The right to strike in the public sector

Ireland

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This factsheet reflects the situation in April 2018 and was elaborated by Cristina Inversi (PhD candidate at the Alliance Manchester Business School, University of Manchester) and reviewed by EPSU/ETUI.
1. Legal basis

International level

The Republic of Ireland has ratified:

**UN instruments**¹

- **International Covenant on Economic Social and Cultural Rights**  
  (ICESCR, Article 8)
- **International Covenant on Civil and Political Rights**  
  (ICCPR, Article 22)

Ireland signed the Optional Protocol to the International Covenant on Economic Social and Cultural Rights in 2012, but it has not yet ratified it. (it entered into force in 2013).

**ILO instruments**²

- **Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise**  
  ratified on 4 June 1955
- **Convention No. 98 concerning the Right to Organise and to Bargain Collectively**  
  ratified on 4 June 1955

Ireland did not ratify

- Convention No. 154, Collective Bargaining Convention, 1981
- Convention No. 151 - Labour Relations (Public Service), 1978

**European level**

Ireland ratified:

- **The (Revised) European Social Charter**  
  on 4 November 2000, and accepted Article 6(4)  
  It has also accepted the collective complaints procedure  
  (ratified on 4 November 2000).

**National level**

**The Constitution of Ireland**

In Ireland, as in the UK, there are no constitutional provisions guaranteeing the right to strike.
Applicable law(s)

- The Industrial Relations Act, 1990 provides general regulations governing industrial action.

- The Civil Service Regulation Act, 1924, as amended, provides the regulatory framework for the Civil Service.

- The Garda Síochána Act, 1977 provides regulations governing the right to organise in the national police force.

- The Code of Practice on Voluntary Dispute Resolution (2000) and the Industrial Relations (Amendment) Act, 2001 further regulate industrial action.

- Case law on industrial action is a particularly important part of the Irish legal framework guaranteeing the right to strike, in line with the common law legal tradition. The case law is instrumental in laying down the principles on the right to strike in conjunction with the statutory instruments. For instance, in *Nolan Transport (Oaklands) Ltd v James Halligan and Others*, the High Court decided that secondary industrial action is lawful.

- Ireland has a voluntarist system of collective bargaining, mainly at workplace level (single-employer collective bargaining). Social dialogue played a very important role following the first social partnership agreement in 1987, but the process collapsed in late 2009.
2. Who has the right to call a strike?

Workers who engage in industrial action which is ‘in contemplation or furtherance of a trade dispute’ enjoy legal immunities. These immunities cover civil and criminal liabilities arising from conspiracy and inducement of a breach of contract.

Immunities are also granted to trade unions for torts (civil liability) committed by or on behalf of the trade union if the tortious act was done ‘in contemplation or furtherance of a trade dispute’.

The right to strike is guaranteed in all branches of the public sector, with the exception of the national police and armed forces. Immunities cover only officials and members of authorised trade unions holding a negotiation licence. In Ireland, the police and armed forces are completely excluded from the right to take collective action.
3. Definition of a strike

Industrial action is defined as ‘any action which affects, or is likely to affect, the terms and conditions, whether expressed or implied, of a contract and which is taken by any number or body of workers in compelling their employer to accept or not to accept terms or conditions of or affecting employment’. Strike is defined as ‘a cessation of work by any number or body of workers in combination or a concerted refusal or a refusal under a common understanding of any number of workers to continue to work for their employer intended as a means of compelling their employer to accept or not to accept terms or conditions of or affecting employment’.6

Industrial action includes action short of a strike, such as a ‘go-slow’, work-to-rule and an overtime ban. Secondary action, political strikes and sympathy strikes are legal.7
4. Who can participate in a strike?

The 1990 Act provides that workers and employers are entitled to protection in the event of a trade dispute. In its section 8, it defines a worker as ‘any person who is or was employed whether or not in the employment of the employer with whom a trade dispute arises’, while an employer is ‘a person for whom one or more workers work or have worked or normally work or seek to work having previously worked for that person’. Section 8 furthermore defines an authorised trade union as a trade union which is ‘the holder of a negotiation licence under Part II of the Trade Union Act, 1941’.

Public sector

The notion of public (civil) service in Ireland is narrow and covers only persons who work in the central administration, which means those working in government ministries; accordingly, teachers, members of the police force, hospital workers and local authority staff are not strictly considered to be civil servants.

Essential services are defined in the Code of Practice on Dispute Procedures as those ‘whose cessation or interruption could endanger life, or cause major damage to the national economy, or widespread hardship to the Community and particularly: health services, energy supplies, including gas and electricity, water and sewage services, fire, ambulance and rescue services and certain elements of public transport’. In disputes that concern industries which provide essential services, the Code of Practice proposes that the resolution of disputes should proceed in stages and suggests alternative dispute settlement procedures which may involve third-party intervention in arbitration. The Conspiracy, and Protection of Property Act, 1875 contains provisions that potentially make it a criminal offence for workers in the water, gas or electricity industry to go on strike (these provisions remain in force but are no longer applied).

Procedures for the maintenance of ‘essential’ services during industrial action are outlined in the Code of Practice on Dispute Procedures. Section 20 recognises that ‘there is a joint obligation on employers and trade unions to have in place agreed contingency plans and other arrangements to deal with an emergency which may arise during an industrial dispute. Employers and trade unions should co-operate with the introduction of such plans and contingency arrangements’. Arrangements should be made in essential services concerning: the maintenance of plan and equipment; health, safety and security; special operational problems in continuous process industries; urgent medical services and supplies; emergency services required on humanitarian grounds. Should the parties encounter problems in making such arrangements, they should seek the assistance of the Labour Relations Commission.
5. **Procedural requirements**

Engagement in dispute resolution and negotiations is voluntary. The Code of Practice on Dispute Procedures outlines dispute procedures in industries which provide essential services. There are different procedures and bodies available for different sectors: for instance, the Garda Síochána has a dedicated Conciliation and Arbitration Scheme which was set up in 1993 and provides that, should disagreements persist in the conciliation stage, issues can be referred to an independent arbitrator.\(^{10}\)

Before engaging in industrial action, a trade union must hold a secret strike ballot;\(^{11}\) failure on the part of the union to comply with the secret ballot rule can lead to the revocation of its negotiation licence.\(^{12}\) All of the trade union’s members who might be reasonably interested in taking part in the industrial action must be given a fair opportunity of voting. The union may not organise a strike if the majority of its members vote against strike action unless the ballot was organised by more than one trade union and an aggregate majority of all the votes cast favours such strike action.

The trade union must give the employer at least one week’s notice of when industrial action will take place.
6. Legal consequences of participating in a strike

Participation in a lawful strike

What is the status of the employment contract?
From the common law perspective, strike action usually entails a breach of contract and results in termination of the contract. However, in *Becton Dickinson & Co Ltd v Lee*¹³, the Supreme Court agreed with the argument that, if a strike takes place in accordance with the procedural requirements (i.e. after due notice has been given), the contract is suspended not breached. This naturally applies only if the contract does not contain a ‘no-strike clause’.

Do workers incur any loss of wages, social security benefits or other privileges for the days they are on strike?
There is no obligation on employers to pay workers who are on strike. Furthermore, for the days they are on strike, employees are not entitled to receive pension contributions from their employer.¹⁴ Strikes also affect the concept of continuity of employment: days when employees are on strike do not count towards continuous employment. This provision affects the calculation of statutory redundancy entitlements for the purposes of the Unfair Dismissals Acts.¹⁵

Trade unions can set up a strike fund in order to compensate workers for any financial loss sustained while being on strike.

Under common law, any type of industrial action could potentially lead to the dismissal of an employee found to be in breach of the employment contract. Under the Unfair Dismissals Act, an employer may dismiss all employees for taking part in a strike. Protection against unfair dismissal may be enforced in cases where the employer dismisses only certain employees or selectively rehires certain employees.

Participation in an unlawful strike

An employer may claim damages for any losses caused by persons (workers and trade unions) who are not covered by the immunities conferred by the Industrial Relations Act.

What kind of protection against dismissal exists for striking workers?
The Unfair Dismissals Acts 1977 to 2007 protect trade union members participating in trade union activities. The dismissal of an employee engaged in industrial action would be considered unfair if: one or more of the other employees taking part in the action were not dismissed; or one or more of the other employees who were previously dismissed for taking part in the action were later reinstated. A dismissal can be lawful in the case of misconduct (i.e. malicious damage and assault) on the part of the employee during the industrial action or strike.

The employer may obtain an injunction against the trade union if the strike action is considered to be illegal. Section 19 of the 1990 Act provides that an injunction restraining the strike or other industrial action will not be granted if: the secret ballot procedures have been observed and the outcome favours industrial action; due notice was given to the employer concerned; and the defendant demonstrates that he was acting in contemplation or furtherance of a trade dispute.
7. Case law of international/European bodies

European Committee of Social Rights (ECSR)
In 2014, the European Committee of Social Rights (ECSR) concluded that the Irish legal framework of the right to strike is still not in conformity with Article 6§4 of the Revised Charter, on the grounds that:

(a) Only authorised trade unions – i.e. trade unions holding a negotiation licence – their officials and members are granted immunity from civil liability in the event of a strike;
(b) Under the Unfair Dismissals Act, an employer may dismiss all employees for taking part in a strike;
(c) The absolute prohibition of the right to strike of police forces goes beyond the conditions established by the Charter.16

Following the Committee’s 2006 conclusion of non-conformity with Article 6(4) of the Charter, the Irish Government committed to enact new regulations on unfair dismissals that align with the Charter.

ECSR Decisions under the collective complaints procedure

EUROMIL v Ireland, Complaint No. 112/2014.17
In this complaint, the ECSR found that there was a violation of articles 5 and 6§2 on respectively the right to organise and the right to bargain collectively for members of the armed forces. However, the ECSR found – by 9 votes against 4 – that the prohibition of the right to take collective action for the armed forces does not amount to a violation of Article 6§4.

European Confederation of Police (EuroCOP) v Ireland, Complaint No. 83/2012.18
In this complaint, in addition to other violations, the complainant alleges that there is a violation of Article 6§4 of the Charter on grounds of the prohibition against the right to strike of members of the police. In its conclusion, the Committee confirmed the existence of a violation of Article 6(4), as the complete abolition of the right to strike infringes the fundamental right of workers and trade unions to engage in collective action for the protection of economic and social interests. The Irish Government has failed to provide a compelling justification for the imposition of an absolute prohibition on the right to strike of the police force, and therefore the provision of section 8 of the 1990 Industrial Relations Act is not considered to be proportionate to the legitimate aim pursued.
8. Recent developments

There have been no recent developments.
9. Bibliography

Notes

1 The status of the ratification of the UN treaties concerned can be viewed at: http://indicators.ohchr.org/
3 Sections 10 and 12 of the 1990 Act.
4 Section 13 of the 1990 Act.
6 Both definitions can be found under section 8 of the Industrial Relations Act 1990.
7 See ETUI Report 103.
9 ETUI Report 108.
11 Section 14 of the Industrial Relations Act 1990.
12 Section 16 of the Industrial Relations Act 1990.
14 Fuller v Minister for Agriculture, [2008] IEHC 95.