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Explanatory Memorandum](#)

**AN BILLE CAIDRIMH THIONSCAIL (LEASÚ) (UIMH. 2),
2011**
**INDUSTRIAL RELATIONS (AMENDMENT) (NO. 2) BILL
2011**

Mar a tionscnaíodh
As initiated

ARRANGEMENT OF SECTIONS

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PRELIMINARY AND GENERAL.

Section

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2. Definitions.

PART 2

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3. Amendment of section 25 of Act of 1946.
4. Amendment of section 27 of Act of 1946.
5. Amendment of section 28 of Act of 1946.
6. Amendment of section 29 of Act of 1946.

PART 3

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7. Amendment of section 34 of Act of 1946.
8. Amendment of section 42 of Act of 1946.
9. Amendment of section 43 of Act of 1946.
10. Amendment of section 23 of Act of 1990.
11. Amendment of section 48 of Act of 1990.

[No. 40 of 2011]

12. Amendment of Fifth Schedule to Act of 1990.
13. Consequential amendments.

ACTS REFERRED TO

Employment Permits Act 2006	2006, No. 16
Employment Permits Acts 2003 and 2006	
Industrial Relations Act 1946	1946, No. 26
Industrial Relations Act 1990	1990, No. 19
Industrial Relations Acts 1946 to 2004	
Organisation of Working Time Act 1997	1997, No. 20



AN BILLE CAIDRIMH THIONSCAIL (LEASÚ) (UIMH. 2)
2011
INDUSTRIAL RELATIONS (AMENDMENT) (NO. 2) BILL
2011

BILL

entitled

5
10 AN ACT TO MAKE FURTHER AND BETTER PROVISION
FOR PROMOTING HARMONIOUS RELATIONS
BETWEEN WORKERS AND EMPLOYERS, TO AMEND
AND EXTEND THE INDUSTRIAL RELATIONS ACTS
1946 TO 2004, TO AMEND THE EMPLOYMENT PERMITS
ACT 2006 AND THE ORGANISATION OF WORKING
TIME ACT 1997, AND TO PROVIDE FOR RELATED
MATTERS.

15 BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL.

1.—(1) This Act may be cited as the Industrial Relations
(Amendment) Act 2011.

Short title,
collective citation,
construction and
commencement.

20 (2) The Industrial Relations Acts 1946 to 2004 and this Act (other
than *section 13*) may be cited together as the Industrial Relations
Acts 1946 to 2011 and shall be construed together as one.

25 (3) The Employment Permits Acts 2003 and 2006 and *section*
13(1) may be cited together as the Employment Permits Acts 2003
to 2011 and shall be construed together as one.

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

30 2.—In this Act—

Definitions.

“Act of 1946” means the Industrial Relations Act 1946;

“Act of 1990” means the Industrial Relations Act 1990.

PART 2

AMENDMENTS TO PART III OF INDUSTRIAL RELATIONS ACT 1946.

Amendment of section 25 of Act of 1946.

3.—Section 25 of the Act of 1946 is amended—

- (a) by deleting the definition of “registered”, and
- (b) by substituting the following definition for the definition of “registered employment agreement”:

“the expression ‘registered employment agreement’ means—

- (a) in the case of an agreement registered before the commencement of *Part 2* of the *Industrial Relations (Amendment) Act 2011*, an employment agreement for the time being registered in the register, and
- (b) in the case of an agreement registered after the commencement of *Part 2* of the *Industrial Relations (Amendment) Act 2011*, an employment agreement for the time being registered in the register, the terms of which have been confirmed by order of the Minister under section 27 of this Act,

and the word ‘registered’ shall be construed accordingly.”.

Amendment of section 27 of Act of 1946.

4.—Section 27 of the Act of 1946 is amended by inserting the following subsection after subsection (5):

- “(5A) (a) Where, after the commencement of *Part 2* of the *Industrial Relations (Amendment) Act 2011*, the Court registers an employment agreement, the Court shall forward a copy of the agreement to the Minister.
- (b) As soon as practicable after receipt of a copy of the agreement, the Minister shall by order confirm the terms of the agreement, from such date (on or after the date of the order) as the Minister shall specify in the order.
- (c) Every order under paragraph (b) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.
- (d) Nothing in this subsection shall affect the validity of an employment agreement registered before the commencement of *Part 2* of the *Industrial Relations (Amendment) Act 2011*.”.

Amendment of section 28 of Act of 1946.

5.—Section 28 of the Act of 1946 is amended—

(a) by repealing subsection (2)(c), and

(b) by inserting the following subsection after subsection (2):

5 “(3) (a) Where, after the commencement of *Part 2* of the
Industrial Relations (Amendment) Act 2011, the Court makes an order varying an agree-
ment (in this subsection known as a ‘variation
order’) the Court shall forward a copy of the
variation order to the Minister.

10 (b) As soon as practicable after receipt of a copy of
the variation order, the Minister shall by order
confirm the terms of the variation order, from
such date (on or after the date of the order) as
the Minister shall specify in the order.

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

25 (d) Nothing in this subsection shall affect the val-
idity of an order varying a registered employ-
ment agreement made before the commence-
ment of *Part 2* of the *Industrial Relations
(Amendment) Act 2011*.”.

6.—Section 29 of the Act of 1946 is amended by inserting the fol-
lowing subsection after subsection (5):

Amendment of
section 29 of Act of
1946.

30 “(6) (a) Where, after the commencement of *Part 2* of the
Industrial Relations (Amendment) Act 2011, the
Court cancels the registration of an agreement, the
Court shall forward a copy of the cancellation to
the Minister.

35 (b) As soon as practicable after receipt of a copy of the
cancellation, the Minister shall by order confirm the
terms of the cancellation, from such date (on or after
the date of the order) as the Minister shall specify in
the order.

40 (c) Every order under paragraph (b) shall be laid before
each House of the Oireachtas as soon as may be
after it is made and, if a resolution annulling the
order is passed by either such House within the next
21 days on which that House has sat after the order
45 is laid before it, the order shall be annulled accord-
ingly, but without prejudice to the validity of any-
thing previously done thereunder.”.

PART 3

MISCELLANEOUS AMENDMENTS.

Amendment of section 34 of Act of 1946.

7.—Section 34 of the Act of 1946 is amended by substituting the following definition for the definition of “employment regulation order”:

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“the expression ‘employment regulation order’ means—

- (a) in the case of an order made before the commencement of section 9 of the *Industrial Relations (Amendment) Act 2011*, an order made by the Court under section 48 of the Industrial Relations Act 1990, and 10
- (b) in the case of an order made after the commencement of section 9 of the *Industrial Relations (Amendment) Act 2011*, an order made by the Minister under section 43 of this Act;”. 15

Amendment of section 42 of Act of 1946.

8.—Section 42 of the Act of 1946 is amended—

(a) by inserting the following subsection after subsection (2):

“(2A) When formulating proposals to submit to the Court pursuant to subsection (1) or (2), a joint labour committee shall have regard to the following— 20

- (a) the legitimate interests of the workers,
- (b) the legitimate interests of the employers,
- (c) the prevailing economic circumstances,
- (d) the prevailing employment circumstances of the workers, 25
- (e) the prevailing commercial circumstances of the employers,
- (f) the terms of any national agreement relating to pay and conditions, for the time being in force.”. 30

and

(b) by inserting the following subsection after subsection (3):

“(4) Notwithstanding subsection (3), where an employment regulation order has been in force for less than 6 months, a joint labour committee may submit proposals for revoking or amending the order where it is satisfied that— 35

- (a) the order contains an error, or
- (b) exceptional circumstances exist which warrant the revocation or amendment.”. 40

9.—Section 43 of the Act of 1946 is amended—

Amendment of
section 43 of Act of
1946.

(a) by substituting the following subsection for subsection (2):

5 “(2) Where, after the commencement of *section 9* of the
Industrial Relations (Amendment) Act 2011, the Court
adopts the proposals of a joint labour committee it shall
forward a copy of the proposals to the Minister.”,

(b) by inserting the following subsection after subsection (2):

10 “(2A) (a) The Minister shall, as soon as practicable after
receipt of a copy of the proposals from the
Court, make an employment regulation order
giving effect to such proposals and, on the
15 making of such order, the Minister shall for-
ward a copy of the order to the Court and the
Court shall publish notice of the making of the
order and the contents thereof in the pre-
scribed manner.

20 (b) Nothing in this subsection shall affect the val-
idity of an employment regulation order made
before the commencement of *section 9* of the
Industrial Relations (Amendment) Act 2011.”,

and

(c) by inserting the following subsection after subsection (5):

25 “(6) Every order under subsection (2A) shall be laid
before each House of the Oireachtas as soon as may be
after it is made and, if a resolution annulling the order is
passed by either such House within the next 21 days on
which that House has sat after the order is laid before it,
30 the order shall be annulled accordingly, but without preju-
dice to the validity of anything previously done
thereunder.”.

10.—Section 23 of the Act of 1990 is amended—

Amendment of
section 23 of Act of
1990.

(a) in subsection (1), by substituting the following paragraphs
for paragraphs (c) to (f):

35 “(c) a teacher in a national school, or

(cc) a teacher employed by a vocational education
committee.”,

and

(b) by repealing subsections (2), (5) and (6).

11.—Section 48 of the Act of 1990 is amended by substituting the
40 following subsections for subsections (3), (4) and (5):

Amendment of
section 48 of Act of
1990.

“(3) When proposals for an employment regulation order are
submitted to the Court, the chairman of the committee shall
submit—

- (a) a report to the Court on the circumstances surrounding their adoption,
 - (b) a copy of all written submissions considered by the committee when formulating the proposals,
 - (c) a copy of any other documentation considered by the committee when formulating the proposals. 5
- (4) (a) When considering whether to adopt the proposals of a joint labour committee, the Court shall consider any reports, submissions or other documentation submitted pursuant to subsection (3), and where it considers it appropriate to do so, hear all parties appearing to the Court to be interested and desiring to be heard. 10
- (b) The Court may, as it thinks proper, adopt the proposals of a joint labour committee. 15
- (5) (a) Where the Court is not satisfied that it should adopt the proposals of a joint labour committee, it may submit to the committee amended proposals which the Court is willing to adopt.
- (b) The committee may, if it thinks fit, re-submit the amended proposals, with or without modifications, to the Court. 20
- (c) The Court may, as it thinks proper, adopt the proposals as re-submitted under paragraph (b) or refuse to adopt the proposals.”. 25

Amendment of Fifth Schedule to Act of 1990.

12.—The Fifth Schedule to the Act of 1990 is amended by substituting the following subparagraph for subparagraph (4) of paragraph 2:

- “(4) (a) Subject to clauses (b) and (c), the independent member of a committee shall hold office for a period not exceeding 5 years. 30
- (b) The independent member of a committee shall cease to hold office on attaining the age of 65 years.
- (c) The independent member of a committee, who holds office on the commencement of *section 12* of the *Industrial Relations (Amendment) Act 2011*, shall hold office for a period not exceeding 3 years from the commencement of that section.”. 35

Consequential amendments.

13.—(1) Section 1 of the Employment Permits Act 2006 is amended by substituting the following definition for the definition of “employment regulation order”: 40

“ ‘employment regulation order’ means an employment regulation order within the meaning of the *Industrial Relations Acts 1946 to 2011*;”.

(2) Section 2 of the Organisation of Working Time Act 1997 is amended by substituting the following definition for the definition of “employment regulation order”:

5 “ ‘employment regulation order’ means an employment regulation order within the meaning of the *Industrial Relations Acts 1946 to 2011*;



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**AN BILLE CAIDRIMH THIONSCAIL (LEASÚ) (UIMH. 2),
2011
INDUSTRIAL RELATIONS (AMENDMENT) (NO. 2) BILL
2011**

EXPLANATORY MEMORANDUM

Introduction

The main purpose of the Bill is to strengthen the existing system for the making both the Employment Regulation Orders (ERO) and Registered Employment Agreements (REA) and to provide for their continued effective operation. The Bill also provides for the amendment of the definition of “worker” under Section 23 of the Industrial Relations Act 1990.

PART 1

Preliminary and General

Section 1 provides for the short title, collective citation, construction and commencement provisions of the Bill.

Section 2 provides for the definitions associated with the Bill.

PART 2

Amendments to Part III of Industrial Relations Act 1946

Section 3 provides for a new definition of “registered employment agreement” to differentiate those made before the commencement of this Act (i.e. registered by the Labour Court) and those made after the commencement of this Act (i.e. those registered agreements that have been confirmed by Ministerial order).

Section 4 provides for the confirmation by order of a Registered Employment Agreement by the Minister. Following receipt of a copy of an agreement, the Minister shall make an order confirming the terms of the agreement. The standard legislative provision dealing with the laying of the order before the Oireachtas by the Minister will apply. Section 4 also provides that the introduction of the new procedure will not detract from the validity of an existing REA made before the commencement of this Act.

Sections 5 and 6 provide for the same procedure as under Section 4 in respect of an order to vary an agreement or to cancel an agreement respectively.

PART 3

Miscellaneous Amendments

Section 7 provides for a new definition of “employment regulation order” to differentiate those made before the commencement of this Act (i.e. orders made by the Labour Court) and those made after the commencement of this Act (i.e. by Ministerial order).

Section 8 provides for the “principles and policies” to which a Joint Labour Committee (JLC) must have regard when formulating proposals to submit to the Labour Court for Employment Regulation Orders.

In this context, a JLC must have regard to:

- the legitimate interests of the workers,
- the legitimate interests of the employers,
- the prevailing economic circumstances,
- the prevailing employment circumstances of the workers,
- the prevailing commercial circumstances of the employers,
- the terms of any national agreement relating to pay and conditions, for the time being in force.

Section 8 also provides that where an employment regulation order has been in force for less than 6 months, a Joint Labour Committee may submit proposals for revoking or amending the order where it is satisfied that—

- (a) the order contains an error, or
- (b) exceptional circumstances exist which warrant the revocation or amendment.

Section 9 provides for the making of an ERO by the Minister. Following adoption of a proposal for an ERO by the Labour Court, the proposals will be forwarded to the Minister who shall make an order giving effect to the proposals. The standard legislative provision dealing with the laying of the order before the Oireachtas by the Minister will apply. Section 9 also provides that the introduction of the new procedure will not detract from the validity of an existing ERO made before the commencement of this Act.

Section 10 provides for the amendment of the definition of “worker” under Section 23 of the Industrial Relations Act 1990. Access to the dispute settling agencies — Labour Relations Commission, Labour Court and Rights Commissioner Service — is governed by the definition of “worker” in Section 23. At present, vocational education committee (VEC) officers do not have access to these agencies as they are specifically excluded from the definition of “worker”. Up to now these officers have been served by a scheme of Conciliation and Arbitration, but they now wish to be able to access the dispute settling agencies like workers generally. This

amendment would allow officers of VECs, other than teachers, access to the dispute settling agencies.

Section 10 also provides for the deletion of Sections 23(2), (5) and (6) of the 1990 Act. Section 23(5) provides that the Government may by order amend the definition of “worker” in subsection (1) of Section 23 and may by order revoke or amend any such order. Section 23(6) deals with the laying of such orders before the Houses of the Oireachtas. The effect of these amendments is to remove the power to make changes in the definition of worker by Ministerial order and to ensure, in line with the decision in the case of *Mulcreavy v the Minister for Environment and Local Government* [2004] 1 IR 72, that future changes in the definition of worker will be made by primary legislation. Moreover, the Industrial Relations Act of 1990 (Definition of “Worker”) Order of 1998 (S.I. No. 264 of 1998) amended the definition of “worker” in Section 23(1) of the Industrial Relations Act of 1990 in order to give officers of local authorities (including health boards) access to the Labour Relations Commission, Labour Court and Rights Commissioners. Since it is considered unsafe to rely on changes made to statute by secondary legislation, it is now proposed to make the amendment in primary legislation. The definition of “local authority” contained in Section 23(2) of the 1990 Act should be deleted in consequence.

Section 11 provides for improved procedures to be followed when formulating proposals for an ERO. The High Court challenge concerning the Hotels Joint Labour Committee was determined on procedural grounds following acceptance that the JLC had failed to forward to the Labour Court a submission made to it by the Irish Hotels Federation. The current legislation merely requires that, when proposals for the making of an ERO are being forwarded to the Labour Court, the JLC Chairman must submit a report to the Court on the circumstances surrounding their adoption by the JLC. The Bill provides that, in future, the Chairman of the JLC shall forward to the Labour Court, in addition to a report on the circumstances surrounding their adoption, copies of all written submissions and any other documentation considered by the JLC in formulating its proposals. The Labour Court will consider the material forwarded to it in considering the JLC’s proposals and may hold a hearing where there are objections to the proposals.

Section 12 provides that the term of office of a Chairman of a JLC shall not exceed 5 years and shall cease to hold office on attaining the age of 65. An existing JLC Chairman shall hold office for no longer than 3 years following the enactment of the Act.

Section 13 provides for consequential amendments to the Employment Permits Act 2006 and the Organisation of Working Time Act 1997.

Financial Implications of the Bill

The Bill has no direct financial implications for the Exchequer.

*Deputy Peadar Tóibín T.D.,
Iúil, 2011.*