

New law group to review ‘coherence’ of employment laws

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The Employment Law Review Group (ELRG), up and running since March, is tasked with ensuring Ireland’s employment law is ‘fit for purpose.’ The Group’s chairman, Professor Michael Doherty, talked to IRN about how the Group is to function and its first work programme.

The ELRG was formally established last year under the Employment (Collective Redundancies and Miscellaneous Provisions) and Companies (Amendment) Act 2024. Twenty of its members were announced earlier this year (one nominee from the Labour Court is still to be announced) and it held its first plenary with government ministers on 4 March.

Its function is to “monitor, review, and advise on all aspects of employment and redundancy law, with a specific focus on promoting good workplace relations in the State, simplifying the operation of employment and redundancy law in the State, and ensuring that the State’s suite of employment rights and redundancy legislation remains relevant and fit for purpose”.

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Professor Michael Doherty (Maynooth University) was appointed as the Group’s chairman. No stranger to a lead role, Mr Doherty was chair of the 2021-2022 High Level Group set up to reform industrial relations and collective bargaining and is a highly regarded academic in employment law and industrial relations in Ireland.

He is joined by many prominent figures in employment law (see end), most of which have been put forward by various state bodies, as well as the social partners. However, the Group’s members are not there to represent their organisation’s interests; rather, they can bring their experiences to provide a more thorough understanding of how employment laws operate in practice.

“It is a reasonable question to ask, to what extent the members represent their interests. We’re not representing any constituency in the work that we do [in the Group] but it is pointless to have all this expertise in the room and [not have] their feedback”, says the chairman.

WORK PROGRAMME 2025-2026

The two-year work programme for the Group was set in late March, after the Group’s first plenary meeting. For 2025 and 2026, the ELRG will look at the determination of employment status; review the Unfair Dismissals Acts 1977-2015; and review the notice periods in the Minimum Notice and Terms of Employments Act of 1973.

On the face of it, this might appear to be limited. But Mr Doherty explains: “I think the view was that we would like to do something relatively defined, that we could have a coherent output. We’re also conscious that, as with the company law review group, if something comes up, the Minister can ask the ELRG to review something. Just build in a little bit of wriggle room for that.”

“We wouldn’t envisage the Group adding anything to the work programme, but I could see it’s conceivable that something could come up through members of the group that we say to the Minister, ‘there’s this issue’. And if the Minister feels that we should look at that, we can”.

“And of course, you’re at the mercy of court decisions, especially the Court of Justice of the EU. Things can change quite rapidly, and I suppose the idea is that we will be flexible enough to respond to that”.

EUROPEAN AND DOMESTIC FACTORS

Each of the three topics for the Group’s work programme has a subgroup which will focus in depth on the issue at hand. The Group’s full membership will be 21; each subgroup has 7 members. The allocation to each group has taken into account a mix of constituency backgrounds, expertise and gender balance.

The review of the three aforementioned topics will look at European and domestic factors. “Are there going to be EU implications? For example, if you talk about employment status, the ‘Platform Work’ directive is coming down the line.”

“A domestic factor [for employment status] would be *Karshan*. With Unfair Dismissals, it would be the *O’Suird* ruling”, Doherty says.

The notice period topic “was a little bit more specific”, he says. “There is a European Social Committee finding that Ireland is not in compliance with the Charter; they’re saying those periods are ‘manifestly unreasonable’ in certain instances. That legislation is 50 years old [but] we’re not presupposing any outcome”, he adds.

MODELLED ON COMPANY GROUP

The ELRG is modelled on the Company Law Review Group. The CLRG is a “template” for the Employment Law Group – “we can see what’s worked well for them”. Two members of the ELRG are also members of the CLRG.

Mr Doherty said that most people “are fairly happy that the CLRG has done a pretty good job”, noting that there have been occasions where the CLRG has had to respond to matters that have arisen, as well as trying to consolidate and make a more coherent framework for company law.

“It is fair to say that we [the ELRG] are finding our feet a little bit, exploring and making sure we have a common understanding amongst ourselves.”

On whether the Group can, or would reach out beyond its membership, Mr Doherty says: “We are supposed to be a group of experts, but I can’t see any bar to us saying, ‘Well, look, we need to hear from a person, or constituency, on a particular issue’.” But the group will not be inviting public consultations, he says.

WHAT ELRG WON’T DO

The ELRG has a remit for 23 Acts, 21 specific sections of other Acts, and 13 statutory instruments – all of which are in the schedule of the Workplace Relations Act, 2015. (The original list of laws to be covered by the ELRG in a 2024 press release omitted by mistake a series of Acts and other provisions listed in the WR Act).

“There may be issues that touch on aspects of other laws so, there may come a point where we say, actually, we don’t have the expertise, or indeed, maybe this isn’t the right place to be looking at”, the Chairman says.

What will not be considered by the Group are policy matters. A good example of this, Doherty says, is the collective bargaining Action Plan (under the Adequate Minimum Wages Directive).

“That very clearly is something that would not sit within our group, even though we have social partner representation. It’s a completely different issue”.

Neither will the ELRG have a role in looking at the institutions of the WRC or the Labour Court – another ‘no go’ area.

“We’re not there to propose new measures; we’re there to review what we have and make sure that it’s coherent and clear as it can be”.

The ELRG’s remit does not cover implementation or transposition of upcoming directives; that’s “not our role”, says the Chairman.

“We’re thinking about the platform work directive just in the context of looking at an existing issue we have, which is, how do you define employment status? It would be ridiculous to do some of that and just ignore things that are coming down the tracks. But equally, we’re not there to say, ‘well, this is how the platform or directive should be’, because that’s a policy issue.”

“So, we’re there to look at what we have; we’re not there to suggest what we should have in terms of policy or new types of laws we should have in terms of making our existing laws coherent.”

REPORTING ANNUALLY

On that functioning of EWC law in Ireland (the Transnational Information and Consultation of Employees Act, 1996), Prof Doherty said that this law “did come up in informal discussions [...] but I think the Department is very much of the view that that is something that’s in train [and] it would not be right for this group to get involved in proceedings that are ongoing.”

“The negotiations on a new directive are ongoing, so I think things are still pretty much at a policy stage.”

The ELRG has statutory requirements, including reporting annually to the Minister.

Due to the later than hoped for commencement of the Group’s work, the first annual report will be in quarter one of 2026. While it may be that the Group have “some very substantive things to say” next year, that is not a foregone conclusion, and whether or not the Group makes recommendations in its first annual report will depend on how the work progresses during the year.

The Group is likely to meet in a full plenary four times this year, “maybe even more, if we feel it is needed, just because it’s the inaugural year”, Mr Doherty says.

“We will have a mix of in-person and online meetings; the idea is that the plenary should all be in-person, but subgroup meetings can be virtual.”

RESEARCH POSSIBILITIES

Mr Doherty says he is conscious of the demands placed on the members of the group: “They’re all extremely successful in their own professional fields. They’re all extremely busy people, and they are giving up their time, essentially for free, for public service.”

“I am really impressed with the calibre of people that put themselves forward. So, that makes me hopeful. If people who have very successful and busy day jobs are willing to throw in with this, I think it’s because they believe that they can do something genuinely useful here.”

“So, I hope that the members of the group get the appreciation that they deserve. We would hope to do research here and there, so hopefully there will be some budget provided for that”, he added.

MEMBERSHIP OF GROUP

1. Michael Doherty (Chair) Nominated by Minister for ETE
2. Cathy Smith - Nominated by Minister for ETE
3. Kevin Duffy - Nominated by Minister for ETE
4. Claire Bruton - Nominated by Minister for ETE
5. Desmond Ryan - Nominated by Minister for ETE
6. Anne Lyne - Nominated by Minister for ETE
7. Deirdre Malone - Nominated by Minister for ETE
8. Donal Hamilton - Law Society of Ireland
9. Mary Paula Guinness - Employment Bar Association
10. Gavin Smith - Restructuring and Insolvency Ireland
11. Nichola Harkin - Ibec
12. Rachael Ryan - ICTU
13. John Barry - ISME
14. Áine Maher - DETE
15. Orlaith Mannion - Department of Social Protection
16. Jane Ann Duffy - Department of Children, Equality, Disability, Integration and Youth
17. Gwendolen Morgan - Workplace Relations Commission
18. Lorraine Williams - Chief State Solicitor's Office
19. Deirdre O'Kane - Office of the Attorney General
20. Jim Finn - Courts Service
21. Appointment Pending - Labour Court