) as is just and equitable having regard to all the circumstances,

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

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

(a) the extent (if any) to which the financial loss referred to in that subsection was attributable to an act, omission or conduct by or on behalf of the employer,

(b) the extent (if any) to which the said financial loss was attributable to an action, omission or conduct by or on behalf of the employee,

(c) the measures (if any) adopted by the employee or, as the case may be, his failure to adopt measures, to mitigate the loss aforesaid, F35[...]

F34[(d) the extent (if any) of the compliance or failure to comply by the employer, in relation to the employee, with the procedure referred to in subsection (1) of section 14 of this Act or with the provisions of any code of practice relating to procedures regarding dismissal approved of by the Minister,

(e) the extent (if any) of the compliance or failure to comply by the employer, in relation to the employee, with the said section 14, and

(f) the extent (if any) to which the conduct of the employee (whether by act or omission) contributed to the dismissal.]

F36[(2A) In calculating financial loss for the purposes of subsection (1), payments to the employee—

(a) under the Social Welfare Acts, 1981 to 1993, in respect of any period following the dismissal concerned, or

(b) under the Income Tax Acts arising by reason of the dismissal,

shall be disregarded.]

(3) In this section—

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

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

Annotations

Amendments:

- F34** Substituted (1.10.1993) by *Unfair Dismissals (Amendment) Act 1993* (22/1993), s. 6(a) and (b), commenced as per s. 17(4).
- F35** Deleted (1.10.1993) by *Unfair Dismissals (Amendment) Act 1993* (22/1993), s. 6(b), commenced as per s. 17(4).
- F36** Inserted (1.10.1993) by *Unfair Dismissals (Amendment) Act 1993* (22/1993), s. 6(c), commenced as per s. 17(4).

Modifications (not altering text):

- C21** Subss. (1)(c) and (2) substituted in certain circumstances (for period 8.05.2007 to 8.05.2013) by *Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007* (27/2007), ss. 3, 9(3), commenced on enactment and extended by S.I. No. 197 of 2010.

Effect of opinion.

9. — ...

(3) Section 7 of the Unfair Dismissals Act 1977 has effect in relation to a dismissal that is one of a number of dismissals included in a collective redundancy that is determined by the Labour Court, in an opinion given under section 8, to be an exceptional collective redundancy as if—

(a) the following paragraph were substituted for paragraph (c) of subsection (1) of section 7:

“(c) payment by the employer to the employee of such compensation as is just and equitable having regard to all the circumstances but does not exceed in amount remuneration in respect of the employment from which the employee was dismissed (calculated in accordance with regulations under section 17 of this Act) for—

(i) in the case of an employee who, at the date of the dismissal, had not more than 20 years’ continuous service — 208 weeks, or

(ii) in the case of an employee who, at the date of the dismissal, had more than 20 years’ continuous service — 260 weeks.”,

and

(b) the following subsection were substituted for subsection (2) of section 7:

“(2) Without prejudice to the generality of subsection (1), in determining any reduction in the amount of compensation otherwise payable under paragraph (c) of that subsection regard

shall be had only to the amount (if any) of severance or redundancy payment accepted by the employee in relation to the dismissal.”.

Editorial Notes:

E12 Previous affecting provision: application of section potentially restricted (1.07.1977) by *Employment Equality Act 1977* (16/1977), s. 27(3), S.I. No. 176 of 1977; repealed (18.10.1999) by *Employment Equality Act 1998* (21/1998), s. 5(1), S.I. No. 230 of 1999, subject to continued operation of certain orders.

Determination of claims for unfair dismissal.

8.—(1) A claim by an employee against an employer for redress under this Act for unfair dismissal may be brought by the employee before a rights commissioner or the Tribunal and the commissioner or Tribunal shall hear the parties and any evidence relevant to the claim tendered by them and, in the case of a rights commissioner, shall make a recommendation in relation to the claim, and, in the case of the Tribunal, shall make a determination in relation to the claim.

F37[(1A) There shall be included in—

- (a) a recommendation of a rights commissioner under subsection (1) of this section,
- (b) a determination of the Tribunal under the said subsection (1), and
- (c) an order of the Circuit Court, under section 11 of the *Unfair Dismissals (Amendment) Act, 1993*,

under which specified redress under this Act is awarded to an employee a statement of the reasons why either of the other forms of redress specified in section 7 (1) of this Act was not awarded to the employee.

(2) A claim for redress under this Act shall be initiated by giving a notice in writing (containing such particulars (if any) as may be specified in regulations under section 17 of this Act made for the purposes of subsection (8) of this section) to a rights commissioner or the Tribunal, as the case may be—

- (a) within the period of 6 months beginning on the date of the relevant dismissal, or
- (b) if the rights commissioner or the Tribunal, as the case may be, is satisfied that exceptional circumstances prevented the giving of the notice within the period aforesaid, then, within such period not exceeding 12 months from the date aforesaid as the rights commissioner or the Tribunal, as the case may be, considers reasonable,

and a copy of the notice shall be given by the rights commissioner or the Tribunal, as the case may be, to the employer concerned as soon as may be after the receipt of the notice by the rights commissioner or the Tribunal.

(3) A rights commissioner shall not hear a claim for redress under this Act if—

- (a) the Tribunal has made a determination in relation to the claim, or
- (b) any party concerned notifies the rights commissioner in writing, within 21 days of the giving to the employer pursuant to subsection (2) of this section of the copy of the notice concerned referred to in that subsection and relating to the claim, that he objects to the claim being heard by a rights commissioner.

(4) (a) Where a recommendation of a rights commissioner in relation to a claim for redress under this Act has not been carried out by the employer concerned in accordance with its terms, the time for bringing an appeal against the recommendation has expired and no such appeal has been brought, the

employee concerned may bring the claim before the Tribunal and the Tribunal shall, notwithstanding subsection (5) of this section, without hearing the employer concerned or any evidence (other than in relation to the matters aforesaid), make a determination to the like effect as the recommendation.

(b) The bringing of a claim before the Tribunal by virtue of this subsection shall be effected by giving to the Tribunal a notice in writing containing such particulars (if any) as may be specified in regulations under section 17 of this Act made for the purposes of subsection (8) of this section.]

(5) F38[...] the Tribunal shall not hear a claim for redress under this Act (except by way of appeal from a recommendation of a rights commissioner)—

(a) if a rights commissioner has made a recommendation in relation to the claim, or

F39[(b) unless, before the commencement of the hearing of the claim, one of the parties concerned notifies in writing—

(i) in a case where the claim has been initiated before a rights commissioner, the rights commissioner, or

(ii) in any other case, the Tribunal,

that he objects to the claim being heard by a rights commissioner.]

(6) Proceedings under this section before a rights commissioner shall be conducted otherwise than in public.

(7) A rights commissioner shall notify the Tribunal of any recommendation he makes under this section.

(8) Regulations under section 17 of this Act may provide for all or any of the following matters and for anything consequential thereon or incidental or ancillary thereto—

(a) the procedure to be followed regarding the bringing of claims under this section or appeals under section 9 of this Act before the Tribunal,

(b) the times and places of hearings by the Tribunal,

(c) the representation of parties attending hearings by the Tribunal,

(d) procedure regarding the hearing of such claims and appeals as aforesaid by the Tribunal,

(e) publication and notification of determinations of the Tribunal,

(f) the particulars to be contained in the notices referred to in subsections (2) and (4) of this section and section 9 of this Act,

(g) the award by the Tribunal of costs and expenses in relation to such claims and appeals as aforesaid and the payment thereof.

(9) Section 21 (2) of the Industrial Relations Act, 1946, shall apply in relation to all proceedings before the Tribunal as if the references in that section to the Labour Court were references to the Tribunal and subsection (17) of section 39 of the Redundancy Payments Act, 1967, shall apply in relation to proceedings before the Tribunal under this Act as it applies to matters referred to it under the said section 39 F40[with the substitution in paragraph (e) of the said subsection (17) of 'a fine not exceeding £1,000' for 'a fine not exceeding twenty pounds'].

F41[(10) (a) A dispute in relation to a dismissal as respects which a recommendation has been made by a rights commissioner under this Act or a hearing by the Tribunal under this Act has commenced shall not be referred, under the

Industrial Relations Acts, 1946 to 1990, to a rights commissioner or the Labour Court.

(b) Where, in relation to a dismissal, a recommendation has been made by a rights commissioner, or a hearing by the Labour Court under the said Acts has commenced, the employee concerned shall not be entitled to redress under this Act in respect of the dismissal.

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

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

Annotations

Amendments:

- F37** Substituted (1.10.1993) by *Unfair Dismissals (Amendment) Act 1993* (22/1993), s. 7(a), commenced as per s. 17(4).
- F38** Deleted (1.10.1993) by *Unfair Dismissals (Amendment) Act 1993* (22/1993), s. 7(b)(i), commenced as per s. 17(4).
- F39** Substituted (1.10.1993) by *Unfair Dismissals (Amendment) Act 1993* (22/1993), s. 7(b)(ii), commenced as per s. 17(4).
- F40** Inserted (1.10.1993) by *Unfair Dismissals (Amendment) Act 1993* (22/1993), s. 7(c), commenced as per s. 17(4).
- F41** Substituted (1.10.1993) by *Unfair Dismissals (Amendment) Act 1993* (22/1993), s. 7(d), commenced as per s. 17(4).

Editorial Notes:

- E13** Previous affecting provision: subs. (4)(a) modified for the purposes of *Maternity Protection of Employees Act 1981* (2/1981), s. 27 (23.10.1981) by *Maternity Protection (Disputes and Appeals) Regulations 1981* (S.I. No. 357 of 1981), reg. 6; 1981 Act subsequently repealed (30.01.1995) by *Maternity Protection Act 1994* (34/1994), s. 6(1), S.I. No. 16 of 1995, subject to transitional and continuation provisions.
- E14** Previous affecting provision: section applied with modifications (6.04.1981) by *Maternity Protection of Employees Act 1981* (2/1981), s. 27(3), commenced as per s. 1; subsequently repealed (30.01.1995) by *Maternity Protection Act 1994* (34/1994), s. 6(1), S.I. No. 16 of 1995, subject to transitional and continuation provisions.

Appeal from recommendation of rights commissioner.

9.—(1) A party concerned may appeal to the Tribunal from a recommendation of a rights commissioner in relation to a claim for redress under this Act and the Tribunal shall hear the parties and any evidence relevant to the appeal tendered by them and shall make a determination in relation to the appeal.

(2) An appeal under this section shall be initiated by a party by giving, within 6 weeks of the date on which the recommendation to which it relates was given to the parties concerned, a notice in writing (containing such particulars (if any) as may be specified in regulations under section 17 of this Act for the purposes of section 8 (8)

thereof) to the Tribunal and stating the intention of the party concerned to appeal against the recommendation and a copy of the notice shall be given to the other party concerned F42[by the Tribunal as soon as may be after the receipt by it of the notice.]

Annotations

Amendments:

F42 Substituted (1.10.1993) by *Unfair Dismissals (Amendment) Act 1993* (22/1993), s. 8, commenced as per s. 17(4).

Editorial Notes:

E15 Previous affecting provision: section applied with modifications (6.04.1981) by *Maternity Protection of Employees Act 1981* (2/1981), s. 27(3), commenced as per s. 1; repealed (30.01.1995) by *Maternity Protection Act 1994* (34/1994), s. 6(1), S.I. No. 16 of 1995, subject to transitional and continuation provisions.

Proceedings in Circuit Court for redress under Act.

10.—F43[...]

Annotations

Amendments:

F43 Repealed (1.10.1993) by *Unfair Dismissals (Amendment) Act 1993* (22/1993), s. 16, commenced as per s. 17(4)

Editorial Notes:

E16 Previous affecting provision: section applied with modifications (6.04.1981) by *Maternity Protection of Employees Act 1981* (2/1981), s. 27(3), commenced as per s. 1; repealed (30.01.1995) by *Maternity Protection Act 1994* (34/1994), s. 6(1), S.I. No. 16 of 1995, subject to transitional and continuation provisions.

Service of documents on bodies.

11.—Any summons or other document required to be served for the purpose or in the course of any proceedings under this Act on a body corporate or an unincorporated body of persons may be served by leaving it at or sending it by post to the registered office for the purpose of the Companies Act, 1963, of that body or, if there is no such office, by leaving it at or sending it by post to any place in the State at which that body conducts its business.

Annotations

Editorial Notes:

E17 Previous affecting provision: section applied with modifications (6.04.1981) by *Maternity Protection of Employees Act 1981* (2/1981), s. 27(3), commenced as per s. 1; repealed (30.01.1995) by *Maternity Protection Act 1994* (34/1994), s. 6(1), S.I. No. 16 of 1995, subject to transitional and continuation provisions.

Provisions relating to winding up and bankruptcy.

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

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

Avoidance of certain provisions in agreements.

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

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

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

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

F44[(3) The reference in subsection (1) of this section to a procedure is a reference to a procedure that has been agreed upon by or on behalf of the employer concerned and by the employee concerned or a trade union or an excepted body within the meaning of the Trade Union Act, 1941, representing him or has been established by the custom and practice of the employment concerned, and the references in subsection (2) of this section to an alteration in the said procedure are references to an alteration that has been agreed upon by the employer concerned or a person representing him and by the employee concerned or a trade union, or an excepted body, within the meaning aforesaid, representing him.

(4) Where an employee is dismissed, the employer shall, if so requested, furnish to the employee within 14 days of the request, particulars in writing of the principal grounds for dismissal, but, in determining for the purposes of this Act whether, in accordance with the provisions of this Act, the dismissal was an unfair dismissal, there may be taken into account any other grounds which, subject to the provisions of this Act and having regard to all the circumstances, are substantial grounds justifying the dismissal.]

Annotations

Amendments:

F44 Substituted (1.10.1993) by *Unfair Dismissals (Amendment) Act 1993* (22/1993), s. 9, commenced as per s. 17(4).

Alternative remedies of employee.

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

F45[(2) Where a recommendation has been made by a rights commissioner in respect of a claim by an employee for redress under this Act or the hearing of a claim by the Tribunal has commenced, the employee shall not be entitled to recover damages at common law for wrongful dismissal in respect of the dismissal concerned.

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

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

Annotations

Amendments:

F45 Substituted (1.10.1993) by *Unfair Dismissals (Amendment) Act 1993* (22/1993), s. 10, commenced as per s. 17(4).

Amendment of Act by order of Minister.

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

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

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

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

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

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

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

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

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

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

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

Regulations. **17.**—(1) The Minister may make regulations for the purposes of sections 7 (1) (c) and 8 (8) of this Act and for the purpose of enabling any other provisions of this Act to have full effect.

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

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

Annotations

Editorial Notes:

E18 Power pursuant to section exercised (14.09.1977) by *Unfair Dismissals (Calculation of Weekly Remuneration) Regulations 1977* (S.I. No. 287 of 1977).

E19 Power pursuant to section exercised (14.09.1977) by *Unfair Dismissals (Claims and Appeals) Regulations 1977* (S.I. No. 286 of 1977).

Employment Appeals Tribunal. **18.**—The tribunal established by section 39 of the Redundancy Payments Act, 1967, shall be known as the Employment Appeals Tribunal and references in that Act and any other Act of the Oireachtas and any instrument made under any Act of the Oireachtas to the Redundancy Appeals Tribunal shall be construed as references to the Employment Appeals Tribunal.

Repayment of moneys paid under Redundancy Payments Acts, 1967 and 1973. **19.**—Where an employee is re-instated or re-engaged by an employer in pursuance of a determination or order under this Act in relation to the dismissal of the employee by the employer, any payments made under the Redundancy Payments Acts, 1967 and 1973, in relation to the dismissal shall be repaid by the person to whom they were made to the person by whom they were made and may be recovered by the latter from the former as a simple contract debt in any court of competent jurisdiction and any moneys due and owing to any person under those Acts in relation to the dismissal shall cease to be due or owing.

Amendment of First Schedule to Minimum Notice and Terms of Employment Act, 1973. **20.**—The First Schedule to the Minimum Notice and Terms of Employment Act, 1973, is hereby amended by the substitution of the following paragraphs for paragraphs 5 and 7:

“5. An employee who claims and receives redundancy payment in respect of lay-off or short time shall be deemed to have voluntarily left his employment.

7. Where the whole or part of a trade, business or undertaking was or is transferred to another person either before or after the passing of this Act, the service of an employee in the trade, business or undertaking, or the part thereof, so transferred shall be reckoned as part of the service of the employee with the transferee and the transfer shall not operate to break the continuity of the service of the employee.”.

Expenses. **21.**—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Short title and
commencement.

22.—(1) This Act may be cited as the Unfair Dismissals Act, 1977.

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

Annotations

Editorial Notes:

E27 Power pursuant to section exercised (9.05.1977) by *Unfair Dismissals Act, 1977 (Commencement) Order 1977* (S.I. No. 138 of 1977).

2. The 9th day of May, 1977, is hereby appointed to be the day on which the Unfair Dismissals Act, 1977 (No. 10 of 1977), shall come into operation.

[1977.]

Unfair Dismissals Act 1977

[No. 10.]

ACTS REFERRED TO

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