



STATUTORY INSTRUMENTS

S.I. No. 76 of 2004.

INDUSTRIAL RELATIONS ACT 1990 (ENHANCED CODE OF PRACTICE ON
VOLUNTARY DISPUTE RESOLUTION) (DECLARATION) ORDER 2004

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S.I. No. 76 of 2004

Industrial Relations Act 1990 (Enhanced Code of Practice on Voluntary Dispute Resolution) (Declaration) Order 2004

WHEREAS the Labour Relations Commission has prepared under subsection (1) of section 42 of the Industrial Relations Act 1990 (No. 19 of 1990), a draft enhanced code of practice on voluntary dispute resolution where negotiation arrangements are not in place and where collective bargaining does not take place;

AND WHEREAS the Labour Relations Commission has complied with subsection (2) of that section and has submitted the draft enhanced code of practice to the Minister for Enterprise, Trade and Employment;

NOW THEREFORE, I, Frank Fahey, Minister of State at the Department of Enterprise, Trade and Employment, in exercise of the powers conferred on me by subsection (3) of that section, the Labour (Transfer of Departmental Administration and Ministerial Functions) Order 1993 (S.I. No. 18 of 1993) (as adapted by the Enterprise and Employment (Alteration of Name of Department and Title of Minister) Order 1997 (S.I. No. 305 of 1997)), and the Enterprise, Trade and Employment (Delegation of Ministerial Functions) Order 2003 (S.I. No. 156 of 2003), hereby order as follows:

1. This Order may be cited as the Industrial Relations Act 1990 (Enhanced Code of Practice on Voluntary Dispute Resolution) (Declaration) Order 2004.
2. It is declared that the enhanced code of practice set out in the Schedule to this Order shall be a code of practice for the purposes of the Industrial Relations Act 1990 (No. 19 of 1990).
3. The Industrial Relations Act 1990 (Code of Practice on Voluntary Dispute Resolution) (Declaration) Order 2000 (S.I. No. 145 of 2000) is revoked.

SCHEDULE

1 - INTRODUCTION

1. Section 42 of the Industrial Relations Act 1990 provides for the preparation of draft Codes of Practice by the Labour Relations Commission for submission to the Minister, and for the making by him or her of an order declaring that a draft Code of Practice received by him or her under Section 42 and scheduled to the order shall be a Code of Practice for the purpose of the said Act.

2. Paragraph 9.22 of Partnership 2000 for Inclusion, Employment and Competitiveness established a High Level Group on Trade Union Recognition. The High Level Group, involving the Departments of the Taoiseach, Finance and Enterprise, Trade and Employment, the Irish Congress of Trade Unions (ICTU), the Irish Business and Employers Confederation (IBEC) and IDA - Ireland, considered proposals submitted by the ICTU on the Recognition of Unions and the Right to Bargain and took account of European developments and the detailed position of IBEC on the impact of the ICTU proposals. As a result of these deliberations a set of procedures were put in place in the Code of Practice on Voluntary Dispute Resolution (S.I. No. 145 of 2000) and the Industrial Relations (Amendment) Act 2001.

3. Article 8.9 of Sustaining Progress Social Partnership Agreement 2003 - 2005 provides for the further development of employee representation. It was agreed by the trade union and employer organisations that there was a need to enhance the effectiveness of the existing procedures put in place in the Code of Practice on Voluntary Dispute Resolution and the Industrial Relations (Amendment) Act 2001.

4. The following measures were agreed for this purpose:
 - the introduction of an indicative overall time-frame targeting 26 weeks - with provision for up to a maximum of 34 weeks where necessary - for the processing of cases under the Voluntary Dispute Resolution Code and the 2001 Act to the point of issuance of a determination, save when an extension is agreed by the parties;

- the amendment of Section 2 of the 2001 Act to provide that engagement by the Court could now take place on the basis of a breach of the time-frames within the Code, the exhaustion of the time-frames or the indication at any time by the Labour Relations Commission that it is unable to assist the parties; these provisions to be substituted for the existing Section 2(1)(b), while preserving the remainder of the Section;
- the amendment of Section 3 of the 2001 Act so as to allow the Court to combine both the preliminary and substantive hearings, where it considers this to be appropriate;
- the removal of the provision in the Act for the Labour Court to review a determination, prior to seeking enforcement of a determination by the Circuit Court, by deleting section 9 and amending section 10 to provide for an entitlement for the trade union or excepted body to apply to the Circuit Court for the enforcement of a determination immediately - or on expiry of whatever implementation period is provided for in the determination;
- the development of transitional provisions to allow for the processing of cases in current disputes where access to the Code of Practice on Dispute Resolution as at the date of agreement is not available;
- the introduction of a new Code of Practice setting out the different types of practice which would constitute victimisation arising from an employee's membership or activity on behalf of a trade union or a manager discharging his or her managerial functions, or other employees and the amendment of the Act to provide that the Labour Court should have regard to breaches of this Code and where appropriate should provide for redress when making its determination.

5. In April 2003 the Minister for Enterprise, Trade and Employment requested the Commission under section 42(1) of the Industrial Relations Act 1990 to prepare a draft Enhanced Code of Practice on Voluntary Dispute Resolution pursuant to the provisions of Article 8.9 of the Sustaining Progress Social Partnership Agreement 2003 - 2005.

6. In advance of the Minister's request the Department of Enterprise, Trade and Employment chaired discussions over a five-week period between trade union and employer organisations on the enhancement of the existing procedures (Article 8.11 of Sustaining Progress). The outcome of these discussions was communicated to the Labour Relations Commission in May 2003.

7. When preparing and agreeing this Enhanced Code of Practice, the Commission consulted with the Department of Enterprise, Trade and Employment, ICTU, IBEC, and the Labour Court and took account of the views expressed to the maximum extent possible.

8. The major objective of the Enhanced Code is to provide an improved framework that has the full support of all the parties for the processing of disputes arising in situations where negotiating arrangements are not in place and where collective bargaining fails to take place.

2 - PROCEDURES

Where negotiating arrangements are not in place and where collective bargaining fails to take place, the following process would be put in place with which management and unions should fully co-operate in seeking to resolve the issues in dispute effectively and expeditiously:

1. The procedure will last for a period of 6 weeks from the date of receipt by the other party of a written invitation from the Labour Relations Commission to participate in the procedure. The referring party may copy the original Labour Relations Commission referral to the other party at time of referral. The 6 weeks to include 2 weeks to arrange meetings and commence discussions on the issues in dispute and 4 weeks for substantive engagement on the issues in dispute. In the event that the parties are making substantial progress toward a resolution of the dispute this time frame can be extended by agreement (see paragraph 5 below).

2. In the first instance, the matter should be referred to the Labour Relations Commission in the prescribed format (see Appendix). An Advisory Officer will be appointed by the Commission to facilitate the procedure.

3. On receipt of the referral in the prescribed format the Advisory Officer will issue a written invitation (by registered post) to the other party to the dispute to participate in the voluntary dispute resolution procedure. Failure by the other party to indicate to the Advisory

Officer (in writing) their willingness to participate in the procedure within 2 weeks (during which a reminder will issue) will be deemed to be a breach of the time frame. During this two-week period the Advisory Officer will seek to arrange a preliminary meeting with the other party.

4. On receipt of written confirmation (within 2 weeks) of the other party's willingness to participate in the procedure the Advisory Officer will work with the parties in an attempt to resolve the issues in dispute over a period of 4 weeks.

5. If progress is being made it may be agreed by the parties to extend the time frame. In this context the parties will seek the views of the Advisory Officer as to the likelihood of progress being made through the Labour Relations Commission intervention in the event of any such agreed extension. During any such extension an agreed cooling-off period can be put in place and the Advisory Officer will continue to work with the parties in an attempt to resolve any outstanding issues. The Labour Relations Commission may engage expert assistance throughout the procedure, including the involvement of ICTU and IBEC, should that prove helpful to the resolution of any differences.

6. If after the six-week period or following any agreed extension, including any agreed cooling-off period, all issues have been resolved, the Advisory Officer will disengage and the procedure will be deemed to be completed. Before disengaging, the Advisory Officer may make proposals to the parties for the peaceful resolution of any future grievances or disputes.

7. In the event of issues remaining unresolved the procedure will be deemed to have been exhausted and the Advisory Officer will then make an immediate written report to the Labour Court on the situation.

Appendix

Prescribed Format for Referrals to the Labour Relations Commission

The referring party must ensure that the following details are made available to the Labour Relations Commission at the time of referral and that all referrals are addressed to the **Director of the Advisory Service, Labour Relations Commission, Tom Johnson House, Haddington Road, Dublin 4.**

- Name and address of union official and contact number/fax/email address.
- Name and address of company, contact person, number/fax/e-mail address and details of any representative organisation where known (IBEC, CIF etc.)
- Category of members i.e. general operatives, admin., production, technical etc.
- A description of the issues in dispute.
- Any correspondence or dialogue entered into with other party by the initiating party.

GIVEN under my hand,

13th January 2004.

Frank Fahey

Minister of State at the Department of
Enterprise, Trade and Employment