

WORKPLACE RELATIONS REFORM

Introduction

The Minister for Jobs, Enterprise and Innovation, Mr Richard Bruton T.D. proposes to replace the current complex and outdated workplace relations employment rights dispute resolution system with a more efficient and user-friendly two-tier structure. This reform will deliver a modern, user-friendly, world-class workplace relations system that will provide significant benefits for its users and society as a whole. The reform will make a substantial contribution to better business regulation, employee relations and public service reform. It will greatly improve the service for users while at the same time saving money for the taxpayer. It is proof that the public sector can be reformed in a way that benefits all.

The Need for Reform

The current system for resolving individual disputes related to the workplace is wasteful, both in terms of state resources and those of the users. It is also frustrating for employers, employees and professionals representing them. The system has been the subject of much analysis involving eight reports in as many years. Some of the criticisms of the system outlined in these reports include:

- Five organisations with overlapping, but completely separate, objectives and operations
- So complex that even experienced practitioners find it difficult to comprehend
- Claims are often referred to the wrong forum or under the wrong statute: they sometimes become statute barred before the error is discovered
- Lack of consistency between, and in some cases, within the bodies regarding the degree of formality of hearings, rules of evidence and the use of adversarial or inquisitorial procedures
- Overly legalistic with many users feeling the need to incur legal expenses
- A set of circumstances arising in respect of a single employee and single employer can give rise to a number of claims, which must be processed through different fora to obtain redress
- Different routes of appeal can apply for issues arising out of the same set of circumstances in the same employment
- Irrational and inequitable variations in how compensation is calculated and in remedies available – no reasons are given for decisions in some cases
- Duplication of functions between the bodies results in “forum shopping”

- Delays are excessive
- Poor value for money

Changes that have been introduced so far

Substantial progress has already been delivered in terms of the reform programme and a number of important priority actions have been successfully delivered.

These include:

- A new single contact portal called “Workplace Relations Customer Services” has replaced the five separate entry points.
- Complaints are now acknowledged, on average, within a week of receipt. This was previously taking up to eight months in some cases.
- The employer is also notified, on average, within a week of the complaint being lodged thus increasing the possibility of a resolution being reached without the need for a hearing. Again this was taking up to eight months in some cases.
- There are now no backlogs for Rights Commissioner hearings.
- A Single Complaint Form that deals with over 100 first instance complaints has replaced the 30 forms previously in use.
- A new workplace relations interim website www.workplacerelements.ie is in place.
- Delivery of a pilot Early Resolution Service has commenced.

Consultations

Two public consultation processes have been undertaken. The first concluded in September 2011. The synthesis of submissions and most of the submissions received in response to that consultation are available on the Workplace Relations Website – [Summary & Analysis of Reform Submissions October 2011](#).

The many positive suggestions that emerged from that process have helped to inform the design and delivery of the reform to date. They also influenced the proposals set out in the [Blueprint to Deliver a World-Class Workplace Relations Service](#) published in April 2012.

The *Blueprint* document set out, in considerable detail, how it is proposed to reform the workplace relations structures and processes. It was published in order to provide a further opportunity for

consultation. All of the submissions received in response are available on the Workplace Relations Website in a single document called [Blueprint Consultation Responses, May 2012.](#)

In July 2012 the Minister published the Policy Document, [Legislating for a World-Class Workplace Relations Service](#) . It responded to many of the submissions received in response to the Blueprint and set out in detailed narrative format the core principles that will be incorporated into the proposed new structures and processes.

The new Structures

The Minister proposes to establish a two-tier Workplace Relations structure. This means that from next year two statutorily independent bodies will replace the current five. We will have a new single body of first instance to be called the Workplace Relations Commission and a separate appeals body, which will effectively be an expanded Labour Court.

The new Workplace Relations Commission (WRC) will incorporate the functions of the Labour Relations Commission (including the Rights Commissioner Service), the Equality Tribunal, the Employment Appeals Tribunal (first instance jurisdiction only) , and the National Employment Rights Authority (NERA). In addition, the WRC will provide an Early Resolution Service to facilitate and encourage the resolution of individual complaints at as early a stage as possible and so obviate the need for formal adjudication or investigation, to the greatest extent possible. The four bodies listed above will then be dis-established following the transfer of their functions to the WRC.

All first instance complaints will be made to the Workplace Relations Commission where three options for resolving complaints will be available – early resolution, inspection and adjudication. All appeals will be to the Labour Court with the only further appeal being to the High Court on a point of law.

The Labour Court will be retained as a stand-alone statutory body and will be the single appellate body to deal with all appeals from the WRC. The Labour Court will continue to deliver all of its existing services (other than the small number of first instance functions transferring to the WRC) in addition to taking on the appellate functions of the EAT. The Labour Court will be given the necessary additional resources to fulfil this role.

The Workplace Relations Bill

The reform will be given statutory effect through the Workplace Relations Bill which the Minister aims to publish early in 2013. This legislation will provide for the orderly wind down of the LRC, NERA, the EAT and the Equality Tribunal and the transfer of the services of the LRC, NERA and the Equality Tribunal together with the first instance functions of the EAT and the Labour Court to the Workplace Relations Commission. The appellate functions of the EAT will be amalgamated into a reconfigured Labour Court.

Work is well advanced on the preparation of the legislative programme and detailed design necessary to deliver the reform. This involves amending 22 pieces of employment legislation, 12 sections in other legislation and 71 statutory instruments. In July 2012, the Scheme of Bill was approved by the Government for priority drafting.

Further Administrative Changes Proposed

Pending the enactment of the legislation the Minister proposes to continue to progress the reform on an administrative basis and is now proceeding to:

- Transfer responsibility for the Equality Tribunal from the Minister for Justice and Equality to himself
- Publish the permanent Workplace Relations Website to replace the six sites currently in place
- Establish a Single Hearings Management and Scheduling Unit
- Establish a Single/Shared Corporate Services Unit for the Workplace Relations Bodies.
- Provide a version of the Workplace Relations Complaint Form that can be submitted online (e-Complaint Form)
- Enhance Adjudication Arrangements and reduce backlogs in the Equality Tribunal
- Develop and deliver an accredited training programme for adjudicators
- Implement new business processes in the Workplace Relations Bodies
- Implement a Code of Practice and Conduct for adjudicators
- Introduce standard templates for Rights Commissioners' decisions/Equality Tribunal and EAT Determinations
- Review and revise, as necessary, existing statutory instruments (SIs)
- Rationalise hearings venues

- Develop a Single Determinations Database
- Put in place a Single Complaints Management System

Services to be delivered by the WRC

The WRC will develop and deliver a suite of high quality and responsive services. It will deliver a marked and measurable improvement in the quality of services provided to users of the State's workplace dispute resolution services including better and faster vindication of employees' rights and entitlements delivered through a modern, user-friendly service. Details of the services that will be provided by the WRC are set out below.

Advisory and Information Services

This service will combine the functions currently performed by the LRC Advisory Service (including code of practice functions), NERA information service and the information functions currently carried out for the Equality Tribunal, EAT, Labour Court and Rights Commissioners Service and information on parental leave currently provided by the Equality Authority.

The service will assist employers and employees to build and maintain positive working relationships and will work with them to develop and implement on-going effective mechanisms for building harmonious relationships and solving problems. This service will be available to employers, employees and trade unions in non-dispute situations to develop effective industrial relations and equality practices, procedures and structures that best meet their needs.

The specific functions will include:

- Devising and delivering education, awareness and information programmes
- Providing an advisory service promoting best practice in the workplace
- Providing employment information by phone and electronic methods
- Carrying out Industrial Relations Audits¹
- Conducting appropriate research
- Establishing Joint Working Parties

¹ This service will be provided at the request of employers/trade unions on a similar basis to the service currently provided by the LRC

- Implementing Frequent Users Initiatives
- Preparing and supporting the implementation of Codes of Practice

Conciliation and Early Resolution Service

There will be a dedicated division within the WRC focused entirely on providing a full suite of timely and effective early resolution options to parties engaged in either disputes of right or of interest. These will include alternative dispute resolution services delivered through appropriately trained officers – so as to obviate, where possible, the need for the parties concerned to avail of the adjudication services of the WRC (and the Labour Court, on appeal).

The Department has already initiated a pilot Early Resolution Service. This commenced operations in May 2012. The Pilot will be evaluated in due course and the lessons learned applied to the mainstream service in time.

The Early Resolution Service will draw from the considerable experience in alternative dispute resolution and problem-solving that has been developed over a number of years by Rights Commissioners, Equality Mediation Officers and Conciliation Officers. Subject to further development, and the outcome from the evaluation of the Pilot Scheme referred to above, it is proposed that the ERS will work as follows:

- Parties named in first instance complaints/referrals to the Workplace Relations Commission may be offered early intervention; participation in the process will be voluntary.
- Those who opt for ERS will be assigned to a Case Resolution Officer.
- The Case Resolution Officer will contact the parties or their representatives in order to:
 - Help establish the facts at issue and discuss the options that are open;
 - Help each party to understand how the other side views the case and explore with all parties how it might be resolved without a formal hearing/inspection;
 - Discuss any proposals that either side has for a settlement that both sides would find acceptable.
- Case Resolution Officers will not impose solutions, but will explore the issues involved and try to help settle differences in a way that is acceptable to the parties concerned.

- A range of early intervention tools will be deployed by the ERS – from simple telephone contact with both parties up to scheduled face to face meetings – as appropriate to the circumstances of the parties and the issues in dispute in a given case.
- Deliberations during the process will remain confidential to the parties and the Case Resolution Officer.
- In cases of right, the outcome of the process will be a confidential, binding, written agreement which can be enforced by either party in the District Court.
- In cases of interest, the outcome will be a confidential, possibly binding, non-enforceable agreement between the parties.

The WRC will also carry out the conciliation functions currently undertaken by the LRC. The WRC will continue to provide conciliation as a voluntary process involving a facilitated search for agreement between disputing parties where they have failed to resolve the issue themselves.

Adjudication

All complaints previously within the first instance jurisdiction of the Rights Commissioner Service, the Equality Tribunal, the Employment Appeals Tribunal and the Labour Court will be referable to the WRC Adjudication Service. A hearing will be convened, in private, before a single WRC Adjudicator sitting alone.

Reasoned decisions will issue in all decided employment rights and equal status cases; written recommendations/determinations will issue in all cases of interest referred to the adjudication service. Decisions of all decided employment rights and equality cases will be published on www.workplacerelations.ie.

Adjudicators will be drawn from a diverse panel, which will include experienced industrial relations and HR practitioners, civil servants and employment lawyers with appropriate skills/qualifications. Subject to the overarching requirement to act judicially and with due regard to the principles of natural and constitutional justice, WRC Adjudicators will have a level of discretion to determine their own procedures in the conduct of hearings. They will be empowered to take evidence on oath and to summon witnesses and documents. The emphasis will be on utilising an inquisitorial (as opposed to an adversarial) approach in so far as possible.

Compliance Service

The functions undertaken by the National Employment Rights Authority to date in promoting a culture of compliance with employment legislation will be continued by the proposed Compliance Service of the new Workplace Relations Commission. Officers previously referred to as Labour Inspectors or NERA Inspectors will be re-named as Compliance Officers of the WRC. These officers will continue to engage with employers and their representative organisations to this end; they will continue to inspect individual employers' employment records with a focus on achieving voluntary compliance in the first instance where non-compliance is detected. The Minister proposes to supplement the existing statutory powers of Labour/NERA inspectors by introducing new mechanisms in the Workplace Relations Bill 2012 that are designed to be effective instruments, including compliance and fixed-charge notices.

The Labour Court

The Labour Court will be retained as a stand-alone statutory body and will continue to deliver all of its existing services (other than the small number of first instance functions transferring to the WRC). The Labour Court will thus hear all appeals from the Workplace Relations Commission in all complaints of right and of interest. The Court will therefore retain its existing appellate function under both the Industrial Relations Acts 1946 -2004 and a range of employment rights enactments. The Court will also acquire the current appellate jurisdiction of the Employment Appeals Tribunal. The Labour Court will be given the necessary additional resources to fulfil this role.

Either party to a first instance hearing will have the right to appeal the decision of a WRC Adjudicator. The Labour Court will act as a court of final appeal for all adjudication decisions of the Workplace Relations Commission, subject to the right of either party to bring a further appeal from a determination of the Labour Court to the High Court on a point of law only.

Appointments of Chairman and Deputy Chairman to the Court by the Minister shall, in the future, be through the Public Appointments Service. In order to keep the employer/employee balance in the tripartite divisions of the Court, Ordinary Members will be selected through a selection process based on merit from a panel of candidates put forward by employer representative groups and trade unions. The guiding principle for all appointments/assignments will be openness, transparency, ability and merit. Clear criteria will be established as regards knowledge, experience, qualifications and skills against which all candidates will be assessed.

Some amendments will be made to the procedural rules which currently apply to the conduct of the Court's business to facilitate, for example, the hearing of cases in public. In addition, it is proposed to provide for the making of regulations by the Minister for the purpose of facilitating the active management of cases by the Labour Court. This will ensure that hearings focus on the issues which the Court will have to resolve so as to fairly dispose of the case. It will lead to greater efficiency and better use of the resources available to the Court. In particular, such regulations may provide that certain specified preliminary applications or procedural matters can be dealt with by the Chairman or a Deputy-chairman sitting alone.

The current requirement of the Court that parties to an appeal file written submissions in advance of the hearing will be extended to all cases coming before the Court under the new arrangements. Submissions should contain an outline of the legal and factual issues in contention, together with a summary of the evidence that each party proposes to tender. Templates will be provided on www.workplacerelements.ie to assist unrepresented parties in preparing submissions. No party who, for example because of literacy, linguistic or disability reasons, may be unable to prepare and submit such a submission, will be disadvantaged. When both parties have prepared and submitted advance written submissions, each party's submission will be copied to the other side in the interest of efficiency and ensuring that the hearing focuses on the contested issues.

A system of pre-hearing reviews will be put in place in which either the Chair or a Deputy Chair of the Court will review the file and the decision of the first instance adjudication, and ascertain the issues between the parties. He or she will then ascertain the likely duration of the hearing required to deal with the case. In appropriate cases, the Court may convene a pre-hearing case management conference with the principal representatives of the parties, so as to ensure that the time allocated to the hearing is used efficiently. Case management conferences will be taken by the Chair or a Deputy Chair of the Court sitting alone.

Enforcement of Awards

The difficulty experienced by successful complainants before the various employment rights adjudication bodies in enforcing awards made by those bodies in their favour is very unsatisfactory.

Any system of employment rights adjudication which is not backed up by an efficient and effective enforcement regime for successful complainants lacks credibility. If employees who have been denied their statutory entitlements, and their representatives, are to have faith in the proposed new system an effective, inexpensive and easily-navigated process needs to be put in place.

Accordingly, the Minister proposes to put in place a more robust method of enforcement of awards. It is proposed that there will be an Enforcement Section within the new structures that will implement the revised enforcement system, where the District Court will have considerable enforcement powers in relation to decisions of Adjudication Officers of the WRC and determinations of the Labour Court.

Conclusion

The root-and-branch reform of the employment dispute resolution system proposed by the Minister will deliver a range of real and practical benefits for all users and stakeholders in the system:

- **Less red tape and bureaucracy:** In the future all complaints will be made on one form to a single body of first instance. It is proposed to similarly consolidate respondents' forms into one single form. Complainants will be required to give more detailed information in relation to their complaints; if they have multiple complaints these will be dealt with in one location and employers will only have to engage with, or defend themselves in one first instance body. This means that the concept of "forum shopping" will be a thing of the past; all complaints from an individual complainant will be heard together by the same adjudicator, at the same venue and on the same day, resulting in considerable time and costs savings for respondents faced with defending multiple complaints;
- **Increased emphasis on early resolution:** Considerable resources will be applied within the new system to help parties to resolve the issues between them efficiently and inexpensively through early resolution and thus avoid the need for a hearing and the possible associated costs;
- **More rational system with standardised procedures:** Less time and effort will be required to understand and navigate the new system. Those who are unhappy with the outcome of adjudication at first instance for example will have only to consider a single appeal option (to the Labour Court); standard limitation and appeal periods will be applied across the full suite of employment legislation.

All who engage with the workplace relations system need to familiarise themselves with the changes as they happen and make the best use of services such as the Early Resolution Service. To keep up to date log on to www.workplacerelations.ie or call Workplace Relations Customer Service on Lo-call 1890 80 80 90 or (059) 917 8990.

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