An Roinn Post, Fiontar agus Nuálaíochta
Department of Jobs, Enterprise and Innovation

LEGISLATING FOR A WORLD-CLASS WORKPLACE RELATIONS SERVICE

Submission to Oireachtas Committee on Jobs, Enterprise and Innovation
July 2012

Mr. Richard Bruton TD, Minister for Jobs, Enterprise and Innovation wishes to engage in constructive dialogue with the Oireachtas Committee on Jobs, Enterprise and Innovation in advance of seeking Government approval to draft the Workplace Relations Bill. This document was prepared for the members of the Committee to facilitate this dialogue.

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Foreword by Mr Richard Bruton TD, Minister for Jobs, Enterprise & Innovation

The Importance of Harmonious Workplace Relations

Harmonious and productive workplaces are a key to the success of any society or economy. Non-compliance with employment standards or disputes in the workplace can have very serious consequences for employees, employers and business and society as a whole. They also impose significant costs on individuals, businesses and the State.

We aim to be the best small country in the world in which to do business by 2016. Putting in place a modern fully functional workplace relations system is essential to achieving this objective. This, together with the many difficulties encountered by those using the current system, is why the Government has started to implement a major reform of our workplace relations services.

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

There is universal acceptance of the need for major reform of the current processes. It was for this reason that I announced my intention to undertake a root-and-branch reform of the State’s complex Workplace Relations systems in July 2011. I indicated that my aim was to establish a world-class Workplace Relations Service.

Progress to Date

I am happy to report that substantial progress has been made to date and a number of important priority actions have been successfully delivered within the target timescale.

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 five working days of receipt. This was previously taking up to eight months in some cases.
- The employer is also notified, on average, within five working days of the complaint being lodged thus increasing the possibility of a resolution being reached without the need for a hearing.
- 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.workplacerelations.ie is in place.
- Delivery of a pilot Early Resolution Service has commenced.

The Need for Legislation

My intention is to continue to progress the reform programme. The next major step is to establish a two-tier Workplace Relations structure. This means that from the end of this year two statutorily independent bodies will replace the current five bodies. 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.

While considerable progress has been achieved to date on an administrative basis, completing the proposed reform requires the enactment of detailed legislation. This is necessary in order to provide the statutory basis for the new structures and processes required to deliver a world-class system.

Consultation

Last year I undertook a public consultation process that 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.

There were 67 responses. The responses, overall, demonstrated a strong consensus around the need for reform and the shape that reform should take. 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* (*Blueprint*) which I published in April of this year.

The *Blueprint* document set out, in considerable detail, how it is proposed to reform the workplace relations structures and processes. I published the *Blueprint* in order to provide a further opportunity for consultation. I am happy to have received 32 responses to the document. All of the submissions are available on the Workplace Relations Website in a single document called *Blueprint Consultation Responses, May 2012.* They include many supportive, useful and constructive suggestions and comments. Some expressed concerns in relation to a number of proposals including the role of the Registrar of the Workplace Relations Commission; whether first instance hearings should be in private or public; whether there should be a charge for any services; access to an appeal process and enforcement measures. All contributions made have received careful consideration and helped inform the preparation of this document and will help inform our finalisation of the Heads of the Workplace Relations Bill 2012.

Progressing the Reform

I am proceeding with the reform process and I am committed to delivering a world-class workplace relations service. My aim is to provide a simple, independent, effective, impartial, accessible and workable means of redress and enforcement, within a reasonable period of time. The system must operate to the highest standards and earn the confidence of employers, employees and all who will use its services.

The system we are designing will be in place for generations to come. It is essential, therefore, that it is designed and implemented to the highest standard. The new system, as proposed, will be characterised by a number of key principles which aim to:

- Promote harmonious workplaces and a culture of compliance with employment law
- Reduce the number of disputes within the workplace and, where they do arise, provide assistance to resolve them at the earliest possible date
- Deliver a responsive user-friendly service
- Deliver value for money for the tax payer and reduce costs for employers and employees
- Eliminate procedural overlaps and institutional confusion.

Early input from the Oireachtas Committee on Jobs, Enterprise and Innovation

Work has commenced on the legislative programme and detailed design to deliver the reform. The Programme for Government commits to enhancing the democratic process by involving public representatives at an earlier stage of the legislative process, particularly before Bills are published. I fully support the early involvement of Oireachtas Committees in the early development of legislation. For this reason I now propose to engage with the Oireachtas Committee on Jobs, Enterprise and Innovation to provide them with an opportunity to input at this early stage into the future design of the State's workplace relations structures.

This opportunity for the Committee to give its input before the Heads of Bill have been drafted is not intended in any way to take from the importance of the usual committee stage of the legislative process to which the proposed Workplace Relations Bill 2012 will, of course, be subject in the normal way. Rather it provides an important opportunity for the Committee to shape the legislation in its formative stage.

I now wish to engage in a constructive and creative dialogue with the Committee. In order to facilitate this dialogue I am presenting this Policy Document, ***Legislating for a World-Class Workplace Relations Service*** to the committee. It sets out in detailed narrative format the core principles that I believe should be incorporated into the proposed new legislation.

The document is set out in a way that I hope will facilitate our dialogue. Chapter 1 sets out in broad outline the streamlined two-tier system that I am proposing should replace the current complex system which comprises five separate bodies. The subsequent chapters each deal with discreet key components of the proposed new system. The chapters are structured as follows: they begin with a brief description of the status quo and the need for reform followed by the key rationale for reform of that particular area. The relevant proposal for reform detailed in the Blueprint document of April 2012 is then summarised as is the feedback received from the interested parties who made submissions in response to the Blueprint. Finally, each chapter concludes with a detailed outline of the reforms I am now proposing.

Conclusion

I wish to thank all those who have contributed to the process so far, in particular those who have taken the time and effort to make submissions. Their contributions are appreciated. I also wish to thank all those who are delivering the reform both in my Department and in the Bodies concerned. This project is proof that public sector reform can successfully deliver better services while at the same time delivering better value for the taxpayer.

I look forward to receiving and incorporating the Committee's feedback to this document and its proposals before finalising my submission to Cabinet and thereafter progressing the drafting of this very significant workplace reform legislation. I look forward to continued support and cooperation as we develop a world-class Workplace Relations service.

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Richard Bruton, TD,

Minister for Jobs Enterprise and Innovation

June 2012

Chapter 1 – Overview of the State's Proposed New Workplace Relations Structures & Processes

The Minister proposes to replace the current complex and outdated system with a simpler, more efficient and user-friendly two-tier structure with simplified procedures. This reform will deliver a modern, user-friendly, world-class employment workplace relations system that will provide significant benefits for its users and society as a whole. The reform will make a significant contribution to better business regulation, employee relations and public service reform.

The model that is envisaged will deliver:

- One authoritative source of good quality, clear, up to date information and a strong emphasis on assisting employers and employees to avoid disputes and where they do arise to assist them in resolving the dispute themselves
- Maximum opportunities for resolution of disputes, as early and as close to the workplace as possible. The intention is to move from the default position that every individual complaint, no matter how large or small, must always result in a time-consuming and expensive formal hearing
- A single Body of First Instance to adjudicate on all complaints, with a single route to appeal, together with common time limits for lodging complaints and appeals
- A just, fair and efficient adjudication service provided by independent, professional and impartial decision-makers with a target period of three months from the time of complaint to hearing, and written, reasoned decisions within 28 working days of the hearing with published decisions
- New compliance mechanisms to encourage compliance with employment law and to deal with non-compliance in a more efficient and proportionate manner
- A more open and transparent system of appointing suitably qualified individuals as decision-makers, that will ensure highest standards in terms of appointments
- Procedures and administrative processes that are efficient and simple to access and use
- A Customer Charter with specific commitments with regard to the quality and efficiency of the service that users can expect. These will be supported by service level targets to ensure quality, consistency and timeliness of services

1.1 New Workplace Relations Structures

The Government took a formal decision on 15 November 2011 to progress the streamlining of a broad range of state bodies. This was reflected in the *Public Sector Reform Plan* of November 2011[1] which *inter alia* proposed the rationalisation of the 'industrial relations' and 'employee rights institutions' currently operating under the aegis of the Department of Jobs, Enterprise and Innovation (the Labour Court, the Labour Relations Commission, the Rights Commissioner Service, the Employment Appeals Tribunal and the National Employment Rights Authority) along with the Equality Tribunal (an Office of the Department of Justice and Equality). This reform programme will see the current five bodies operating in this area replaced by two, the Workplace Relations Commission and the Labour Court.

1.2 The Workplace Relations Commission (WRC)

Following extensive public consultation, Minister Bruton now proposes to establish a single new body – to be called the Workplace Relations Commission (WRC) – which 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)[2], 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.

The establishment of the WRC will result in the creation of a single body with responsibility for the co-ordination of the State's supports for the promotion, development and maintenance of good industrial relations, the efficient and early resolution of disputes 'of interest' and 'of right' between employers and workers as early and as close to the workplace as possible, the first instance adjudication of disputes that remain unresolved, the publication and provision of comprehensive information on industrial relations and employment rights (including family leave) matters to employers and workers, the inspection of employment records for compliance purposes and the enforcement of employment rights and adjudication awards, where necessary.

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[1] *Public Sector Reform Plan*, Department of Public Expenditure and Reform, 17th November 2011

[2] The appellate function of the Employment Appeals Tribunal is to be transferred to an expanded Labour Court.

Chapter 2 contains a comprehensive discussion of the role of the WRC and subsequent chapters set out in greater detail the main services to be provided 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 in Chapter 3.

1.3 The Labour Court

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 Labour Court will hear all appeals from the Workplace Relations Commission. 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 act as a court of final appeal for all adjudication decisions of the WRC, 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.

Some amendments will be made to the procedural rules which currently apply to the conduct of the Court's operation in the interests of the efficient performance of the business of the Court. Chapter 8 contains a comprehensive discussion of the role of the Labour Court in the proposed new system while Chapter 9 sets out in detail how the appeals process will operate.

1.4 Joint Services

The WRC and the expanded Labour Court will be established as two separate and independent Offices of DJEI. However, they will share common administrative features and facilities, including administrative, managerial and corporate support services and a common ICT system. It is also intended that DJEI will provide staff to both bodies. These joint services will be put in place in a manner that does not in any way compromise the independence of either body. Applying similar corporate governance structures to both bodies will greatly assist the efficient and effective management and delivery of these joint services. As both bodies will be established as offices of the DJEI, good governance requirements can be met with fewer resources.

1.5 Data Protection

Robust measures will be provided for to ensure the highest standards of confidentiality apply to all aspects of the WRC and the Labour Court's business operations and to prevent unauthorised disclosure of confidential information available to the WRC or the Court, their officers and staff generally. Such measures will assist in the development of public confidence in the new system. Unauthorised disclosure of specified information – e.g. relating to service users and their complaints - by members of the Board of the WRC, the Director or staff of the WRC or the Chairman, members or staff of the Court will be an offence. Any person injured by unauthorised disclosure will be able to obtain relief or damages in court proceedings.

1.6 Co-Operation between the WRC, the Labour Court and Other Official Agencies

It is proposed that the legislation to establish the WRC will provide comprehensively for the development of co-operation agreements between the WRC, the Labour Court and other specified official bodies to facilitate, *inter alia*, the exchange of relevant information between the WRC/Labour Court and specified official bodies and to minimise the duplication of activities by different official bodies. The Social Welfare (Amendment) Act 2007 provided the legislative basis for co-operation and information sharing between the National Employment Rights Authority, Revenue and the Department of Social Protection and for joint investigations by officials from each of those bodies. This proved to be of considerable benefit to all the bodies concerned in fulfilling their respective statutory enforcement remits. Certain consequential amendments of the Data Protection Acts and Freedom of Information Acts will be required to enable effective information sharing between the official bodies.

1.7 Early Resolution

The proposed new dispute resolution system will focus intensely on facilitating workers and employers to engage as close as possible to the point of origin of any dispute in the workplace to attempt to find an agreed solution. The new system will build on the work to date of the Labour Relations Commission and NERA in this regard. Chapter 5 includes a more detailed discussion of the proposed Early Resolution Service of the WRC.

1.8 Improved Adjudication

The reform will provide a just, fair and efficient adjudication service provided by well-trained, professional, impartial and fair decision-makers. It is intended to greatly reduce the waiting time for hearings and decisions by putting in place a target period of three months from the time of complaint to hearing, and written, reasoned decisions within 28 working days of the hearing in 90% of cases. All decisions will be published and will include the reason for the decision. Chapter 6 sets out in detail the proposed new Adjudication Service.

1.9 Improved Compliance Measures

The Minister, subject to advices from the Office of the Attorney General, proposes to provide in the legislation for the use of Compliance Notices to promote higher levels of compliance with employment legislation. Such notices may issue when a Compliance Officer forms an opinion that a scheduled contravention of employment law, which the employer concerned fails or refuses to rectify, has occurred. The Compliance Notice will set out the steps the employer concerned must take to effect compliance. An employer may appeal against all or any aspect of the notice to the Labour Court. Failure to comply with a Compliance Notice may result in the Labour Court, following a hearing, issuing a binding order. Failure to comply with such an order in turn would be a prosecutable offence.

In order to further bolster the system of compliance with employment rights, the Minister also proposes to legislate for the use of Fixed Charge Notices in respect of a specified range of acts of non-compliance on the part of employers. The matters in respect of which a fixed charge notice may be issued will be specified in a schedule to the proposed legislation. The proposals to improve compliance are set out in greater detail in Chapter 7 while further detail on compliance notices and fixed-charge notices is included at section 7.4.

1.10 Better Enforcement of Awards

The current system of enforcement of employment rights awards is cumbersome, expensive and not fit for purpose. The Minister proposes to use this opportunity for reform to prescribe a new and robust enforcement regime which will provide successful complainants with an accessible and inexpensive means whereby recalcitrant respondents can be compelled to honour the award of the WRC Adjudication Service or of the Labour Court, as the case may be. Chapter 10 of this document includes a detailed discussion of the proposed new enforcement regime in respect of adjudication awards.

Chapter 2 – The Workplace Relations Commission (WRC)

2.1 Governance of the WRC

The WRC will be required to apply the highest standards of governance and accountability and to this end will be subject to the usual governance requirements of Government Offices. The WRC will be required under establishing legislation to develop appropriate strategies for the performance of its statutory functions. The WRC will publish a Strategy Statement once every three years setting out its high level goals and objectives for the coming three year period. This will be supported by an Annual Work Programme. It will also make a report of its activities to the Minister each year in the form of an Annual Report which will be laid before each House of the Oireachtas. In addition, the WRC – on foot of a Memorandum of Understanding between it and the Department - will supply to the Minister such information as he or she may from time to time require regarding its activities.

2.2 The Board of the WRC

Given the diverse range of services that will be provided by the WRC, the organisation would benefit from the input, advice and oversight of a Board comprising stakeholders including representatives of users of the service. To provide for this, a Workplace Relations Commission Board will be established. This will be a statutory Board, appointed by the Minister and will comprise of a chairperson and eight ordinary members.

The Board will have important statutory functions in relation to the business plans, work programmes and service design and delivery of the WRC including the preparation of statutory codes of practice. It will be a tripartite board representative of employers, trade unions and appropriate Ministerial nominees. This will ensure that stakeholder interests will be properly represented at the appropriate level and that the services of the WRC have appropriate input from stakeholders in their design and delivery.

The term of appointment of members will be staggered. The Chairperson will be appointed for a non-renewable term of 5 years; some ordinary members will be appointed for a term of 2 years, renewable while others will be appointed for a term of 3 years, renewable. The Minister will, in so far as is practicable, having regard to the relevant expertise and experience of the persons concerned, ensure an equitable balance between men and women in the membership of the Board of the WRC.

Appropriate safeguards will be put in place to ensure that the WRC Board will have no role or influence in relation to the quasi-judicial decisions of Adjudicators or in relation to how individual inspections or other cases are dealt with.

The Chairperson of the Board will present an annual written report to the Minister outlining the WRC's activities during that year. The Minister, in turn, will lay a copy of the report before each House of the Oireachtas. The Board, in consultation with the Director, will have statutory responsibility for preparing the WRC's Strategy Statement and Work Programme.

No remuneration will be paid to Board members. Travel and subsistence allowances will be paid in line with Government guidelines.

2.3 Director of the WRC

The chief officer of the WRC shall be the holder of the statutory office of 'Director of the Workplace Relations Commission' and will be appointed by the Minister following the holding of an open competition for this position. (This arrangement shall not apply to the appointment of the first Director.) The terms of office will be modelled on section 39 of, and Schedule 6 to, the Safety, Health and Welfare at Work Act 2005 which provide for the office of the Chief Executive of the Health and Safety Authority.

The office holder will have statutory independence but shall not hold office for more than 10 years. The Director will provide on-going support and assistance to the Chairman and Board in discharging their statutory functions but he or she alone will have executive and statutory responsibility for the day to day management of the WRC and its staff.

As the WRC is to be established as an Office of the Department of Jobs Enterprise and Innovation, its Accounting Officer will be the Secretary General of that Department.

2.4 Registrar of the WRC

As the WRC will have statutory jurisdiction for providing information in relation to, and facilitating the resolution of disputes, under some 40 separate pieces of employment, equality and industrial relations legislation - in accordance with best international practice and in compliance with international human rights standards – the WRC will require access to a suitably qualified and experienced lawyer to advise it on procedural and other issues.

Such a person will be appointed as Registrar of the WRC and will have a range of specified functions similar to those performed by the legal advisors to the Equality Tribunal. The role envisaged for the Registrar is described in some detail in the Chapter 4, Registration Service of the WRC.

2.5 Staffing of the WRC

The Minister, in consultation with the WRC Board and the Minister for Public Expenditure and Reform, will appoint an appropriate number of officials to staff the WRC as are necessary to ensure the efficient running of the WRC and the effective discharge of its statutory functions. All appointments will be subject to the Public Service Management (Recruitment and Appointments) Act 2004 and the Civil Service Regulation Acts 1956 to 2005. There will, in addition, be a panel of external adjudicators available to the WRC.

While staff of the WRC will be mainly civil servants and therefore subject to the Civil Service Code of Conduct, the Board of the WRC, in consultation with the Director and staff of the WRC, and with the approval of the Minister, will prepare a code of conduct prescribing the standards which shall regulate the performance of certain duties of the officers and staff of the WRC, including any contract staff.

The purpose of the Code will be to:

- Assist in the provision of a professional and effective service
- Promote good practice and the highest standards of conduct and ethics
- Prevent the development or acceptance of unethical practices

The proposed code of conduct is along similar lines to the Code of Conduct developed and implemented by NERA and approved by the Minister for Labour Affairs. See
http://www.employmentrights.ie/en/media/NERA%20Code%20of%20Practice.pdf

2.6 WRC Strategy Statement

The responsibility for developing the three-yearly Strategy Statement will primarily rest with the Board of the WRC. The Board will consult with the Director in the process. Ultimately, each Strategy Statement will be subject to Ministerial approval prior to formal adoption and publication. The Minister will also lay the Strategy Statement before both Houses of the Oireachtas in the usual way.

The WRC's Strategy Statement will –

(a) specify the key objectives, outputs and related strategies (including the use of resources) of the WRC,

(b) have regard to the need to ensure the most beneficial, effective and efficient use of the WRC's resources,

(c) except for the first strategy statement, include a review of the outcomes and effectiveness of the preceding strategy statement,

(d) specify the manner in which the WRC proposes to assess performance in respect of the objectives referred to in paragraph (a), taking account of relevant performance indicators (financial and non-financial),

(e) be prepared in the form and manner that the Minister may from time to time direct, and

(f) include any other matters that the Minister may from time to time direct.

2.7 WRC Annual Work Programme

The Board will be required to prepare an annual Work Programme in consultation with the Director for submission to the Minister. The purpose of the Work Programme is to ensure that the WRC deploys its staffing and other resources to good effect through definite well-planned work programmes aimed at achieving strategic objectives set out in the Strategy Statement. The Work Programme will be deemed to be adopted when approved by the Minister. The Minister may, from time to time, issue policy directions in writing to the WRC concerning the improvement of workplace relations, either generally or in a particular sector or particular sectors, which might require amendment of the current Work Programme.

Each annual Work Programme will set out:

(a) a review of the outcomes and effectiveness of the preceding Work Programme,

(b) having regard to the strategy statement, the objectives of the WRC for that year and the strategy of the WRC for achieving those objectives,

(c) the priorities of the WRC for that year, having regard to those objectives and resources available to the WRC, and

(d) any other matters that the Minister may from time to time specify.

2.8 Reports and Information to the Minister

The Director will be required to prepare an annual written report on the performance by the WRC of its statutory functions for submission to the Minister and such other reports from time to time as the Minister may require or the Director may deem appropriate. The Minister will then lay the WRC's Annual Report before both Houses of the Oireachtas in the usual way.

The WRC's Annual Report shall include a report on progress regarding implementation of the strategy statement, and the outcomes and effectiveness of the work programme during the year concerned, and information regarding such other matters as the Minister may direct. In addition the Minister may from time to time, seek additional information and reports from the Director on the performance of the WRC provided such information and reports are not such that they would prejudice the WRC's performance of its statutory functions.

Chapter 3 – Services to be provided by the Workplace Relations Commission

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.

3.1 Advisory and Information Service

The general consensus from last autumn's consultation responses was that a specialised non-directive information service providing information to both employers and employees is an essential element in facilitating early resolution of grievances and stemming the flow of complaints.

Such a service will be provided by the WRC Advisory and Information Service (AIS). It 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.

It will also incorporate the proactive information functions of NERA and the advisory functions carried out by the LRC in relation to informing and advising employers and employees in respect of employment matters with a particular emphasis on complying with employment law and avoiding and resolving disputes. Such information or advice will not extend to the merits or otherwise of individual complaints or cases. In addition, the research role of the LRC will be incorporated into this service.

Assistance to employers and employees

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.

Codes of Practice

The service will prepare draft codes of practice concerning industrial and employment relations for submission to the Minister, either on its own initiative or at the request of the Minister. It will also offer guidance and help resolve disputes that may arise concerning the implementation of these codes.

During the consultation process that followed the publication of the *Blueprint,* many worthwhile suggestions were made in relation to the review of existing codes of practice. For example, it was suggested that the three separate codes of practice that, at present, regulate the issues of bullying and harassment should be reviewed and consolidated into one single document. It is the Minister's intention that the Workplace Relations Commission will ensure that all current codes of practice continue to be fit for purpose and are reviewed on a regular basis.

Information

The Advisory and Information Service (AIS) will also provide an online and telephone information service to employers and employees in respect of all employment matters including employment law, customer service support and scheduling information.

The service will build on the Workplace Relations Customer Service launched in January 2012 to become the only contact number, website or email that an employer, employee or their representative will need to know or use in relation to seeking information or assistance with an employment related query.

Staff of this service will have appropriate levels of access to the customer relationship/case management system to allow them to deal with all enquiries including details relating to scheduling of hearings or appeals and related matters.

They will not, however, have access to details which are relevant only to a Workplace Relations Commission Adjudicator. Similarly neither the WRC Adjudicator nor the AIS staff will have access to any matters relating to attempts at early resolution. Levels of access to electronic and physical files will be controlled through appropriate protocols.

Resolving Disputes at Workplace Level

There was strong consensus in last autumn's consultation responses that employers and employees need assistance to resolve disputes at workplace level. While it was acknowledged that the work of NERA and the LRC has been helpful to date in this regard there was a clear view that more needs to be done.

The WRC will assist employers and employees to avoid or resolve disputes within the workplace. The provision of complete, clear and unambiguous employment information and making employers and employees more aware of the supports available to them will be an important element of the work of the WRC.

The new Workplace Relations Website www.workplacerelations.ie and the Information Service will provide accessible, user friendly and comprehensive information. This will include information on rights and responsibilities. New services will include an online tool to aid employers to develop written terms and conditions of employment to fulfil their obligations under law and foster good relations with their employees. The WRC will also provide assistance in developing other policies and procedures.

Employers will be encouraged to supply employees with clear grievance and disciplinary procedures and simple codes of practice for dealing with disputes as they arise. These will be available to download free of charge for employers on www.workplacerelations.ie in the form of a generic set of policies and procedures capable of customisation for their particular circumstances. Having such policies will assist employers and employees to resolve issues informally through a variety of clearly defined steps before proceeding to a more formal process.

The system where employers were often unaware of an employee's dispute until they received documentation from the relevant employment rights body, sometimes months after the complaint was lodged, was not acceptable. The fact that employers will now be notified of the details of any complaint lodged against them within five working days will provide an opportunity to resolve the matter at an early stage.

Employees will be encouraged to seek to resolve complaints directly with their employer in the first instance and where possible to provide employers with notification of their intention to make a complaint to an employment rights body before the complaint is lodged.

Some of those who responded to the *Blueprint* called for prior notification to their employers by employees of their complaint before referring it to the WRC to be mandatory. The Minister has carefully considered the submissions in this regard but has decided that to impose a mandatory requirement could create the potential for further disputes and litigation between parties as to whether in fact the requirement had been properly satisfied or not in particular cases. For this reason the emphasis will be on assisting and encouraging employees to notify their employer rather than making it mandatory.

To assist employees in requesting that a matter be resolved by their employer prior to lodging a complaint to the WRC template letters/forms will be made available through www.workplacerelations.ie which employees can use for this purpose.

The specific functions of the AIS 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 Audits[3]
- Conducting appropriate research
- Establishing Joint Working Parties
- Implementing Frequent Users Initiatives
- Preparing and supporting the implementation of Codes of Practice

3.2 Conciliation & Early Resolution Service

There will be a dedicated division within the WRC called the Conciliation and Early Resolution Service 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).

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

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.

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 applied to the mainstream service in time. A full discussion of the proposed Early Resolution Service can be found in Chapter 5.

3.3 Adjudication Service

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 – where parties have attempted but withdrawn from early resolution or where one party objected to early resolution – to the WRC Adjudication Service. A hearing will be convened 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**.** Chapter 6 contains a detailed discussion of the proposed Adjudication Service of the WRC.

3.4 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 in fostering a culture of compliance. A more detailed discussion on the proposed compliance measures is set out in Chapter 7.

Chapter 4 – Registration Service of the WRC

4.1 The Current Situation and the Need for Reform

Complainants and respondents currently may have to wait up to two years to have their case heard before some adjudicative bodies. In some cases full hearings are scheduled to deal with cases where the body concerned has no jurisdiction because the complaint was out of time or did not disclose a cause of action. This is not in the interest of the employee, employer or the State. It is wasteful of resources and delays cases which should be scheduled for hearing. It is essential that those who have a complaint can have a professional, fair and impartial adjudication within a reasonable period of time. Achieving this will require a system that makes the best use of the resources available to the WRC in the interests of all parties.

The Labour Court has a legally qualified Registrar invested with a range of statutory functions in aid of the efficient discharge of the Court's business since the Court's inception in 1946. Similar functions have been invested in legal advisors appointed to the staff of the Equality Tribunal. The National Employment Rights Authority had the services of a full-time Legal Advisor. Neither the Labour Relations Commission nor the Employment Appeals Tribunal has had a Registrar or Legal Advisor assigned to them.

4.2 Summary of Reforms Proposed in the *Blueprint*

The *Blueprint* listed the Registration Service as one of the proposed functional areas of the WRC. It further proposed that this service would be supported by a Registrar who would be a full-time officer of the WRC and a qualified and experienced lawyer. It envisaged that such a Registration service would be responsible for the receipt, validation and processing of all employment related complaints and the coordination, management and referral of cases to Hearing, Inspection and Early Resolution services. In short, the *Blueprint* proposed that this service would have overall responsibility for steering each case through the system and ensuring it is dealt with efficiently and effectively.

4.3. Observations Received on *Blueprint* Proposals

The submissions received in response to the Blueprint included considerable commentary on the proposed Registration Service and the role envisaged for it. It is fair to say, that the commentary was largely negative. This was undoubtedly due to the focus in the *Blueprint* on the case management function of that Service, particularly in so far the role of the Registrar in identifying complaints that appeared not to be well-grounded was highlighted in the document.

Observations received in response to the *Blueprint* proposals in this regard included:

- The right of a worker to advance a case to the proposed Workplace Relations Commission and have it adjudicated on must not be conditional upon the decision of a registrar.
- The proposed filtering role of the Registration Service may be a denial of access to justice and in breach of the Charter of Fundamental Rights of the European Union.
- The proposed system for filtering complaints that appear not to be well-grounded does not make adequate provision for complainants with low literacy skills or other communication barriers (e.g. their first language is other than English).
- The decision of the Registrar to disallow a complaint on jurisdictional grounds should be subject to a full appeal hearing by the Labour Court which could either uphold the decision to dismiss or refer the complaint to the Early Resolution or Adjudication Service of the WRC.
- While the proposed Registrar system may work for complaints grounded on a particular employment rights, it may not be suitable for dealing with more general industrial relations issues. Time-limits and other statutory restrictions are not applicable to disputes of interest.
- The operation of the Registration Service needs to be subject to executive oversight.
- The efficient management of cases would be further facilitated by requesting respondents to identify whether there are any legal points at issue in their response to the complaint form e.g. are they disputing whether the WRC has the necessary jurisdiction to hear the case, or whether the complainant comes within the scope of the Act.
- The Registrar's jurisdiction to refer a complaint either for hearing or inspection may result in inspection being used to undermine compliant employers.
- The Registration Service should filter and divert the more legally complex and technical complaints for adjudication to the appropriately experienced or qualified adjudicators so as to reduce the potential workload of the Labour Court in correcting errors of law.

Response

As will be seen from the role envisaged for the proposed Registration Service at subsection 4.4 below, the Registration Service and the Registrar's coordination and management of cases must be seen in its broader context. The role envisaged for the Registration Service is multi-dimensional and will involve ensuring the best use of the resources available to the WRC in the interests of all parties: complainants, respondents and the State. All adjudication bodies, including the courts, exercise a level of case filtering and allocation. It is essential for the efficient functioning of the system. This includes examining complaints on receipt to ensure that they disclose a cause of action.

The current regime operated by the Director of the Equality Tribunal provides a very good example of the effective filtering of complaints on receipt. Under the Employment Equality Acts 1998-2011 and the Equal Status Acts 2000-2011, the Director of the Equality Tribunal has the power to 'dismiss a complaint at any stage if of opinion that it has been made in bad faith or is frivolous, vexatious or misconceived or relates to a trivial matter.' It is entirely logical that a similar power be vested in the Director of the Workplace Relations Commission.

The Director of the Equality Tribunal's exercise of her power under section 22 of the Equal Status Act 2000 was unsuccessfully challenged by the claimant/appellant in *Fitzgerald v Minister for Community, Equality and Gaeltacht Affairs* [2011] IEHC 180, which came before the High Court by way of an appeal on a point of law from a judgment of the Circuit Court.

The UK legislation which provides for the operation of employment tribunals and the Employment Appeal Tribunal in that jurisdiction also provides a useful model for the disposition of complaints such as those described above by decision of the first instance tribunal without the need for a hearing[4].

[4] See section 7 of the Employment Tribunals Act 1996, as amended:

"(3A) Employment tribunal procedure regulations may authorise the determination of proceedings without any hearing in such circumstances as the regulations may prescribe.

(3B)Employment tribunal procedure regulations may authorise the determination of proceedings without hearing anyone other than the person or persons by whom the proceedings are brought (or his or their representatives) where—

(a)the person (or, where more than one, each of the persons) against whom the proceedings are brought has done nothing to contest the case, or

(b) It appears from the application made by the person (or, where more than one, each of the persons) bringing the proceedings that he is not (or they are not) seeking any relief which an employment tribunal has power to give or that he is not (or they are not) entitled to any such relief.

4.4 How the Minister Proposes to Proceed

The WRC will have statutory jurisdiction for facilitating the resolution of disputes under some 40 separate pieces of employment, equality and industrial relations legislation, in accordance with best international practice and in compliance with international human rights standards. To ensure that the WRC delivers its services to the highest standards, the Director will be supported by a Registration Service with a suitably qualified and experienced lawyer as Registrar. The Registrar, who will report directly to the Director of the WRC, will advise on procedural and other issues and will also have a range of additional functions.

The Adjudication Service of the WRC will be staffed by suitably skilled/qualified adjudicators who will bring a diverse range of experience and qualifications to their respective roles i.e. some will have particular expertise in dealing with equality matters, others with complex dismissal proceedings, others again with particular industrial relations experience. While all adjudicators will be required to be qualified to deal with the full range of complaints referable to the Adjudication Service, the Registration Service will have a role, in the interest of maintaining high levels of service, in identifying, where possible, those complaints that are likely to most require the intervention of an adjudicator with particular expertise.

A percentage of employment rights complaints are inevitably flawed on technical grounds: they may be filed well outside the statutory time limit[5]; they may not disclose any cause of action or they may fail to name any respondent. One of the functions to be fulfilled by the Registration Service will be to inform complainants of any such infirmity in their complaint at as early a stage as possible. It is in the interest of both parties and the State that efficiency is introduced into the system by obviating the need to convene a full hearing to deal with such procedural matters.

(3C)Employment tribunal procedure regulations may authorise the determination of proceedings without hearing anyone other than the person or persons by whom, and the person or persons against whom, the proceedings are brought (or his or their representatives) where—

(a)an employment tribunal is on undisputed facts bound by the decision of a court in another case to dismiss the case of the person or persons by whom, or of the person or persons against whom, the proceedings are brought, or

(b) The proceedings relate only to a preliminary issue which may be heard and determined in accordance with regulations under section 9(4).

[5] This would not include cases that are a matter of months out of time or where the date of the event that gives rise to the complaint is in dispute. These would be cases that are out of time by a matter of years for example (as some complaints currently lodged are). No time limit will apply to complaints of interest.

Such complaints will therefore be referred by the Registrar for determination by an Adjudicator of the WRC without a hearing being held. This will be done in accordance with regulations to be made pursuant to the Workplace Relations Bill. A complainant who disagrees with the decision given by the Adjudicator will be able to appeal that decision in the usual way to the Labour Court.

It is proposed that the Registrar will act as legal advisor to the Director of the Workplace Relations Commission and will simultaneously, with the assistance of the staff assigned by the Minister to the Registration Section, perform a range of functions that are analogous, for example, with those of the Legal Advisor to the Equality Tribunal.

It is also envisaged, subject to advices sought in this regard from the Office of the Attorney General, that the Director may recommend to the parties concerned that particular complaints be combined into a multi-party hearing. This option could possibly be exercised, for example, where it is apparent that multiple complaints of a similar nature (e.g. under the Payment of Wages Act or the Organisation of Working Time Act) are being lodged against a single employer, or associated employers. Such a multiparty hearing would offer a speedy resolution of such 'mass' complaints without the need for a series of individual near-identical hearings. The former approach – where deemed applicable, and with the agreement of the complainants in question – would appear to be a much more efficient use of the State's resources in determining parties' rights and obligations.

If a person has a cause of action within the parameters of the relevant legislation and they wish to proceed with that case, either by early resolution or by full adjudicative hearing, the WRC will prove to be an efficient and supportive environment in which to do so. For the avoidance of doubt, no complainant that discloses a cause of action will be obliged to forego a hearing. However, there can be no absolute right to an adjudication hearing in any forum if the complaint as presented by the complainant does not appear to come within the relevant legislation or if the complainant is seeking a remedy not provided for in law. For example, Rules of Court exist to filter complaint coming before the civil and criminal courts.

The Minister is conscious of the excellent work done to date by the existing employment rights bodies - in particular the Equality Tribunal - in facilitating access to the services of those bodies by complainants with literacy and other impediments. The Minister is committed to ensuring that the WRC and the Labour Court will build on and continue to develop the initiatives already in place in this regard.

It is not envisaged that the Registration Service will have the same level of input at the submission stage of ‘complaints of interest’ as may be necessary and appropriate in the case of ‘complaints of right’. That is not to say that there is no scope for the potential requirement for legal input in relation to certain disputes of interest referred to the WRC. It should be borne in mind that, for example, the Industrial Relations Acts 2001-2004 provide a list of statutory pre-conditions which must be in place before the Labour Relations Commission or the Labour Court, in the current framework, can assume jurisdiction in relation to an application under that legislation. The interpretation of those statutory pre-conditions has been subjected to detailed analysis by both the High Court and the Supreme Court.

Thus the remit of the Registration Service will include the following functions:

- Provision of timely legal advices to the Director in relation to the statutory functions of the WRC.
- Provision (and external procurement, where necessary) of advices to the various directorates of the WRC on the application of substantive employment law and procedural matters.
- Development of procedural guidelines for the various functions of the WRC, at the direction of the Director.
- Liaison with the offices of the Attorney General, including the Chief State Solicitor and the DPP.
- Production of reports and statistical analysis on throughput of complaints and referrals for the Director/Minister.
- The management of outsourced legal services suppliers - overseeing: all procurement for such services; the quality of services; value for money of services provided; cost control.
- (In conjunction with the Chief State Solicitor’s Office), instruction of external counsel in matters of judicial review or in any other proceedings in which the WRC is named as a notice party.
- Fulfilment of a range of miscellaneous administrative/procedural tasks to be assigned specifically in legislation or delegated by the Director or the Minister.
- The publication of ‘compendia’ and analysis of decided cases which will be of assistance to parties and their representatives in bringing and defending complaints etc.

Chapter 5 – Early Resolution Service

5.1 The Current Situation and the Need for Reform

Various forms of alternative dispute resolution are currently available or offered to complainants before a number of the employment rights bodies, either on a formalised or informal basis. Mediation at the Equality Tribunal is an example of the former. The latter is also exemplified by the range of strategies frequently utilised by Rights Commissioners.

Equality Tribunal – Mediation Service

Complainants to the Equality Tribunal under the Employment Equality Acts, Equal Status Acts and Part VII of the Pensions Acts, are in the first instance offered the option of availing of the services of a Mediation Officer to attempt to find an agreed resolution of the particular complaint through mediation rather than going straight to an investigation. Mediation is the default position where neither party has objected to it. However, by its nature, mediation cannot be imposed – if either party objects, the matter will be assigned to an Equality Officer for formal investigation.

Mediation is conducted in private, and is directly between the parties concerned, with the support of the Mediator, who acts as an independent facilitator. Either party may withdraw from the process at any time by notifying the Mediator in writing that they wish to do so. If the mediation process results in an agreement acceptable to both parties, the Mediator draws up a written record of the terms of the settlement for signature by the complainant and respondent. A copy of the mediated settlement is given to both parties and a copy is kept in the Equality Tribunal. (Unlike Decisions following investigation, the contents of mediated settlements are not published.) Once signed, this agreement is legally binding on both parties. A mediation settlement, which has not been complied with, may be enforced through the Circuit Court.

If, during the mediation, one party withdraws or the Mediator decides for any other reason that the case cannot be resolved by mediation, s/he will send a notice to that effect to both parties.

If the complainant still wishes to pursue their complaint they must respond to the notice in writing within 28 days, or in the case of complaints under the Employment Equality Act, 42 days, seeking a resumption of the Investigation of the complaint. Where such an application is not made within the specified time limit, the Tribunal has no further jurisdiction in the matter and must close the case.

Rights Commissioner Service

From its inception in 1969, the Rights Commissioner Service has been characterised by its emphasis on non-adversarial problem-solving approaches to dispute resolution. Perhaps this is not surprising when one considers that the Service was established for the purpose of providing a non-legalistic, efficient means of resolving individual disputes of interest. Since 1969, however, the Rights Commissioners have acquired first instance jurisdiction under some 40 pieces of employment legislation. Nevertheless, It has been reported that approximately one third of the cases referred to a Rights Commissioner continue to be settled informally on the hearing day with the assistance of the Rights Commissioner[6]. This of itself goes to demonstrate that there is often scope to mediate a settlement even when employment rights have been contravened and thus avoid a potentially much more costly adversarial process.

Pilot Early Resolution Service

A pilot Workplace Relations Early Resolution Service (ERS) has commenced operations. Case Resolution Officers, selected from within the Department of Jobs, Enterprise and Innovation, underwent initial training in early in 2012 and commenced the pilot phase in May 2012.

All first instance complaints/referrals to the Rights Commissioner Service, the EAT, the Labour Court or NERA, are received and registered by the Workplace Relations Customer Services of the Department of Jobs, Enterprise and Innovation[7]. The pilot ERS offers an early intervention in a selection of these cases. Complaints selected for ERS are assigned to a Case Resolution Officer. Participation in the process is voluntary.

5.2 Summary of Reforms Proposed in the *Blueprint*

One of the key features of the system for the resolution of employment related disputes outlined in the *Blueprint* is the focus it places on maximising opportunities for early resolution of disputes, as close as possible to their point of origin in the workplace. 'The intention is to move from the default position that every individual complaint, no matter how large or small, must always result in a time-consuming and expensive formal hearing.' (p.7)

[6] Teague and Thomas, *Employment Dispute Resolution & Standard Setting* (Oak Tree Press, 2008), 59

[7] This has been in place since January 2012.

To this end, it is proposed to provide for a dedicated and suitably resourced Early Resolution Service (ERS) within the Workplace Relations Commission. The objective of the ERS will be to seek resolution of workplace relations complaints as an alternative to either a formal hearing by the Adjudication Service or an inspection by a WRS compliance officer. The ERS will deploy a broad suite of early intervention tools – ranging 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.

The potential benefits arising from the creation of the Early Resolution Service include:

- Early and timely intervention before disputes escalate and parties' positions become entrenched,
- Reducing costs for employers and employees,
- Minimisation of the need to proceed to formal hearings and inspections,
- Enhanced capture of invalid and inadmissible complaints,
- The provision of an alternative method of dispute resolution,
- Leveraging at an early stage the expertise, skills and knowledge which reside within the current employment disputes resolutions bodes in order to efficiently and effectively resolve disputes,
- Contributing towards the simplification of access to and navigation of the employment dispute resolution processes,
- Generating efficiencies and savings in terms of staff input and associated administrative costs.

5.3 Observations Received on *Blueprint* Proposals

Responses to the consultation process initiated by the Minister in 2011 indicated a strong consensus that early intervention in order to resolve disputes is desirable. This view was overwhelmingly endorsed by the submissions received in response to the *Blueprint*.

However, some respondents did query the use of telephone interventions, observing that this form of intervention could not be a substitute for face to face mediation or conciliation, for example. The Minister acknowledges the validity of this observation, but wishes to stress that the ERS will have a range of tools at its disposal and that they will be deployed as appropriate.

Undoubtedly there will be a percentage of disputes that may be based on a lack of knowledge or a simple misunderstanding on the part of one of the parties. Quite often, the mere clarification of a simple point of information to both parties by an objective, neutral party, over the phone or otherwise can diffuse this type of dispute.

It should also be noted that telephone contact is increasingly used as a form of dispute resolution in other jurisdictions. For example the Labour Relations Agency in Northern Ireland state, in this regard, that "*many cases can be dealt with in a few telephone calls or a short meeting, with agreed settlements implemented very soon afterwards*"[8]. In England and Wales, it is proposed that around 80,000 cases a year will be taken out of county court hearings, on foot of the introduction of cheaper, quicker and more accessible settlement procedures including telephone mediation in the civil courts.

A separate concern was raised by one respondent organisation regarding the enforceability of settlements arrived at by early resolution. The respondent in question expressed concern at the Minister's proposal to make agreements reached in Early Resolution recoverable from the State's Insolvency Fund, pointing out that, in its view, it may encourage certain employers 'to settle on terms disproportionately favourable to employees'. In that organisation's view, this would create an unhelpful precedent for other employers.

The Minister is of the view that complainants who proceed to mediated settlements should not be at a disadvantage compared to those whose complaints are adjudicated. In circumstances where a complainant who is granted an award by the WRC Adjudication Service or by the Labour Court can recover that award (in full or in part, as the case may be) from the Insolvency Fund, it follows that a complainant whose award resulted from a mediated settlement should likewise be able to recover that award or part thereof, in similar circumstances, from the Insolvency Fund. The current statutory limits on amounts payable from the fund would apply equally to mediated settlements and adjudicated awards. Finally, as all mediated and other settlements achieved through the ERS will be private to the parties, the Minister believes the concern expressed in relation to 'unhelpful precedents' should not arise.

[8] LRA Pre-Claim Conciliation Explained

5.4 How the Minister Proposes to Proceed

The proposed ERS to be provided by the WRC 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[9], non-enforceable agreement between the parties.
- A complainant who agrees a mediated settlement with an employer who is or becomes insolvent within the meaning of the Protection of Employees (Employers Insolvency) Acts, will be entitled to claim from the Insolvency Fund on the same basis as if he or she had been granted an award by an Adjudicator of the WRS or by the Labour Court. That is to say, the same qualifying criteria and financial limits will apply to such mediated settlements as apply to

[9] This will be determined by the relevant section of the Industrial Relations Acts under which the complaint has been initiated.

adjudicated awards. It is not anticipated that this proposal will result in an increased burden on the Insolvency Fund.

- Should early intervention not succeed and the complainant opts instead to refer the matter to adjudication, neither party will be permitted to rely on information exchanged during the early resolution process.

Chapter 6 – Adjudication Service of the Workplace Relations Commission

6.1 The Current Situation and the Need for Reform

For the majority of complainants and respondents in employment rights disputes, their appearance before an employment rights adjudication forum is an exceptional event. The present system is extremely complex and is not easily understood by parties who come in contact with it for the first time or only occasionally. This is due in no small measure to the fact that there are multiple forums in which complainants can initiate potential complaints against employers.

The majority of employment rights complaints ('complaints of right') can be initiated, in the current system, in one of three forums, depending on the Act under which the complaint in question is brought: the Rights Commissioner Service; the Employment Appeals Tribunal; or the Equality Tribunal.[10] The majority of complaints may be commenced before the Rights Commissioner Service which has first instance jurisdiction under some 40 pieces of legislation[11]. First instance complaints under employment equality legislation (with one exception[12]) must be initiated before the Equality Tribunal. Complaints under the Minimum Notice and Terms of Employment Acts and the Redundancy Payments Acts must be initiated before the Employment Appeals Tribunal. Finally, complaints under the Unfair Dismissals Acts can be initiated either before a Rights Commissioner or before the Employment Appeals Tribunal unless either party (complainant or respondent) objects to the Rights Commissioner's jurisdiction in which case the complaint must be referred for adjudication to the Employment Appeals Tribunal.

The complexity is added to by the fact that there is a wide variation in the time limits within which an employment complaint must be initiated, the grounds on which an employment adjudicator can extend the time limit in given circumstances and the extent of the period for which the initial limitation period can be expanded. There is universal agreement that the current multi-forum system for the resolution of individual employment disputes is not working.

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[10] For the purpose of this analysis we are not including the first instance jurisdiction of the Labour Court under the Industrial Relations Acts 1946-1990. Nor are we specifically referring to the option available to complainants prosecuting a complaint of gender discrimination under the Employment Equality Acts 1998-2011 to commence their complaint in the Circuit Court.

[11] This ever expanding jurisdiction of the Rights Commissioner service in the arena of employment rights is somewhat anomalous when one considers the purpose for which the office of Rights Commissioner was established under the Industrial Relations Act 1969: the resolution of individual disputes of interest.

[12] See footnote 10 (above).

- There is a significant variation in the procedures which are applied by the individual first instance bodies. At one end of the spectrum there is the often informal, alternative dispute resolution/mediation format frequently adopted by the Rights Commissioners; at the other end of the spectrum there is the potentially extremely legalistic approach which is often adopted in the adversarial hearings of the Employment Appeals Tribunal; somewhere between both of those extremes one can locate the inquisitorial procedures mandated for the Equality Tribunal by the Employment Equality Acts.
- The adjudicators assigned to each body vary enormously in terms of their respective backgrounds and their level of training: Rights Commissioners are appointed by warrant and, for the most part, tend to be drawn from the ranks of former trade union officials or HR/personnel managers; Equality Officers are full-time civil servants; the Employment Appeals Tribunal members are engaged as such on a part-time basis and tend to have other responsibilities as lawyers, HR persons, trade union officials or in business otherwise.
- There is unnecessary duplication of resources applied by the State for the maintenance of multiple separate adjudication bodies: each requires a team of adjudicators, support and administrative staff, a secretariat, a website presence, training budget, information provision facilities etc.
- Users of the Employment Appeals and Equality Tribunals, for example, experience considerable delays in having their complaints heard; by contrast there is currently no backlog in the Rights Commissioner Service
- There is widespread perception of inconsistency of decision-making across individual adjudicators within each body and across the different statutory bodies
- There is an inexplicable diversity in the format of the written determinations issued to the parties appearing before them by the different dispute resolution forums
- An Individual with a number of *bona fide* complaints arising from the same set of circumstances with the same employer (e.g. a discrimination complaint, a redundancy complaint and a complaint under the Payment of Wages Act) currently has to have each complaint heard, both at first instance and on appeal, by separate bodies.
- The current system also lends itself to ‘forum shopping’: a common practice whereby an opportunistic complainant, with a view to pressurising an employer into early settlement, will lodge multiple complaints under several different pieces of legislation, in as many forums as possible, arising from the same circumstances.
- In the latter two sets of circumstances the employer will have to defend complaints in respect of the same employee before a number of different first instance and appeal bodies.

6.2 Summary of Reforms Proposed in the *Blueprint*

The *Blueprint*'s proposal in relation to the adjudication of complaints at first instance proposed the following[13]:

- All first instance complaints requiring adjudication will be heard by single Workplace Relations Commission Adjudicators at a hearing where both parties will have the opportunity to be heard.
- Adjudication Officers will be appointed through an open and transparent system and will be required to meet certain criteria on an annual basis.
- Service level targets will be set to ensure quality, consistency and timeliness of hearings and the publication of determinations.
- A Customer Charter will be published with specific commitments with regard to the quality and efficiency of the service that users can expect.
- Although a detailed Operations Manual will be prepared to govern the conduct of hearings, Adjudication Officers will be statutorily independent in their decision making role.
- Adjudication Officers will be subject generally to the same Code of Conduct as will apply to all WRC staff.
- The Minister may make regulations to provide for certain matters in relation to the conduct of hearings. Subject to these regulations, WRC Adjudicators will have a level of discretion to determine their own procedures in the conduct of hearings.
- Parties will be free to represent themselves at hearings or choose their own representation.
- An administrative fee may be introduced so that users of the service could contribute in some way towards the State's costs in providing the service; any fee would be configured in such a way as to encourage the parties to engage in early resolution.
- Hearings will be held in private unless the WRC Adjudicator decides at the request of either party to the complaint to hear the complaint in public.
- WRC Adjudicators will issue written, reasoned, signed and dated decisions in accordance with a pre-defined template which will require that the written decision outlines the reason for the decision and the application of the law therein.
- Either party to the adjudication may request anonymity in the published decision.
- A database of decisions will be maintained and made available through www.workplacerelations.ie.

[13] See pages 17-19 of the *Blueprint*

6.3 Observations Received on *Blueprint* Proposals

The submissions received in response to the *Blueprint* contained many and diverse observations on the proposals vis-à-vis the first instance adjudication system proposed in the document. In order to do justice in outlining and responding to those observations, it is proposed to group them under a number of headings as follows:

- Appointment of WRC Adjudicators
- Single-member Adjudication v Tri-partite Tribunal
- Conduct of Hearings
- Public v Private Hearings
- Publication of Adjudication Decisions
- Adjudication Awards

Appointment of WRC Adjudicators

This particular issue evoked a range of very robust and conflicting observations. It is worth pointing out, however, that there was near universal support for the Minister's proposal that appointments to the WRC Adjudication Service would be through an open, transparent and public competitive process.

One submission called for the panel of adjudicators to be largely comprised of 'experienced and independent lawyers presiding over the adjudication of vitally important individual legal rights.' On the other hand, other respondents alternatively proposed that first instance adjudicators should be individuals 'who possess a strong track record of experience as IR/HR practitioners, [with] excellent interpersonal and problem solving skills with an appropriate understanding of the law and its application ..'.

Some have gone further on this latter route and called for the appointment of adjudicators nominated by ICTU and IBEC, which is effectively the basis on which Rights Commissioners are currently appointed.[14] Finally, a number of respondents expressly voiced their opposition to the appointment or exclusive appointment of civil servants to the panel of adjudicators.

[14] Technically persons are nominated for appointment as Rights Commissioners by the Labour Relations Commission and appointed as such by the Minister for Jobs, Enterprise and Innovation. However, in practice the system of nominations gives equal priority to nominations by IBEC and ICTU. Candidates submit to no competitive process prior to appointment.

Response

The Minister is mindful that the Adjudication Officers of the WRC will be called upon to determine a broad range of complaints and disputes including those initiated under equality legislation, general employment rights legislation, complex dismissal cases and individual disputes of interest. In order to ensure a high level of service delivery and to obviate the need for unnecessary appeals, the Minister proposes to establish a diverse panel of adjudicators which will include experienced industrial relations and HR practitioners, employment lawyers and civil servants with appropriate skills/qualifications. The external panel will be established following an open, public and transparent competition which will be administered by the Public Appointments Service. Candidates will be assessed against clearly identified criteria and will be required to demonstrate that they possess a range of necessary core competencies. On the establishment of the Workplace Relations Commission, Adjudication Officers will be drawn from the existing serving officers within the workplace relations services. The skills and experience of the Equality Officers and of the existing panel of Rights Commissioners will be utilised. This will provide a mixture of civil servants and external appointments with a broad range of experience and expertise.

Single-member Adjudication v Tri-partite Tribunal

Two respondents made submissions in relation to this issue. One respondent advocated that all hearings should be conducted by a tripartite tribunal 'made up of members coming from three distinct perspectives'. A second respondent advocated that particularly complex dismissal cases, for example, be heard by a three person tribunal.

The Minister has considered both submissions on this point and remains of the view that all first instance complaints be determined by a single adjudicator. The Minister proposes to invest in a thorough selection process which will identify persons to be Adjudication Officers who have the required skill sets and core competencies. These people will then be given state of the art training on an on-going basis and will thus be equipped to competently adjudicate as single members on the full range of matters referred to the WRC's Adjudication Service. In addition, all parties will have access to an appeal to be heard by a three-person division of the Labour Court.

Conduct of Hearings

Conduct of hearings also elicited robust submissions from many respondents with some calling for 'the introduction of uniform formalised procedures' to be specified in primary legislation. Some respondents raised concerns that the Minister's proposals implied that there would be a departure from the current position which applies to equality complaints whereby the Equality Tribunal takes an inquisitorial as opposed to an adversarial approach and the evidential burden shifts to the respondent once the complainant is deemed to have established a *prima facie* case of discrimination.

Response

The Workplace Relations Bill 2012 will not seek to amend the provisions of the Employment Equality Acts 1998-2011 which provide for the procedures adopted by the Equality Tribunal or which locate the burden of proof in equality complaints. Likewise, there will be no substantive change to the Unfair Dismissals Acts in so far as the latter provide that all dismissals are deemed to be unfair until such time as the contrary has been demonstrated. The Adjudication Officers will be required to apply the current corpus of substantive employment, equality and industrial relations law, pending any future amendments or consolidation.

Adjudication officers will be empowered to take evidence on oath and to summon witnesses and documents. However, they will enjoy discretion in the exercise of those powers and generally in the conduct of individual cases subject to the over-riding requirement to act judicially and to observe the principles of natural and constitutional justice. The emphasis will be on utilising an inquisitorial approach in so far as possible.

Public v Private Hearings

The initial proposal in the *Blueprint* that first instance adjudication hearings would be conducted in private provoked a strong reaction particularly (but not exclusively) from commentators from the legal professions, most of whom expressed a preference for public hearings. Some commentators made reference to compliance with Article 6 of the European Convention on Human Rights ('ECHR') in support of their call for hearings to be conducted in public. One submission took a contrary view and suggested that public hearing of complaints at first instance would introduce 'an unnecessary additional dynamic into the dispute resolution process at a stage that should be characterised by informality.'

Article ECHR 6(1) provides: *"In the determination of his civil rights and obligations …., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law …'*. The provisions of the ECHR have been incorporated into domestic Irish law by the European Convention on Human Rights Act 2003. While a *prima facie* requirement of Article 6 is that hearings in which people's rights are determined ought to be in held public, there are a number of judgments of the European Court of Human Rights (ECtHR) in which the Court has stated that many components of the right to a fair hearing (such as the right to a speedy and expeditious determination of the matter) must be balanced against the right to a public hearing and may, in certain circumstances, justify hearing the matter in private. In the words of the Court, "the demands of flexibility and efficiency, which are fully compatible with the protection of human rights, may justify the prior intervention of administrative or professional bodies and, *a fortiori*, of judicial bodies which do not satisfy the said requirements in every respect ...". [15] This is particularly the case, according to the Court, where there is a full rehearing of the matter available to the parties on appeal from the initial private hearing or where judicial review of the adjudicative tribunal is available.

The ECtHR has applied the reasoning outlined above in particular in its examination of the disciplinary procedures adopted by a range of professional bodies in contracting states. Decisions of such bodies frequently have the very far-reaching effect of depriving individuals of their licence to practice a particular profession and thus involve the determination of those individuals' civil rights and obligations to a far greater extent than any employment tribunal has the power to. Invariably, the ECtHR has applied the principle that the availability of recourse to the civil courts by way of appeal or of judicial review ensured the application of Article 6 to the relevant process, notwithstanding that the original hearing will usually have been held otherwise than in public.

Having given due consideration to the State's obligations under Article 6 of the ECHR, and the relevant case law of the European Court of Human Rights pursuant to Article 6, and bearing in mind in particular the unique nature of the employment relationship, the Minister proposes to provide expressly that employment rights and equality complaints should be heard in private at first instance.

[15] *Le Compte, Van Leuven and De Meyere v Belgium* (1982) 4 EHRR 1

Appeals to the Labour Court will be heard in public[16], thus ensuring compliance with the requirements of Article 6 ECHR. Disputes of interest will continue to be heard in private (both at first instance and on appeal).

Adjudication Decisions

While practitioners generally welcomed the Minister's proposal that reasoned decisions of all decided cases (at first instance and on appeal) would be published on www.workplacerelations.ie , a small number of the submissions received in response to the *Blueprint* called for the published decisions routinely to be anonymised or to be anonymised unless the parties concerned requested otherwise. Currently there is diverse practice in this regard across the existing employment rights bodies.

The Minister, having considered the policy issues and the submissions in this regard proposes that the Workplace Relations Bill make provision for the anonymised publication of decisions of the WRC Adjudication Service. On the other hand, published determinations of the Labour Court should include parties' names other than in circumstances where parties jointly opt for anonymity or where the appeal hearing was conducted in private.

The *Blueprint* proposes strict indicative timeframes for the issuing of reasoned determinations to the parties following the conclusion of the hearing of their case. This is in keeping with the Minister's commitment generally with regard to the quality and efficiency of the service that users of the new bodies can expect. 'The target timescale for communicating the written decision will be to issue 90% of decisions within 28 working days from the date of the hearing. Copies of all decisions will be published on the WRC website within 10 days of notification to the parties.'

One submission cautions against setting targets for issuing adjudication decisions, noting that more complex cases will require more detailed consideration. This has been factored into the indicative timeframe and target stated in the *Blueprint* and which will be restated in the detailed Operations Manual to be issued to all adjudicators in the new system.

[16] Appeal hearings shall be in public, other than in cases where there are circumstances justifying a departure from this practice such as complaint of discrimination on disability or Traveller status grounds or cases involving allegations of sexual harassment.

Adjudication Awards

Respondents emphasised the desirability of achieving greater consistency in the new system with regard to the level of awards made. Many also specifically called for adjudicators' written decisions to provide a reasoned explanation for any awards granted. One submission suggested that a Code of Practice be introduced to aid in achieving these objectives. It was also proposed that awards should be reduced by the amount of any social welfare payments received by a complainant, for example, following dismissal.

Adjudicators will be required to provide an explanation for the basis of any award (monetary or otherwise) granted to a successful complainant. It is not proposed to prescribe levels of compensation that may be awarded by an Adjudication Officer in particular classes of cases as adjudicators will apply existing substantive law in this regard. Finally, the Minister does not propose to provide for social welfare payments to be set-off against awards under employment legislation as this would amount to a significant shift in Government policy.

6.4 How the Minister Proposes to Proceed

- The Minister proposes to establish a diverse panel of adjudicators which will include experienced industrial relations and HR practitioners, civil servants and employment lawyers with appropriate skills/qualifications.
- All first instance complaints will be determined by a single adjudicator sitting alone.
- Adjudication Officers will be required to apply the current corpus of substantive employment, equality and industrial relations law, pending any future amendments or consolidation.
- The legislation will make provision for the Minister to make regulations to provide for certain matters in relation to the conduct of hearings.
- Subject to the aforementioned regulations and 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.
- Adjudication officers 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.
- Employment rights, equality complaints and disputes of interest will be heard in private.

- Whereas the Workplace Relations Bill 2012 will include an enabling provision to allow the Minister to introduce a fee structure for users of certain services of the WRC and or Labour Court in the future should this be deemed appropriate then, the Minister does not propose to commence this provision on the establishment of the WRC save in relation to appeals to the Labour Court by parties who failed to attend first instance adjudication without good cause.[17]
- Reasoned decisions will issue in all decided employment rights cases; written recommendations/determinations will issue in all cases of interest referred to the adjudication service.
- Decisions of all cases decided by WRC Adjudicators will be published, without the names of the parties, on www.workplacerelations.ie
- Currently, all complaints under the Equal Status Acts 2000-11 (other than those that relate to licenced premises and registered clubs) are heard at first instance by the Equality Tribunal and on appeal by the Circuit Court. The District Court will retain its jurisdiction over complaints under the Equal Status Acts against licenced premises and registered clubs. The matter of where all other complaints (and appeals therefrom) should be directed is still under consideration.
- The jurisdiction of the Equality Tribunal to mediate or investigate complaints of alleged discrimination contrary to Part VII of the Pensions Acts 1990 – 2004 will transfer to the WRC. Appeals in relation to decisions of the WRC under this legislation will continue to lie to the Labour Court.

[17] See 9.3, *infra*.

Chapter 7 – Compliance Service of the Workplace Relations Commission

7.1 The Current Situation and the Need for Reform

Several individual employment Acts provide employees the option to elect from two alternative avenues of complaint in the event that they believe their employer may not be providing them with their statutory entitlements. That is, the employee in such circumstances may either make a complaint to NERA's Inspection Service – which may result in an inspection of the employer's records – or alternatively, the employee may make a complaint directly to the Rights Commissioner Service – which will result in a hearing being convened, unless the employer rectifies the matter in advance, to the employee's satisfaction.

Labour Inspection is a long established method of securing compliance with minimum employment standards. Currently, NERA's Inspection Service is tasked with the enforcement of employment law including by the inspection, examination of employment records, the carrying out of investigations and the monitoring of compliance with the requirements of employment law. The inspectors are warranted under some 14 individual pieces of legislation which empower them to enter employers' premises for the purposes of examining certain employment records which employers are obliged to retain to show compliance with the legislation in question.

Where non-compliance is detected, Inspectors will, in the first instance, attempt to work with the employer to try and achieve voluntary compliance, including through the payment of arrears to employees who have been underpaid or who may not have received statutory payments provided for in a Registered Employment Agreement, for example. In circumstances where an employer who is non-compliant is unwilling to voluntarily rectify his or her non-compliance, the only avenue open to Inspectors is to initiate a prosecution against the employer or (under a limited number of enactments) commence civil action to recover the arrears due to employees. Litigation is expensive and only infrequently results in meaningful repayment to employees. In any event, from a practical perspective, the scope for NERA Inspectors being able to recover underpayments to workers particularly in respect of entitlements to statutory public holiday pay has been significantly curtailed since the collapse of the Employment Regulation Order (ERO) framework following the High Court's judgment in the *John Grace Fried Chicken* case. As a consequence of that judgment, NERA has no direct means of achieving restitution for the employee(s) concerned, in circumstances where the employer is not willing to voluntarily co-operate.

In many instances the inspector's role is now reduced to checking whether or not records are in place. In such cases the records may clearly indicate underpayment or non-compliance with employment law but the inspector has no powers to take further action.

7.2 Summary of Reforms Proposed in the *Blueprint*

- NERA Inspectors to be re-named Compliance Officers to reflect their key role in informing and educating employers with regard to employment law compliance. The directorate itself should consequently be referred to as the Compliance Service of the WRC.
- Inspectors'/Authorised Officers' powers – currently spread over 14 separate Acts –should be consolidated and restated in one single statutory location.
- The main function of the proposed Compliance Service should be to build on the achievements of NERA to date in fostering a culture of compliance with employment law including through investigating complaints and delivering a pro-active risk-based programme of inspection and generally monitoring compliance with the requirements of employment law.
- The service should be supplemented by the introduction of a number of improved provisions that will deliver a more efficient and effective compliance system.
    - Compliance Officers should be empowered to resolve complaints that concern a statutory minimum entitlement that applies to all workers such as, for example, National Minimum Wage, holidays or public holiday entitlements[18].
    - A party who wishes to appeal a decision made by a Compliance Officer should be able to do so in writing to the Labour Court.

[18] The *Blueprint* proposed that complaints in respect of the following matters be dealt with by a WRC Compliance Officer: Underpayment of National Minimum Wage; Rates of pay due under a Registered Employment Agreement; Rates of pay due under an Employment Regulation Order; Failure to provide a payslip contrary to the Payment of Wages Act; Failure to detail all deductions from gross pay on a payslip; Unlawful deductions from pay contrary to the Payment of Wages Act; Illegal method of payment; Failure to keep records mandated by the Payment of Wages Act; Failure to issue a statement of terms and conditions of employment /accurate statement or to amend a statement as required by the Terms of Employment (Information) Acts; various breaches of the Protection of Young Persons (Employment) Act; Working without a valid employment permit or employing somebody without a permit where one is required under the Employment Permits Acts 2003 and 2006.

- Where the enactment in question is EU derived and provides for the potential award of compensation over and above mere restitution of an underpayment (as for example the Organisation of Working Time Act in respect of annual leave), the Compliance Officer should be able to award restitution but a complainant should in the alternative be able seek compensation at a hearing before an Adjudication Officer.
- The use of Compliance Notices[19] by Compliance Officers as a form of statutory notice or direction to an employer to rectify suspected non-compliance with employment legislation.
- Compliance Officers should be empowered to issue Fixed Charge Notices[20] in respect of the following examples of non-compliance with employment legislation should the employer in question fail to rectify his or her non-compliance within 14 days of having been advised in writing to do so by a Compliance Officer:
    - Failing or refusing to provide an employee with written terms and conditions of employment
    - Failing or refusing to provide an employee with a payslip
    - Failing or refusing to record deductions on a payslip
    - Failing to maintain or produce employment records to a Compliance Officer

7.3 Observations Received on Blueprint Proposals

Several of the *Blueprint's* proposals for improved compliance measures elicited a largely negative reaction from both employers' and workers' representative groups. Certain trade union representations, for example, expressed the view that renaming NERA Inspectors as Compliance Officers pointed to a 'softer approach to employers who breach the legislation' and one which is 'more sympathetic to the perpetrator than to the victim'. That same trade union concluded that in fact the proposal was a retrograde one as it would 'merely require employers to provide employees with that to which they are legally entitled … [but] the requirement to have compensation paid will be denied.' A second trade union, stressed the need to retain a right to a full hearing where the employee's preference is for this.

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[19] The concept is akin to the mechanism provided for in section 75 of the Consumer Protection Act 2007. Similar provisions are contained in SI 7 of 2012 (Regulation 13(2)) and SI 335 of 2006 (Regulation 10).

[20] Such schemes are commonplace today and are a useful and efficient way of effecting compliance. Examples of such schemes can be found in Health and Welfare legislation and in Maritime Safety law. See for example section 79 of the Safety, Health and Welfare at Work Act 2005 (No. 10) and section 58(f) (new section 6A inserted in the Harbours Act 1996) of the Maritime Safety Act 2005 (No. 11). Similar provisions are contained in SI 335 of 2006 (Regulation 16).

A number of trade union submissions were also critical of the proposal to require all complaints relating to alleged non-compliance with Registered Employment Agreements to be investigated by Compliance Officers prior to going to the Labour Court for hearing.

Generally the respondents who addressed the proposed introduction of Compliance Notices tended to take a negative view of the proposal. Criticisms ranged from the associated process being 'too cumbersome' to suggesting that it amounted to 'a usurpation of the judicial function by the inspectorate'. Others suggested that the introduction of the Compliance Notice mechanism could have the 'unintended consequence of increasing the likelihood of employers bringing legal representatives into the Labour Court' and this in turn could 'result in a spate of injunctions, judicial reviews and constitutional challenges to Labour Court procedures and decisions.'

Likewise, the majority of submissions that addressed the proposed introduction of Fixed Charge Notices were not supportive of the proposal. Most respondents took the view that such a system would not be 'an effective, proportionate or a dissuasive remedy' and might in fact have the opposite effect on certain employers who may regard paying a €150 fixed charge as 'cheaper than full compliance'. One submission – particularly opposed to the concept - expressed the view that the proposal would amount to 'a usurpation of the judicial function and is unlikely to be constitutionally permissible'

7.4 How the Minister Proposes to Proceed

The Minister, having had regard to all submissions received proposes to make provision for the following matters in the Workplace Relations Bill 2012.

The legislative powers of Compliance Officers will be consolidated and restated in the Bill. The redress provisions contained in a number of current employment rights enactments will be amended so as to give Compliance Officers the means to require restitution for employees who, as a result of not having received certain statutory entitlements, have been underpaid. The Minister believes that this proposal for reform will result in better utilisation of the resources invested by the State in the compliance function of the proposed Workplace Relations Commission[21].

[21] Appendix 1 includes a number of tables which set out summaries of the relevant first instance complaints together with details of where they currently are dealt with at first instance and a recommendation as to whether they should be subject to WRC hearing or Inspection.

For the avoidance of doubt, the Minister acknowledges that some employment disputes can best, and indeed sometimes only, be resolved by an adjudication hearing where an independent third party hears both sides and makes a determination. Clearly in such cases a hearing remains the most equitable and effective intervention. The State also has a responsibility to provide the most effective and efficient mechanism of resolving disputes.

The Minister, subject to advices sought from the Attorney General, proposes to provide for a legislative basis for the use of Compliance Notices. In circumstances where a Compliance Officer has formed an opinion that a scheduled contravention of employment law (including the non-payment of certain monies due to an employee under employment law), and the employer concerned fails or refuses to rectify the non-compliance the Compliance Officer shall issue a Compliance Notice setting out the steps the employer must take to effect compliance. It is also proposed to provide that an employer may appeal against all or any aspect of the notice to the Labour Court.

If the employer does not appeal and fails or refuses to rectify or set out in writing how he or she proposes to rectify the matters set out in the notice, the Compliance Officer may make a complaint to the Labour Court. The Labour Court may hold a hearing where the employer and the Compliance Officer would be heard. The Court will be empowered to cancel, alter or confirm the Compliance Notice and make a binding order similar to the current provision of Section 32 (1) (b) of the Industrial Relations Act 1946. Such an order could direct the employer to do such things (including the payment of any sum due to a worker for remuneration in accordance with the legislation) as will, in the opinion of the Court, result in the law being complied with by the employer. If the employer fails to implement the Labour Court order he or she shall be guilty of an offence prosecutable in the District Court. As well as possibly imposing a fine on the employer, if found guilty, the District Court may order the employer to pay to the worker(s) concerned such compensation as it considers fair and reasonable in respect of the employer's non-compliance stated in the order of the Labour Court, in addition to the State's costs associated with seeking to enforce the Compliance Notice.

The Minister, subject to the advice of the Attorney General, also proposes to provide for the use of Fixed Charge Notices in respect of a specified range of acts of non-compliance on the part of employers. The matters in respect of which a fixed charge notice may be issued will be specified in a schedule to the proposed legislation. Where a Compliance Officer detects suspected non-compliance in respect of one or more of the scheduled matters, the Compliance Officer will be empowered to serve the fixed charge notice.

If the person pays the charge the matter will not proceed to Court. However, if the person fails or refuses to pay the charge the matter can be progressed to the District Court where the defendant can defend their position in the normal way. Provision will also be made for the person in receipt of a fixed charge notice to appeal it to the District Court. In this regard the system of fixed charges will not deny the person alleged to have committed the offence their right to a hearing.

Chapter 8 – 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[22] 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.

In order to ensure that the Court is adequately staffed for its enhanced role and has the appropriate balance of expertise available to it, the Minister proposes to amend the legislation which regulates appointments to it. The Court currently has three divisions. This will be increased to four divisions and an additional two Deputy Chairmen will be appointed. This would put the membership of the Court at one Chairman, four Deputy Chairmen and eight Ordinary Members. The new arrangement will allow for the chair of individual divisions to be rotated in order to free up the Chairman and Deputy Chairmen for drafting and case management while all four divisions continue to sit. The additional cost of this increase in membership of the Court will be greatly outweighed by major savings delivered by the reform process.

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. The current arrangements will continue to apply in respect of existing Members.

[22] A decision has yet to be reached in respect of complaints under the Equal Status Acts 2000-2011

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. It is also proposed to include a provision in the draft legislation to empower the Court, of its own motion, to request the Director of the Workplace Relations Commission to direct a Compliance Officer to conduct an inspection of a specified employer's records and to give evidence in relation to same before any proceedings before the Labour Court.

The Bill, it is proposed, will 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.workplacerelations.ie to assist unrepresented parties in preparing submissions. No party who is unable, for example because of literacy, linguistic or disability reasons, 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.

Pre-hearing case management conferences will be of particular importance where it appears that the facts can be agreed without evidence, or where it appears that a party is seeking to adduce evidence which is not relevant to the issues to be decided in the case. This procedure will also be appropriate where issues have not been adequately addressed in the submissions filed in the case. The Court will be enabled to direct parties to file further submissions or to direct the parties on the issues they should address whether by way of submissions or evidence.

Chapter 9 – Appeals to the Labour Court

9.1 The Current Situation and the Need for Reform

At present, the majority of employment rights complaints (‘complaints of right’) can be initiated in one of three forums, depending on the Act under which the complaints in question are brought: the Rights Commissioner Service; the Employment Appeals Tribunal; or the Equality Tribunal.[23] The majority of complaints may be commenced before the Rights Commissioner Service which has first instance jurisdiction under some 40 pieces of legislation[24]. First instance complaints under employment equality legislation (with one exception[25]) must be initiated before the Equality Tribunal. Complaints under the Minimum Notice and Terms of Employment Acts and the Redundancy Payments Acts must be initiated before the Employment Appeals Tribunal. Finally, complaints under the Unfair Dismissals Acts can be initiated either before a Rights Commissioner or before the Employment Appeals Tribunal unless either party (complainant or respondent) objects to the Rights Commissioner’s jurisdiction in which case the complaint must be referred for adjudication to the Employment Appeals Tribunal.

Things become even more confusing and difficult for the user of the current system when it comes to appealing a decision or determination of one of the first instance bodies referred to above. This is particularly so with regard to appeals from decisions or recommendations (depending on the Act) of Rights Commissioners: some pieces of legislation provide for an avenue of appeal to the Labour Court and others provide for an appeal to the Employment Appeals Tribunal. There is no apparent logic as to why one route or the other is specified in a particular Act or statutory instrument: the decision appears to be largely *ad hoc*. In most cases, there is provision for an appeal on a point of law only from the determination of the Labour Court or Employment Appeals Tribunal, as the case may be, to the High Court.

[23] For the purpose of this analysis we are not including the first instance jurisdiction of the Labour Court under the Industrial Relations Acts 1946-1990. Nor are we specifically referring to the option available to complainants prosecuting a complaint of gender discrimination under the Employment Equality Acts 1998-2011 to commence their complaint in the Circuit Court.

[24] This ever expanding jurisdiction of the Rights Commissioner service in the arena of employment rights is somewhat anomalous when one considers the purpose for which the office of Rights Commissioner was established under the Industrial Relations Act 1969: the resolution of individual disputes of interest.

[25] See footnote 1.

Decisions of the Equality Tribunal under employment equality legislation may be appealed by either party to the Labour Court with a further appeal on a point of law to the High Court. There is no provision for a full appeal of a determination of the Employment Appeals Tribunal made under the Minimum Notice and Terms of Employment Acts or the Redundancy Payments Acts. However, either party may appeal on a point of law only to the High Court from the Tribunal's determination.

The situation which pertains to appeals under the Unfair Dismissals Acts is particularly complicated and is deserving of specific discussion. A party to a complaint under this legislation before the Rights Commissioner may have to face an appeal to the Employment Appeals Tribunal, and from there to the Circuit Court, and from there to the High Court. This extraordinary situation was the subject of some judicial comment by Mr Justice Charleton in the High Court recently in his decision in *JVC v Panisi* [2011] IEHC 279:

> *'Under the relevant legislation a claim for unfair dismissal may first be brought before the statutory Rights Commissioner. The determination of the Rights Commissioner may then be appealed by either employer or employee to the Employment Appeals Tribunal. The appeal is therefore from a single individual, as decision-maker, to a panel of three: a barrister or solicitor, as chairman, and one representative nominated from each of the employer's and employee's groups. The Rights Commissioner can be bypassed in favour of an initial hearing before the Employment Appeals Tribunal. Both the Rights Commissioner and the Employment Appeals Tribunal apply fair procedures equivalent to those required in a civil trial. Witnesses are heard and there is cross-examination and opening and closing submissions. Since no transcript is kept, the written decision of the Rights Commissioner may be appealed to the Employment Appeals Tribunal and the determination at that level, in turn, may be appealed to the Circuit Court. No transcript is kept in that Court. Thence, it may be appealed, as was this case, to the High Court. All of these steps involve re-hearing all of the evidence. None of the appeals are appeals on a point of law. An employee seeking the vindication of employment rights may be required by a determined employer to proceed through four full oral hearings. The costs in terms of the engagement of legal representation may be very large. Whereas the Rights Commissioner and the Employment Appeals Tribunal may not award costs to a successful applicant, the Circuit Court and High Court are obliged to award costs in accordance with the resolution of the litigation. The entire procedure may take some years. It is also a situation where the resources of an employer may militate against fairness in the disposal of proceedings brought by an impecunious employee.*

After all, the point of such a case is whether the employee was unfairly dismissed; consequently he or she often has no job. The costs of legal hearings has a human rights implication: see Campbell v. MGN Limited [2004] UKHL 22; and in the European Court of Human Rights as MGN Limited. v. The United Kingdom, application number 39401/04. I am satisfied that the employee in this particular dispute was so worried about the potential costs that the sum which he received in apparent redundancy from his employer has been kept untouched by him in a bank account. The timescale involved in this case is not untypical of others. The employee filled in a T1A form seeking redress for unfair dismissal and a failure to comply with the period of notice of termination of employment required by statute on the 20th August 2008. His case was heard before the Employment Appeals Tribunal on the 8th December 2008. That tribunal issued a decision on the 24th April 2009. On the 14th July 2009, that decision was appealed by the employer. It was heard by the Circuit Court on the 2nd and 3rd June 2010, and a decision was given immediately by Judge Linnane. On the 14th June 2010 the matter was then appealed to the High Court. This Court heard the case over the 5th, 6th, 7th and 8th of July 2011. Judgment is now being given after a gap of about two weeks. The entire process has taken three years and three full oral hearings.

This procedure is cumbersome and redolent with the potential for unfairness. Many proposals have been mooted with a view to changing it. There are compelling reasons why change might be considered.'

The current system of appeals, as illustrated above, is unduly complex and cumbersome. It lacks rationale. It confuses occasional users of the system – employers and employees and their professional advisers- who frequently and unwittingly deprive themselves or their clients of their statutory right of appeal by filing their appeal in the wrong forum. As the time limits for bringing appeals are quite strict (normally 6 weeks from the date of receipt of the first instance decision), it is usually too late to seek to rectify the problem when the mistake comes to light. The statutory bodies have no jurisdiction to extend the period for bringing an appeal even when the delay is occasioned by an honest mistake as to the correct forum on the part of the appellant.

It is also the case, as outlined by Mr Justice Charleton in the quotation cited above, that the current system of appeals under the Unfair Dismissals Acts in particular can be potentially exploited by an employer who is determined to force a complainant in an unfair dismissal case to endure several *de novo* hearings of his or her complaint on appeal.

9.2 Summary of Reforms Proposed in the *Blueprint*

The Minister's *Blueprint* document proposed the following in relation to the reform of the current appellate system:

- Either party will have the right to appeal the decision of a WRC Adjudicator
- The Labour Court will hear all appeals that arise from WRC Adjudication hearings
- A consistent time limit of 42 days from the date the decision issues to apply across all legislation
- Written decision from the WRC hearing provide the basis for any appeal
- A party who fails to attend (or be represented at) a WRC hearing, without reasonable cause, forfeits the right to appeal to the Labour Court.
- The notice of appeal should require applicants to provide effective grounds of appeal
- The Labour Court may examine whether a complaint is sufficiently meritorious to proceed to an appeal hearing
- Appeals will be *de novo* hearings held in public
- Decisions to be published on www.workplacerelations.ie
- 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.
- The Labour Court will share a common case management system (with shared case numbering and identification elements) with the WRC which will make the administration of the appeals system more efficient. Members of the Labour Court will have appropriate levels of access to the case management system to assist them in dealing with the appeal
- The issue of whether a fee or deposit (or both) for lodging an appeal should be introduced is under consideration

9.3 Observations Received on *Blueprint* Proposals

De Novo Appeal to Labour Court

There was general consensus that either party to an Adjudication Officer's decision should have the right to appeal that decision and that a consistent time limit of 42 days for making appeals should apply under all Acts.

The proposal that the Labour Court should hear all such appeals that arise from WRC Adjudication hearings as full *de novo* appeals was generally well received[26]. However, a number of respondents raised issues regarding the appropriateness and ability of the Labour Court to deal with employment rights cases. The Minister's proposal in this regard is justified having regard to the very high standing in which the Labour Court's expertise, derived from its current appellate jurisdiction, is held. This is particularly the case with regard to appeals referred to the Labour Court under employment equality legislation, and also legislation regulating fixed-term and part-time work. The Labour Court has considerable first-hand experience of interpreting and applying complex provisions of EU law and indeed has made a number of direct referrals to the Court of Justice of the European Union.

Forfeiture of Right to Appeal in Certain Circumstances

There was very considerable opposition to the proposal that a party would forfeit the right of appeal in circumstances where that party failed to attend the first instance hearing without good cause. Representatives of employees, employers and equality groups raised concerns about the proposal to deny any party the right to appeal. Several respondents suggested that a system of charges or deposits would be a better method of dealing with this issue. Only one respondent fully rejected the proposal to qualify the automatic right of appeal in circumstances where one or other of the parties has failed to appear at the first instance hearing. Other respondents have variously called for clarification of 'without reasonable cause' so as to avoid doing an injustice to a party who, for one reason or another, may not have received notification of the first instance hearing. Others again – in recognition of the current abuses – have suggested that the criterion for allowing an appeal in such circumstances be the stricter standard of 'in exceptional circumstances.'

[26] This contrasts with the position under the UK system where there is no *de novo* appeal from a first instance decision of the Employment Tribunal. That system provides only for an appeal on a point of law.

The rationale for this aspect of the *Blueprint* proposal derives from the frustration expressed by employers' and employees' representatives and others in response to certain abuses of the current system. Some complaints in the current system are lodged by employees who are forum shopping with a view to forcing employers to settle rather than having to attend multiple hearings before a range of different bodies. A respondent not minded to settle in response to such pressure may spend time and resources preparing for and attending each case as it arises. In many instances the complainant does not make an appearance.

However, that complainant may still lodge an appeal of the decision of the first instance body – even if that it is a decision to strike out the complaint for want of prosecution – thus perpetuating the 'forum shopping' phenomenon. Likewise, an employer who has no regard for the first instance body to which a complainant has lodged a complaint can choose without impunity not to attend the hearing and simply appeal any award made in favour of the complainant at first instance to the next level in the system, without incurring any cost or penalty. In most cases, the respondent employer is likely to be better resourced than the complainant to take the necessary steps to make their case at the appellate stage.

The Minister is of the view that the conjunction of the following factors resulting from the reform programme will result in a more efficient system such that parties will be less likely to fail to attend first instance hearings for good cause:

(i) all complaints lodged by an individual complainant against his or her employer/former employer will be scheduled for one first instance hearing, thus obviating the 'forum shopping' phenomenon;

(ii) the backlog of cases awaiting hearing by the Rights Commissioner Service has been cleared completely, due in no small measure to the introduction of the single point of entry in early 2012; likewise it is anticipated that the new system will have at worst a very short lead in period before cases will be scheduled and therefore the problems causes by parties' contact details changing with the passing of time will not be an issue;

(iii) the increased resources of the Labour Court will also mean that the listing of appeals can be expedited thus reducing any perceived advantage that certain respondents may regard as resulting from their deliberate failure to attend the first instance hearing.

In light of the submissions received on this point, the Minister is now proposing to modify the position stated in the *Blueprint* vis-à-vis the forfeiture of the right to appeal. All parties to a first instance hearing will be entitled to appeal the decision of the first instance adjudicator in their case to the Labour Court regardless of whether that party attended the first instance hearing or not. However, where a party failed to attend the first instance hearing, that party's appeal application will be subject to a charge of €300.00 which may be refunded at the direction of the Labour Court if the Court determines that the party's failure to attend the first instance hearing was for good cause.

Appeal to the Labour Court to be final appeal save for the right of either party to further appeal on a point of law only to the High Court.

The *Blueprint* document proposes that the appeal to the Labour Court from the first instance decision of the WRC adjudicator should be the final appeal stage, save for the possibility of a further appeal on a point of law only to the High Court. It is also worth noting in relation to this proposal that the system of employment rights adjudication in the neighbouring UK jurisdiction – upon which so many elements of our own legal and employment rights systems are in fact modelled – is far less generous in this regard than what is being proposed in the *Blueprint*. The UK system allows only for an appeal on a point of law from a determination of an employment tribunal to the Employment Appeal Tribunal.

There is currently only one employment statute which allows for a *de novo* appeal to the Circuit Court: the Unfair Dismissals Acts 1977-2007. Two respondents proposed that this further layer of appeal be retained and extended to other Acts. Such a proposal, if accepted, would introduce a significant additional layer of appeals into the system over and above that which currently exists. This proposal is at odds with the Minister's objectives in achieving a reformed and simplified two tier structure. It also quite clearly at odds with Mr Justice Charleton's observations on the current system for the adjudication of unfair dismissal complaints generally, cited previously. The learned judge also makes the following very notable observation in the same context:

> *'No appeal in any court proceeding under the Constitution is ever more than a hearing and a re-hearing. Often it is less. From District Court to Circuit Court there is a full oral re-hearing in a civil or criminal case. The process is then complete. In a civil case, a Circuit Court judgment may be appealed to the High Court by a full oral re-hearing. The process is then complete. Circuit Court criminal decisions and High Court civil and criminal decisions can be appealed to the Court of Criminal Appeal or the Supreme Court on a point of law argued on the basis of a transcript. The process is then complete, barring a rare criminal appeal on a point of law of exceptional public importance from the Court of Criminal Appeal to the Supreme Court.'*

Having regard to the *Blueprint's* stated objective in seeking to overhaul the current cumbersome and unwieldy system of employment rights adjudication in the interests of replacing it with a user-friendly, efficient and inexpensive system, the Minister remains of the view the proposal to have the Labour Court as the final level of appeal - save for the parties' right to appeal on a point of law only to the High Court from a determination of the Labour Court - remains the most appropriate way to proceed.

Specification of grounds of appeal to allow the Labour Court to examine whether the appeal is sufficiently meritorious to proceed to an appeal hearing.

This proposal in the *Blueprint* provoked a negative reaction equally from respondents representative of employers, employees and the legal profession. The proposal was intended to introduce a filter mechanism to the appeal stage so as to discourage the losing party to the first instance hearing automatically lodging an appeal simply because there was no cost for so doing and no effort required to lodge the appeal. The risk in such a system is that the appellate body becomes inundated with an unnecessarily large volume of appeals which all have to be managed, scheduled and heard. This in turn introduces unwelcome backlog and a delay in the system.

Having regard to the strong views expressed by respondents and representatives of users of the system with regard to this aspect of the proposed system of appeals, the Minister has determined not to proceed with the introduction of a mechanism whereby an appeal by either party to the Labour Court would be subject to any form of pre-screening by the Labour Court.

Active Case Management of all Appeals by the Labour Court

The Labour Court - through a single member (the Chairman or a Deputy Chair) sitting alone – will actively engage with both the appellant and respondent to each appeal application – to identify the issues of fact and/or law that are in contention between the parties to the appeal in the interests of expediting the hearing of the appeal. The single member - where he or she considers it in the interests of justice and fairness to do so – may also require the parties to submit written submissions on such matters for the consideration of the full division of the Court sitting to hear the appeal. Likewise, the Labour Court division sitting to hear the appeal will be empowered to request written submissions from the parties in respect of issues raised by them during the appeal hearing.

The Labour Court will share a common case management system with the Workplace Relations Commission which will make the administration of the appeals system more efficient. Members of the Labour Court will have appropriate levels of access to the case management system to assist them in dealing with the appeal.

9.4 How the Minister Proposes to Proceed

Having considered the responses received in relation to the proposals in the *Blueprint* document with regard to appeals the Minister is now proposing to make provision for the following matters in the Workplace Relations Bill.

- The Labour Court will hear all appeals that arise from WRC Adjudication hearings.
- Appeals will be *de novo* hearings held in public (other than where the complaint is one that raises confidential or sensitive issues in relation to disability, sexual orientation, Traveller status, for example)
- Decisions of the Labour Court will be published on www.workplacerelations.ie
- Determinations following a public hearing will ordinarily contain the names of the parties. In contrast, the published determination of an appeal hearing held in private will not contain the names of the parties. In all cases, the names of witnesses for either party will be anonymised.
- A consistent time limit of 42 days from the date the first decision issues to apply to all appeal applications across all legislation
- Either party will have the right to appeal the decision of a WRC Adjudicator even in cases where that party failed to attend the first instance adjudication hearing with or without good cause.
- A party who fails to attend (personally or through a representative) a WRC hearing will be required to pay a charge of €300 to make an appeal to the Labour Court which may be refunded at the direction of the Labour Court if the Court determines that the party's failure to attend the first instance hearing was for good cause.
- 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.

Chapter 10 – Enforcement of Awards

10.1 The Current Situation and the Need for Reform

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. Enforcement proceedings will generally involve recourse to the civil courts and possibly the relevant sheriff's office.

There are no statistics available by which one can gauge the level of unimplemented determinations of employment rights bodies. The Minister for Jobs, Enterprise and Innovation currently has discretion to pursue enforcement proceedings on behalf of complainants under certain employment rights enactments. Likewise, the Minister for Justice and Equality has similar discretion under equality legislation and family protective leave enactments. Alternatively, individual complainants can take enforcement proceedings themselves or through their trade union.

Because of the cumbersome and antiquated legislative framework in place, such proceedings can be in train for a considerable period of time before bearing fruit or being abandoned; even in the case of successful enforcement proceedings, the costs incurred by way of legal fees expended can be significantly in excess of monies ultimately received to the benefit of complainants.

The State, due mainly to resource constraints, only brings forward a small number of cases. In the cases it has brought, the State has had a poor success rate with regard to enforcement proceedings relative to the resources which it has applied to this area on behalf of complainants. One can only assume that those complainants who take the risk of incurring legal costs in an effort to secure their awards through the civil courts have experienced similarly low levels of success. It should be noted that neither the Citizens Information Advocacy Service nor FLAC provides assistance by way of representation to complainants seeking enforcement of awards. Civil legal aid may be available on a means tested basis but subject to considerable waiting lists.

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 there needs to be an effective, inexpensive and easily-navigated process put in place.

There is a need for a robust method of enforcement of awards. The basis of having a world-class Workplace Relations Service is not only that the decisions are world-class: the real test will be to ensure that decisions are actually implemented. A key focus of the new system will be to encourage early resolution of disputes. This aspiration is undermined if a recalcitrant employer has reason to believe that it is going to be difficult for the employee to enforce any decision against them. On the other hand, a robust system of enforcement will encourage high levels of compliance with legislation and also, where a complaint is made, encourage early resolution and fulsome engagement with the dispute resolution processes.

10.2 Summary of Reforms Proposed in the *Blueprint*

The *Blueprint* highlighted that fact that there is a general consensus that enforcement is becoming increasingly difficult and ineffective and that a faster, more robust, and cheaper method of enforcement of determinations of the employment rights bodies is required. It also acknowledged that there is also a general consensus that all awards should be enforced through one body only and all procedures should be identical regardless of the nature of the award or the legislation under which the complaint was taken. The *Blueprint* did not outline any detailed proposal as to how this objective might be achieved other than committing the Minister to developing a 'new and more effective method of enforcing awards'.

10.3 Observations Received on *Blueprint* Proposals

Several respondents noted the need for an effective and user-friendly system of enforcement of awards under employment legislation that does not require expensive legal assistance to utilise. Some specifically called for the introduction of a system of penalties to be applied to employers who failed or neglected to fulfil the terms of awards made to successful complainants with the level of penalties set such as to act as a meaningful deterrent to other would-be recalcitrant employers. One respondent requested that the issue of "informal insolvency" - where employers just cease trading or go to ground (but do not become formally insolvent) leaving employees with no prospect of recovering monies due to them – be specifically addressed in the proposed legislation.

10.4 How the Minister Proposes to Proceed

Having considered the difficulties inherent in the current enforcement system and having given due regard to the observations and suggestions of interested parties in both sets of consultations to date, the Minister, subject to advices sought from the Attorney General, is now considering the following revised system for the enforcement of determinations made under the reformed adjudication structures.

It is proposed that there will be an Enforcement Section within the new structures that will implement the revised enforcement system outlined below. The District Court will have considerable enforcement powers in relation to decisions of Adjudication Officers of the WRC and determinations of the Labour Court.

It will not be possible to address the issue of so-called 'informal insolvency' comprehensively through the reforms currently being proposed by the Minister as it raises issues of company and insolvency law that are also under consideration in another forum. However, the Minister does propose to allow for sanctions to be imposed personally on directors, officers or managers for offences under employment law committed by a company if it is proven in the course of the prosecution that any such offences were committed with the consent or connivance etc. of any director, manager, secretary or other officer of the company.

If the decision of a WRC adjudication officer (at first instance) or a determination of the Labour Court (on appeal) in favour of a complainant is not appealed by either party but remains unimplemented after the period during which an appeal (or an appeal on a point of law, in the case of a Labour Court determination) may be lodged, the complainant may apply, in the former case to the Workplace Relations Commission or, in the latter case, to the Labour Court, for a **Determination Order**. The WRC or Labour Court, respectively, will not hear evidence at any hearing it may convene to deal with the application save in respect of the non-implementation of the Adjudication Officer's decision or the Labour Court's determination, as the case may be, in the applicant's case. If the WRC/Labour Court is satisfied that the award remains unimplemented and that no appeal has been taken within the time for bringing such an appeal, the WRC/Labour Court may issue a binding and enforceable Determination Order in favour of the applicant and directing the respondent in question to comply with the terms of the WRC's or Labour Court's order within a specified period.

A Determination Order made by the WRC or Labour Court may be enforced by either (a) civil proceedings or (b) criminal prosecution, or both[27].

(a) Civil enforcement proceedings may be brought in the District Court by the employee concerned or his/her trade union. The Minister's discretion to bring such civil proceedings under the enactments listed in Table 10.1 will transfer to the Director of the WRC. The employee concerned or the Director, where he or she is exercising discretion to do so, may apply to the District Court for an Order directing the non-compliant employer to comply with the Labour Court's Determination Order. If the applicant is granted the Order sought by the District Court but the employer concerned continues to fail to comply, it will be open to the applicant (the employee or the Director) to apply for an Order of attachment and committal of the employer, plus an order for costs.

(b) Criminal prosecutions may be brought by the Director of the WRC in the District Court area in which the respondent employer resides or carries on business. A successful conviction should carry an appropriate maximum fine and/or period of imprisonment. In addition to securing the criminal prosecution, where an amount of money is owed by the non-compliant employer, the Director will have the power to seek a Compensation Order in respect of the moneys due. Finally, the legislation will make it mandatory – other than in specific exceptional circumstances – for the District Court to award the Director's costs in bringing the prosecution.

In the context of the drafting process, further detailed consideration will be given to the rationale as to why certain enactments currently do not provide for the enforcement of awards at all or, as in some cases, for limited enforcement by the claimant only (and not the Minister or relevant State agency, for example).

[See Table 10.1, on the next page]

[27] The WRC will be required to develop and publish clear protocols in relation to the criteria it will apply in determining (i) whether or not to prosecute an employer who continues to ignore a Labour Court Determination Order; and (ii) whether or not the Director will exercise his/her discretion to take civil enforcement proceedings when requested to do so.

Table 10.1: Employment Law Enforcement Proceedings which can currently be initiated by the Minister for Jobs, Enterprise & Innovation or the Minister Justice & Equality or the Equality Authority

Legislation	Section	Court	Which Minister has discretion?
Terms of Employment (Information) Act 1994[28]	9	District Court	JEI
Protection of Young Persons (Employment) Act 1996	20	District Court	JEI
Minimum Notice and Terms of Employment Act 1973	12	Award recoverable 'as a simple contract debt in a court of competent jurisdiction'.	JEI
Organisation of Working Time Act 1997[29]	29	Circuit Court	JEI
National Minimum Wage Act 2000	32	Circuit Court	JEI
Protection of Employees (Part-Time Work) Act 2001	18	Circuit Court	JEI
Protection of Employees (Fixed-Term Work) Act 2003	16	Circuit Court	JEI
Maternity Protection Act 1994	37	Circuit Court	J&E
Adoptive Leave Act 1995	39	Circuit Court	J&E
Parental Leave Act 1998	22	Circuit Court	J&E
Carer's Leave Act 2001	22	Circuit Court	JEI
Unfair Dismissals (Amendment) Act 1993	11 (3)	Circuit Court	JEI
European Communities (Protection of Employment) Regulations 2000	Reg. 6(4)(b)(ii)	Circuit Court	JEI
European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003	Reg. 14	Circuit Court	JEI
Protection of Employees (Temporary Agency Work) Act 2012	Schedule 2, Section 4(1)	Circuit Court	JEI
Employment Equality Acts 1998-2011	8	Circuit Court	Equality Authority

[28] The relevant District Court Rules are now to be found in Ord.99B, rr.5 and 6 which were inserted by the District Court (Terms of Employment Information) Rules 2003 (S.I. No. 409 of 2003)

[29] The procedure for applications to the Circuit Court is set out in the Circuit Court Rules 2001 (S.I. No. 510 of 2001) Order 57, rule 4

Chapter 11 – Equal Status Complaints and Complaints under Part VII of the Pensions Acts

11.1 The Current Situation and the Need for Reform - Equal Status Acts

The Equal Status Acts 2000-2011, prohibit discrimination in the provision of goods and services, the disposal of property and access to education, on any of the nine specified grounds[30]. The Acts outlaw discrimination in all services that are generally available to the public whether provided by the State or the private sector. These include facilities for refreshment, entertainment, banking, insurance, grants, credit facilities, transport and travel services. Discrimination in the disposal of premises, provision of accommodation, admission or access to educational courses or establishments is also prohibited, subject to some exemptions.

Complaints under the Equal Status Acts in respect of registered clubs (i.e. clubs allowed to serve alcohol at their bars) and licensed premises may **only** be referred to the District Court.

Complaints under the Equal Status Acts in relation to all other providers of goods and services may be referred in the first instance to the Equality Tribunal. Before referring a complaint to the Equality Tribunal a complainant must first notify the service provider and has the right to ask for information in that notification. The notification must be in writing and sent within two months of the incident complained of (or, in the case of repeated incidents, the most recent one), stating the nature of the allegation and the intention to seek redress under the Equal Status Acts, if not satisfied with the service provider's response. The service provider is not obliged to reply but the Acts state that the Tribunal may draw such inferences as seem appropriate if the service provider does not reply or provides a false, misleading or unhelpful reply.

The Acts allow the Tribunal to dismiss a complaint without a hearing at any stage if, in the opinion of the Director or an Equality Officer, it has been made in bad faith or is frivolous, vexatious, misconceived or relates to a trivial matter (Section 22). Where a case is dismissed under this section, the complainant may appeal to the Circuit Court within 42 days.

[30] The nine specified grounds are: Gender; Civil status; Family status; Sexual orientation; Religious belief; Age; Disability; Race, colour, nationality, ethnic or national origins; Membership of the Traveller community.

When a complaint is received, the Tribunal will ask the parties to indicate in writing whether they have any objection to the case being referred for mediation. If neither party objects, and the Director considers that a case could be resolved by mediation, it will be referred to a Mediator. If the complaint does not go to mediation or mediation is unsuccessful then it can be referred to an Equality Officer for investigation. Under section 27 of the Equal Status Acts, a decision of an Equality Officer which finds in favour of a complainant will provide for compensation for the acts of discrimination or victimisation which occurred (the maximum being the same as that which can be awarded by the District Court in civil cases) and/ or an order that a person or persons take a specified course of action.

An Equality Officer has no general power to award legal costs to any person. However, if the Equality Officer considers that a person is obstructing the investigation, s/he can order that a person pay travelling or other expenses reasonably incurred by another person in connection with the investigation. Either party may appeal the Equality Officer's decision in writing to the Circuit Court within 42 days of the date of issue marked on the decision. If no appeal is lodged during this period, the decision is legally binding and may be enforced through the Circuit Court.

It is proposed to dis-establish the Equality Tribunal on the establishment of the new Workplace Relations Commission and to transfer all jurisdiction for first instance complaints under the Employment Equality Acts 1998-2011 to the WRC (without prejudice to the rights of complainants on the gender ground to initiate their complaints at first instance in the Circuit Court). The current Equality Officers will become officers of the WRC at the same time.

The question therefore arises as to whether complaints under the Equal Status Acts 2000-11 (other than those that relate to registered clubs and licensed premises) should likewise transfer to the WRC or whether all equal status complaints should be referable at first instance to the District Court.

The majority of cases that come before the Equality Tribunal (some 87%) relate to employment matters (i.e. are brought under the Employment Equality Acts or the Pensions Acts). The remaining 13% (approximately 150 cases per year) relate to alleged discrimination in the supply of goods and services contrary to the Equal Status Acts.

11.2 Summary of Reforms Proposed in the *Blueprint* - Equal Status Acts

As no final conclusion had been reached on this issue prior to the publication of the *Blueprint* in April 2012, the *Blueprint* left the matter open and simply stated as follows: 'The functions of the new Workplace Relations Commission will comprise those currently undertaken by the LRC, NERA, the Equality Tribunal and the first instance functions of the EAT and Labour Court in addition to an early resolution service for individual complaints.' (p.10)

11.3 Observations Received on *Blueprint* Proposals - Equal Status Acts

A range of equality, civil liberty and advocacy groups and the Equality Authority specifically called for the current jurisdiction of the Equality Tribunal in relation to complaints under the Equal Status Acts to be transferred to the WRC.

11.4 How the Minister Proposes to Proceed - Equal Status Acts

There will be no change to the current situation that pertains to complaints under the Equal Status Acts in respect of registered clubs (i.e. clubs allowed to serve alcohol at their bars) and licensed premises: it will continue to be the case that such complaints may **only** be referred to the District Court.

The Minister, however, is still in consultation with the Minister for Justice and Equality concerning the arrangement that should be made for hearing complaints under the Equal Status Acts 2000-11 in relation to matters other than those in respect of registered clubs and licensed premises and that best serves the public interest.

11.5 The Current Situation and the Need for Reform - Pensions Acts

With effect from 5th April 2004, it is unlawful to discriminate directly or indirectly in relation to occupational pensions on any of the nine protected grounds (gender, civil status, family status, race, religion, age, disability, sexual orientation, or membership of the Traveller community.)

All complaints of discrimination in occupational pensions occurring on or after that date are currently made to the Equality Tribunal, which may refer to the Pensions Board if it so wishes for technical advice on pension matters. The relevant statutory provisions are found in Part VII of the Pensions Acts 1990-2004.

It is proposed to dis-establish the Equality Tribunal on the establishment of the new Workplace Relations Commission and to transfer all jurisdiction for first instance complaints under the Employment Equality Acts 1998-2011 to the WRC (without prejudice to the rights of complainants on the gender ground to initiate their complaints at first instance in the Circuit Court). The current Equality Officers will become officers of the WRC at the same time.

In this context, it is also appropriate to transfer the Equality Tribunal's first instance jurisdiction under Part VII of the Pensions Acts 1990 to 2004 to the Adjudication Service of the Workplace Relations Commission. The proposed transfer is without prejudice to the right of a complainant on the gender ground under Part VII to initiate his or her complaint in the Circuit Court.

11.6 Summary of Reforms Proposed in the *Blueprint* - Pensions Acts

The Blueprint did not specifically discuss the jurisdiction of the Equality Tribunal in relation to complaints under Part VII of the Pensions Acts. The Blueprint spoke in general terms as follows about transferring the jurisdiction of the Equality Tribunal to the Adjudication Service of the WRC: 'The functions of the new Workplace Relations Commission will comprise those currently undertaken by the LRC, NERA, the Equality Tribunal and the first instance functions of the EAT and Labour Court in addition to an early resolution service for individual complaints.' (p.10)

11.7 Observations Received on *Blueprint* Proposals - Pensions Acts

There were no specific proposals received in relation to this aspect of the Equality Tribunal's jurisdiction .

11.8 How the Minister Proposes to Proceed - Pensions Acts

Having consulted with the Minister for Justice and Equality, the Minister now proposes to make provision to transfer the jurisdiction for dealing with complaints under Part VII of the Pensions Acts 1990 to 2004 from the Equality Tribunal to the WRC.

Appeals from the decisions of WRC Adjudicators will continue to lie to the Labour Court under Part VII of the Pensions Acts 1990-2004.

Chapter 12 – Providing for Standard Timeframes & Related Matters

12.1 The Current Situation and the Need for Reform

There are a number of procedural inconsistencies across the corpus of employment legislation in relation to the following matters:

- **Time limits for initiating a complaint**: these vary from six months of the date of the alleged breach to six months from the date of termination of employment[31] to twelve months from the date of termination[32] to six years from the date of termination[33]
- **The grounds on which the relevant first instance adjudicator may exercise discretion to extend the period for making the complaint:** this can be where 'exceptional circumstances' apply or where 'reasonable cause' is shown.
- **The period by which the period for bringing complaint can be extended:** this can be up to a further six months[34] or up to a further twelve months[35].
- **The time limit for bringing an appeal:** this can vary between 'within four weeks of the date on which the decision to which it relates was given to the parties concerned'[36]to 'within 6 weeks from the date on which the determination is communicated to the parties'[37].

A significant driver of this proposed root-and-branch reform of the system of employment dispute resolution is to develop a system that is accessible and user-friendly. It would seem opportune in this context to address the issue of irrational procedural variations that exist in the current system and to provide for standardised procedures and timeframes wherever possible.

12.2 Summary of Reforms Proposed in the *Blueprint*

The *Blueprint* proposed that 'A common time limit of six months for initiating all complaints requiring adjudication and consistent criteria under which such time limits may be extended to twelve months in exceptional circumstances will apply across all legislation.' In relation to the time to be allowed for appeals of first instance decisions, the Blueprint proposed, 'A common period of 42 days for lodging appeals will apply across all legislation.'

[31] Terms of Employment (Information) Acts 1994 and 2001.
[32] Redundancy Payments Acts 1967-2011.
[33] Minimum Notice and Terms of Employment Acts 1973-2005.
[34] For example, the Unfair Dismissals Acts 1977-2007.
[35] Redundancy Payments Acts 1967-2011; Protection of Employees (Fixed-Term Work) Act 2003; Protection of Employees (Part-time Work) Act 2001.
[36] Maternity Protection 1994
[37] Unfair Dismissals (Amendment) Act 1993

12.3 Observations Received on the *Blueprint* Proposals

Respondents noted that the Minister's proposal in this regard would result in a reduction in the current limitation periods applicable to complaints under the Redundancy Payment Acts and the Minimum Notice and Terms of Employment Acts. Some suggested that this would result in more complaints being lodged under these acts on a 'precautionary basis', resulting in increased pressure on the system and called instead for the standard limitation period to be set at 12 months. All respondents who referred to the threshold to be met by a complainant seeking to enter a complaint outside the statutory limitation period expressed the view that the Minister's proposal in this regard to apply a common 'exceptional circumstances' standard amounted to a 'considerable diminution on the current provisions'.

The Minister has given particular consideration to the submissions which addressed the issue of the appropriate limitation period which should apply to complaints under the Redundancy Payments Acts, the majority of which argued for the retention of the *status quo* in this regard (i.e. an initial limitation period of 12 months, extendable where reasonable cause is shown by a further 12 months). The Minister is of the view that current arrangement has, by and large, not served workers well, particularly in recent recessionary times which have seen significant numbers of employers ceasing to trade. Many employer companies who have found themselves in this situation may have laid workers off for long periods before slipping into 'unofficial insolvency' but were never in fact officially liquidated. This type of situation effectively caught many unsuspecting workers off guard in so far as enforcing their entitlement to statutory redundancy is concerned. The proposed new tighter limitation periods which will apply to redundancy legislation, in line with all other employment legislation, will, the Minister believes, better serve the interests of employees by encouraging them to bring their claims for statutory redundancy in a more timely fashion.

12.4 How the Minister Proposes to Proceed

Having given due regard to the various submissions received to the *Blueprint* proposals the Minister now proposes the following procedural standardisation will apply across the corpus of employment rights legislation:

- Time limits for initiating a complaint in relation to an issue of right: six months from the date of the alleged breach of the legislative provision or six months from the date of termination, whichever is the earlier.

- The grounds on which a Workplace Relations adjudicator may exercise discretion to extend the period for making the complaint will be where 'reasonable cause' is shown.
- The period by which the period for bringing a complaint can be extended where reasonable cause has been shown will be up to six months.
- The time limit for bringing an appeal will be in all cases 'within 42 days from the date on which the determination is sent to the parties by the Workplace Relations Adjudication Service'

For the avoidance of doubt, there will be no change to the situation which pertains to complaints of interest under the Industrial Relations Acts i.e. for practical reasons, it will continue to be the case that no time limits will apply to such referrals.

Appendices

Appendix 1– Referral of Complaints to Compliance Officers v to Adjudication

The tables below set out summaries of the relevant first instance complaints together with details of where they currently are dealt with at first instance and a recommendation as to whether they should be subject to WRC hearing or Inspection.

Table 1 (page no. 77) sets out complaints proposed for inspection. Table 2 (page no. 78) includes complaints which should in general be dealt with by inspection but where it the Minister deems it appropriate to provide that a complainant may seek compensation at a hearing rather than make a complaint to a Compliance Officer.

Either party who wishes to appeal the decision made by a Compliance Officer may do so in writing to the Labour Court. Employees who wish to seek compensation – where this is provided for in the relevant substantive legislation – over and above statutory restitution which can be awarded by a Compliance Officer – can apply directly to the Labour Court for same. Likewise, either party – employee or employer – who is dissatisfied with the Compliance Officer's decision may appeal that decision to the Labour Court where they will be afforded the opportunity for a full hearing.

Table 1: Complaints to be dealt with by WRC Inspection (Compliance Officer)

Issue/Legislation	Current	Proposed
Pay - 9 Potential Complaints		
Underpayment of National Minimum Wage	Rights Commissioner & Inspector	Compliance Officer
REA	Labour Court & Inspector	
ERO	Inspector (under 1946 Legislation)[38]	
No payslip given	Inspector	
Deductions not shown on payslip	Inspector	
Unlawful Deduction	Rights Commissioner	
Illegal method of payment	Inspector	
Not Keeping Employment Records	Inspector	
Terms of Employment Information Act – 6 potential Complaints		
No Statement or update of T&C	Rights Commissioner	Compliance Officer
Protection of Young Persons – 5 Potential Complaints		
Unlawful Employment of a Child/young person	Inspector	Compliance Officer
Rest breaks not given to a child	Inspector	
Double employment of a child	Inspector	
Employment Permits – 3 Potential Complaints		
Working without a valid permit	Inspector	Compliance Officer
Employing someone without a valid permit	Inspector	

[38] EROs were enforced by the Inspectorate from 1946 until 2011 when they were found to be unconstitutional. The Industrial Relations (Amendment) Bill 2010 provides for the enforcement of EROs to transfer to the Rights Commissioner Service

Table 2: Complaints which should in general be dealt with by inspection but where an adjudication option may also be necessary

<table>
<tr><th colspan="3">Hours of Work & Holiday Entitlements–OWT Act 14 Potential Complaints</th></tr>
<tr><td>Rest Breaks</td><td>Rights Commissioner</td><td rowspan="5">Compliance Officer or Workplace Relations Commission Hearing where unfair dismissal or complex redundancy involved or where complainant is seeking compensation</td></tr>
<tr><td>Max hours</td><td>Rights Commissioner</td></tr>
<tr><td>Annual Holidays</td><td>Rights Commissioner + EAT where redundancy is involved</td></tr>
<tr><td>Public Holidays</td><td>Rights Commissioner

+ EAT where redundancy is involved</td></tr>
<tr><td>Notification of starting & finishing times/additional hours</td><td>Rights Commissioner</td></tr>
</table>