



Mutual Learning Programme

DG Employment, Social Affairs and Inclusion

Peer Country Comments Paper - Ireland

Precarious Work – Understanding the Extent and the Challenge

**Peer Review on “The rise of precarious work (including
some forms of solo self-employment) - causes,
challenges and policy options”**

The Netherlands, 19-20 April 2018



EUROPEAN COMMISSION

Directorate-General for Employment, Social Affairs and Inclusion

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1 Introduction

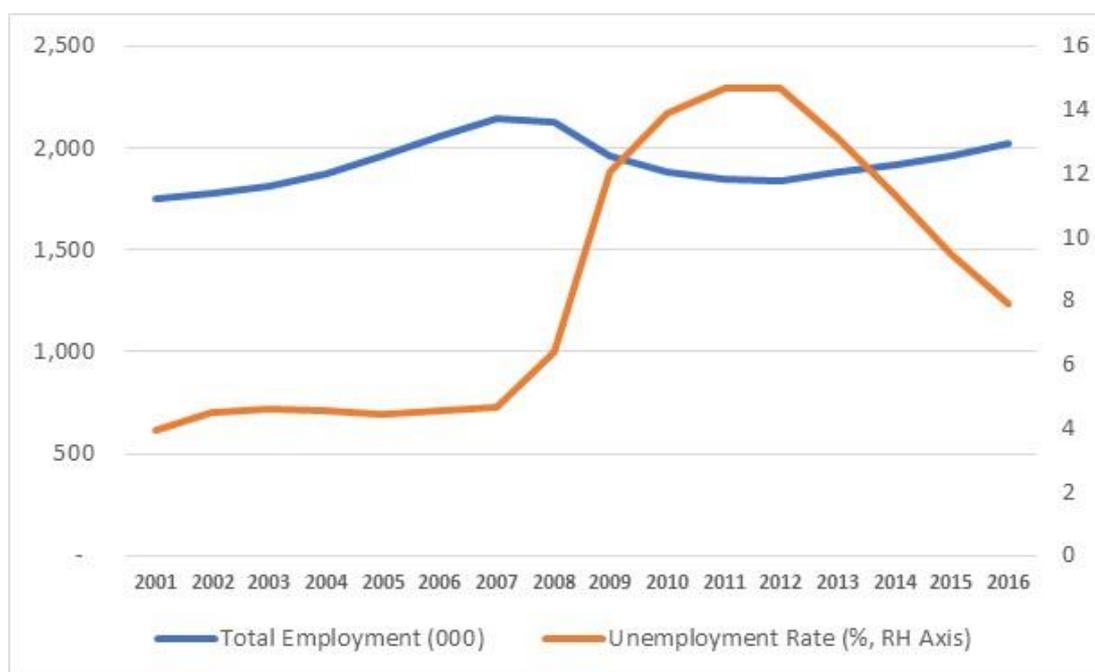
This paper has been prepared for the Peer Review on "The rise of precarious work (including some forms of solo self-employment) - causes, challenges and policy options" within the framework of the Mutual Learning Programme. It provides a comparative assessment of the policy example of the host country and the situation in Ireland. For information on the host country policy example, please refer to the Host Country Discussion Paper.

2 Labour market situation in the peer country

2.1 Overall Labour Market Trends

The period since 2000 has been one of three distinct phases in the Irish labour market: the first a phase of strong labour force participation and employment growth as well as low and quite stable rates of unemployment, both of which had continued from the pre-2000 period; then a sharp and quite prolonged labour market shock and adjustment that occurred in tandem with the international financial and economic crisis that began in 2007/8; and a third period of recovery that began in earnest in 2012, and has since seen strong year-on-year total employment growth, coupled with equally prominent declines in unemployment (Figure 1)

Figure 1. Figure 1. Total Employment and (ILO) Unemployment Rate, Ireland, 2001-2016



Source: Central Statistics Office, Ireland

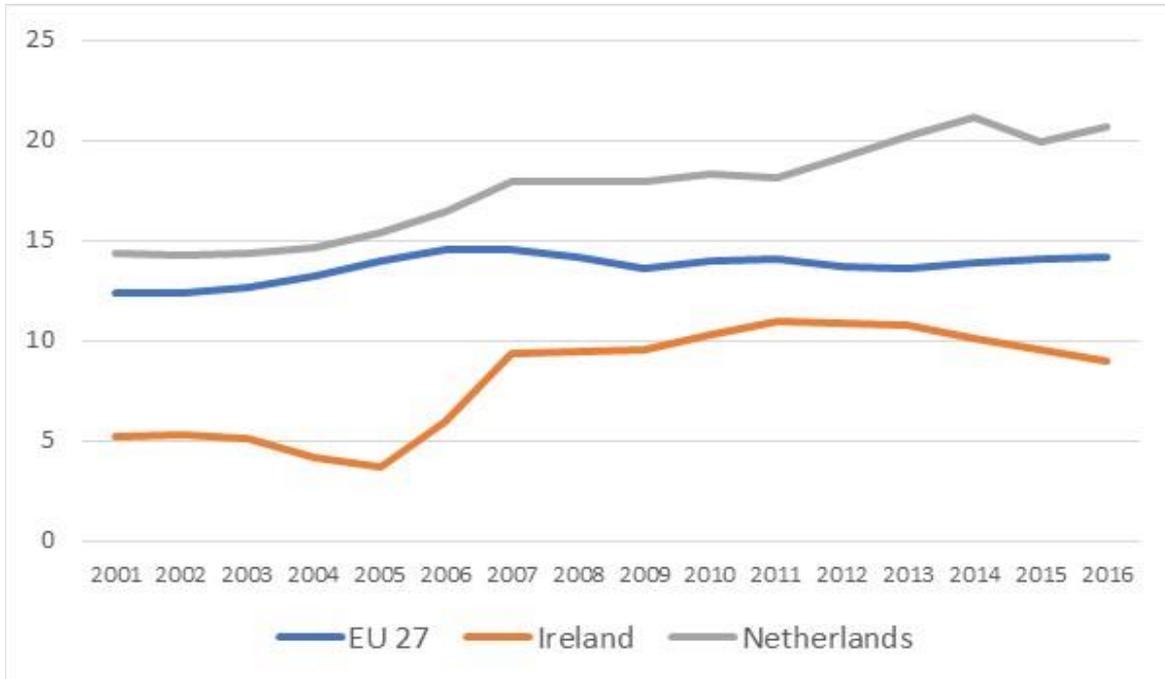
2.2 Precarious Work

Ireland's experience with both temporary employment and solo self-employment relative to the total workforce, in comparison to that of the EU 27 and the Netherlands, is shown below.

At an aggregate level Ireland over this period has not experienced marked changes in either self-employment or temporary employment, relative to the total numbers at

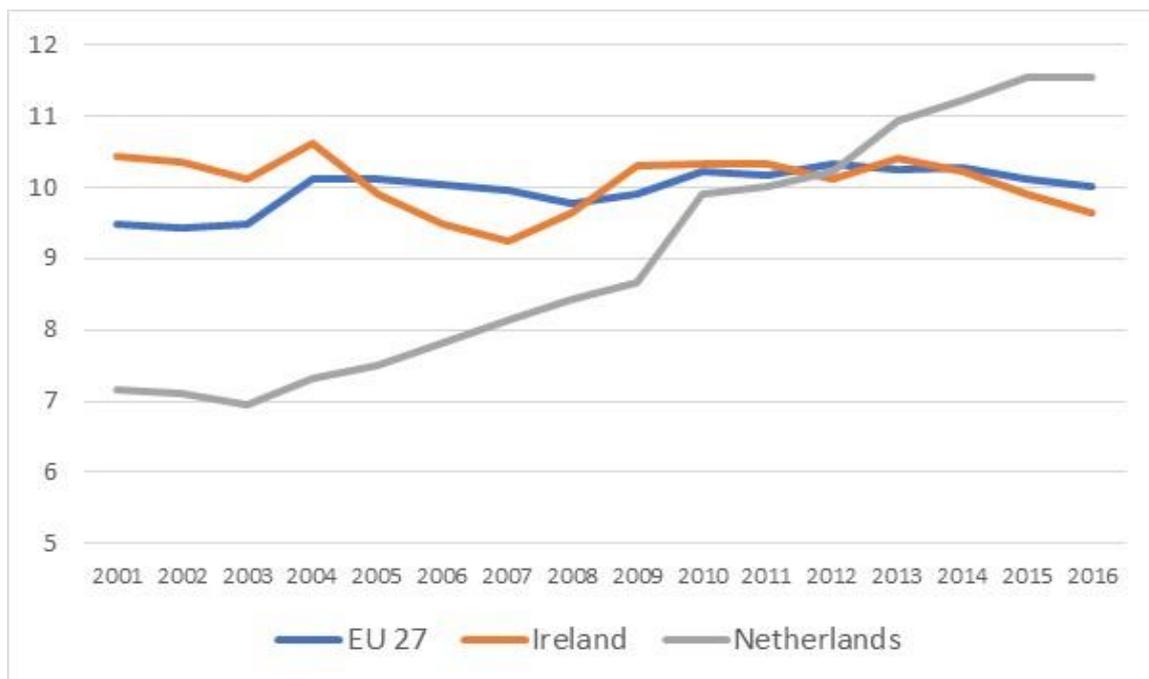
work. Temporary employment increased somewhat in the period 2005-2007 but then plateaued and has since declined somewhat. Throughout it remained at lower levels than in the EU 27 and significantly lower than in the Netherlands.

Figure 2. Precarious Work Trends in Ireland 2001-2016, Temporary Employment as % Workforce



Source: Eurostat (2018)

Figure 3. Precarious Work Trends in Ireland 2001-2016 Solo Self-Employment as % Workforce



Source: Eurostat (2018)

The proportion of the workforce in solo self-employment in Ireland has fluctuated within a reasonably narrow range, similar to the experience for the EU 27, and with no upward trend comparable to that experienced in the Netherlands.

2.3 Sectoral and Occupational Variation

While aggregate trends in temporary and solo self-employment have shown only modest fluctuation since 2000, within individual sectors these have been somewhat more pronounced. In terms of solo self-employment, a number of sectors experienced net growth in the proportion of the workforce thus employed over the entire period (Central Statistics Office, 2018). These included construction, administrative and support services, information and communication, and industry¹. However within these the growth was from a very low base, and while higher in 2016 than in 2001, their levels remain generally low. In addition, while some displayed notable growth, it was most significant up to 2012/2013, and the proportions have been declining once again in recent years.

In terms of the proportion in temporary employment, the sectoral data is probably less remarkable than that regarding solo self-employment. In this case similar sectors show the highest fluctuations (although with agriculture, forestry and fishing also featuring), but the proportions have increased less so than for solo self-employment, and the downward trend in the most recent years is evident here also.

2.4 Types and Reasons for Temporary Employment

The types of temporary employment in Ireland have remained quite consistent. Casual work and employment that lasted only a specific duration have been the most common categories declared by temporary workers, while both seasonal jobs and jobs that only lasted until specific tasks were complete, both were relatively less frequently reported (Central Statistics Office, 2018). The reasons given by workers for their temporary employment shifted somewhat leading up to and since the economic crisis. In the early 2000s, the inability to find a permanent job accounted for approximately 1 in 3 cases (of people who gave a reason), while those who did not want a permanent job accounted for approximately 2 in 3 cases². Their relative positions have changed gradually in the period since³.

2.5 Challenges Faced by Self-Employed and Temporary Workers

Despite their not dramatically increasing in aggregate terms nor occurring at rates significantly above EU norms, the risks and disadvantages faced by those in temporary or solo self-employment in Ireland have gained recognition and acknowledgement. While the national research evidence is not well-developed, where employment is involuntarily or undesirably insecure from the perspective of the worker, it is argued as causing higher risks of lower incomes, the loss of employment rights and entitlements, and the jeopardising of social insurance coverage and entitlement. The income tax system differentiates between employees and self-employed persons, offering higher earned income tax credits to employees, although those in self-employment self-assess their income tax liability and have scope to adopt tax-efficient strategies. The social insurance system differentiates more significantly, with lower contributions paid if self-employed than is paid in aggregate for employees, but with lower short and long-term

¹ Trades union bodies made claims, in 2015, of widespread bogus self-employment in the construction sector (ICTU, 2015). However these have been disputed by both employers and tax authorities. Solo self-employment in the sector, while it increased from 17% in 2008 to 29% in 2013, it has since fallen once more to a level of 24% in 2016.

² Having contracts that covered either probationary or training periods only were given as reasons in a very small proportion of cases.

³ A discontinuity occurred in this data in 2012, so data since is not directly comparable with data prior to that year.

insurance entitlements as a result (e.g. unemployment benefits, illness and disability benefits). A range of employment rights are also granted to employees that do not arise in service contracts to the self-employed, which relate for example to unfair dismissal, minimum wage, leave, equal pay and other areas.

3 Assessment of the policy measure

3.1 Comparison with Host Country Policy Approach

The host country report points to efforts in the Netherlands to establish in legislation "stepping stone" mechanisms designed to effect transitions from temporary towards permanent employment contracts, but that experience suggested such reforms had been more successful in underpinning employment flexibility than security. More recent reforms have focused on limiting the number and/or duration over which consecutive temporary contracts can be put in place. In respect of bogus self-employment, approaches have focused on ensuring fair liability for minimum wage provision, strict duties of employers with respect to identifying workers, and other regulatory steps.

In Ireland, as shown above, there have not been significant increases in either temporary or self-employment. Since 2012, the national economy and labour market have recovered very strongly from the economic crisis that began in 2008. Job creation in the private sector has been to the fore in this recovery, and has created a context which has helped avoid dramatic growth in precarious work due to low labour demand. However, a specific concern in respect of "zero-hours" contracting emerged in recent years which has elicited policy development responses. Responses to bogus self-employment on the other hand have remained a priority for tax and social welfare authorities predominantly, seeking to safeguard revenues and payments from the negative effects of false categorisation of employment.

3.2 General Economic and Employment Strategies

Ireland's pathway out of economic recession has had numerous strategic and policy underpinnings, one of which was a concerted and co-ordinated policy focus on private sector-led, and broadly-based, job creation. Policies supporting this have focused on optimising the business environment, ensuring functional credit markets, the continued attraction of mobile international investment and a knowledge-based enterprise policy, and investment in relevant skills and the activation of the unemployed⁴. While not in all contexts, the strength of the overall economy and of labour demand in general is likely to be limiting the rise in precarious work and insecure employment.

3.2.1 Zero Hours Contracting

Responding to concerns raised by a range of observers (including trades unions and some political parties) following high profile labour court cases, the Irish Government commissioned research in 2015 into the prevalence of "zero hours contracting" – what was felt to be a specific form of precarious employment involving minimal commitment and obligations from employers. The subsequent research report drew attention to the varying forms of such contracts and their broad differences – which generally relate to whether such contracts provide for guaranteed hours, require workers to be available for work, and/or provide for guaranteed income levels. The research found limited evidence of zero-hours contracts but more significant evidence of "if and when" contracts – similar to zero hours contracts by virtue of involving non-guaranteed hours of work, but with the difference being that under "if and when" contracts, workers are not contractually required to make themselves available for work. Some forms of "if and

⁴ A useful discussion of the country's response to its employment crisis is found in OECD (2014).

when" contracts were found to involve no guaranteed hours at all, while others do not guarantee hours above set minima.

The research pointed to differences among professions, occupational groups, genders and sectors with respect to the prevalence of contracts that involve working constantly varying part-time hours, with it being more common in occupations such as sales and personal services, more common for females than males, and those who work non-standard hours (e.g. weekends, evenings, nights and public holidays). Key factors driving the use of "if and when" contracts were found to include:

- where jobs involve increasing work during non-standard hours;
- in demand-led services where flexibility is required;
- for people for whom the non-availability of accessible and affordable childcare influences their availability for work;
- in response to specific aspects of employment legislation; and
- in the Irish education and health services, due to features of resourcing models utilised within them.

The principal policy response by the Irish Government has been publication of draft legislation in the form of the Employment (Miscellaneous Provisions) Bill 2017 in December 2017, aimed at improving the predictability and security of employees on insecure contracts, and addressing what the Government termed the increasing "casualisation" of work. Among the main features of the new legislation are that:

- employers must give employees clear terms of employment within five days of their commencing employment, including details of pay and hours of work;
- zero hours contracts will be prohibited in most circumstances (genuine casual work, or where essential in respect of covering emergency situations or short-term absences being the exceptions);
- new minima payments must apply where employees are called in to work but sent home again without the work;
- a set of "banded hours" will categorise the hours an employee works more accurately than their contracts may state (to ease their access to credit, for example);
- a range of measures will be brought in to ensure employees who invoke their rights are not penalised.

The new legislation has not yet been enacted by the Irish parliament.

3.2.2 Bogus Self-Employment

In Ireland tax and social insurance liabilities depend on whether individuals are employed or self-employed, and detecting and determining self-employment that may be bogus or false has been the responsibility of the tax and social welfare authorities. The Department of Employment Affairs and Social Protection (the relevant ministry and social welfare administrative body) has a dedicated unit ("Scope" section) to whom this responsibility is delegated, and it, together with the (now) Workplace Relations Commission, and with the support of social partner stakeholders, has developed and issued a "Code of Practice for Determining Employment or Self-Employment Status of Individuals"⁵. Key criteria put forward in respect of an employee are that he or she:

⁵ <http://www.welfare.ie/en/downloads/codeofpract.pdf>

- is under the control of another person who directs how, when and where the work is carried out;
- receives a fixed hourly/weekly/monthly wage;
- works set hours or a given number of hours per week or month;
- is entitled to extra pay or time off for overtime;
- supplies labour only, is not exposed to financial risk, and has no managerial or investment responsibility.

Ultimately the Scope section will determine a person's employee status where the details are brought to their attention or where there is any dispute or suspicion of incorrect categorisation.

A working group recently examined the issue of "the use of intermediary-type structures and self-employment arrangements" and their implications for social insurance and tax revenues. Its focus has been on circumstances where an individual, who would otherwise be an employee, establishes a company to provide services, or where an individual who is dependent on and under the control of a single employer, is classified as a self-employed individual, and in both of these "disguised employment" circumstances, how to ensure tax and social insurance revenues and liabilities are protected. The group reported in January 2018⁶ and recommended reducing the differential in social insurance liabilities to minimise any incentive to establish spurious self-employment structures. Specific proposals were recommended for further exploration. Responding to specific concerns about the extent of disguised employment or forced self-employment in the construction sector, the working group drew attention to the range of compliance initiatives that both the tax and social welfare authorities apply specifically to that industry.

4 Assessment of future policy development

4.1 Implementation of Recent Policy Measures

In respect to future policy development the host country paper draws attention to the dialogue in the Netherlands concerning income adequacy, regulatory protection, and certainty of employment (particularly how the latter affects training and upskilling, and wider human capital policy goals). Such considerations are in a context however of considerable growth and expansion of flexible employment with which the protection of the security of workers has arguably not kept pace.

As discussed, in Ireland no such discerned expansion in the extent of insecure or precarious work has taken place, and relative to overall employment levels, both temporary and solo self-employment have actually declined in recent years. Nevertheless a policy focus has been put on insecure employment and bogus self-employment, with new measures in development in the areas of zero-hours contracting and the social security incentives that encourage false self-employment practices. Changes proposed in these areas will need to be implemented and in due course evaluated before their effectiveness can be determined.

6

<https://www.welfare.ie/en/downloads/ReportIntermediaryStructuresSelfEmploymentJanuary2018.pdf>

4.2 Recognition and Analysis of the "Gig Economy"

More recently however some wider discussions have taken place concerning how the world of work is changing, whether temporary work contracts are increasingly a feature of working life, and what the implications of this may be.

Research commissioned by the Workplace Relations Commission (not yet complete) suggests that just below 10% of the Irish workforce falls into the category of "contingent" employment – temporary or non-permanent employment. The rate of such contingent employment was furthermore not expected to increase up to 2025, according to comments from the researchers.

Emerging research findings also suggested that such workers earn on average 21% lower than their permanent employee counterparts. However despite the earnings gap, no significant differences in job satisfaction is evident between persons on temporary and permanent contracts, perhaps suggesting a willingness of contingent workers to trade-off lower wages in favour of opportunities to gain experience. This lack of evident job-dissatisfaction runs counter to a view of exploitation amongst temporary workers.

4.3 Protection of "Gig" Workers

Some policy dialogue has also emerged on what is termed "gig work" or the "gig economy", how "precarious" such employment is, and how policy might respond. Seeking to ensure protection for "gig" workers through collective bargaining can, it has been commented, come up against competition regulations, and the prohibition of cartels. The complexity of the existing laws regarding employment status, collective agreements and competition policy has been highlighted, although some very specific professions and occupations have the means to have self-employed or freelance workers remain exempt from competition rules in their wage negotiation and determination. Proposals made include that collective representation should not be automatically denied to those who cannot satisfy traditional tests of employee status, and that collective agreements should not be automatically subject to control of competition authorities, rather only abuses should be controlled.

However, these issues are highlighted in what is only a recent and very early stage of policy dialogue, and no formal consultative process or Government-led examination of gig work and the protection of employee rights has taken place. The EU proposal for a Directive on Transparent and Predictable Working Conditions has been noted however as an important frame of reference within which future policy debate will need to evolve.

5 Questions

- How was the "stepping stone" mechanism under the Act of Flexibility and Security designed, in order to promote movement from temporary towards permanent employment?
- Has there been evidence that employers "discard" temporary employees when fewer consecutive (chain) contracts were permitted?
- Has there been any review of the effectiveness of the Act Combating Bogus Self-Employment, or provisions within it?
- How actively and in what ways does the Dutch Tax and Customs Administration continue to check the performance of self-employed contracts after it has not been deemed fictitious employment?

6 List of references

- Central Statistics Office (2018). Quarterly National Household Survey. Cork. Detailed Results Database.
- Eurostat (2018). Labour Force Survey. Luxembourg: Eurostat Database.
- Irish Congress of Trades Unions (ICTU), "False Economy - The Growth of 'Bogus Self-Employment' in the Construction Industry", Winter 2015, Dublin. Available at https://www.ictu.ie/download/pdf/false_economy_the_growth_of_bogus_self_employment_in_construction.pdf
- OECD, "Ireland's Action Plan for Jobs: A Preliminary Review", April 2014. Available at "https://www.oecd.org/ireland/Ireland-action-plan-for-jobs-review.pdf"
- O'Sullivan, M, et al, "A Study on the Prevalence of Zero Hours Contracts among Irish Employers and their Impact on Employees", University of Limerick Kemmy Business School, 2015. Available at <https://dbej.gov.ie/en/Publications/Publication-files/Study-on-the-Prevalence-of-Zero-Hours-Contracts.pdf>

Annex 1 Summary table

The main points covered by the paper are summarised below.

Labour market situation in the peer country

- Three phases in labour market development since 2000: buoyancy, followed by severe shock, but with rapid improvement since;
- No marked increase in aggregate temporary employment, self-employment or solo self-employment over period
- Some variation at sectoral level, although moderate
- Most recent years have seen their relative extents decline

Assessment of the policy measure

- Concern emerged about "zero-hours" contracting, and research was undertaken
- Greater evidence of "if and when" than "zero hours" contracts
- Bogus self-employment viewed as means of lowering social insurance and tax liabilities
- Social welfare authorities determine the de-facto status of employment
- Some policy momentum towards reducing the financial incentives to falsely categorise work as self-employment

Assessment of future policy development

- Recent policy initiatives have yet to be implemented
- Policy discussions meanwhile widening around "contingent" and "gig" work
- Evidence being gathered, but indications are of neither growth in contingent work nor of exploitation of necessity associated with it
- Debate on the protection of "gig" workers in very early stage

Questions

- How was the "stepping stone" mechanism under the Act of Flexibility and Security designed, in order to promote movement from temporary towards permanent employment?
- Has there been evidence that employers "discard" temporary employees when fewer consecutive (chain) contracts were permitted?
- Has there been any review of the effectiveness of the Act Combating Bogus Self-Employment, or provisions within it?
- How actively and in what ways does the Dutch Tax and Customs Administration continue to check the performance of self-employed contracts after it has not been deemed fictitious employment?

Annex 2 Example of relevant practice

Name of the practice:	Employment (Miscellaneous Provisions) Bill 2017
Year of implementation:	Bill published in 2017, not yet enacted legislation
Coordinating authority:	Department of Employment Affairs and Social Protection
Objectives:	To improve the predictability and security of working hours for employees on insecure contracts.
Main activities:	<p>The Bill comprises provisions dealing with:</p> <ul style="list-style-type: none">Banded hours such that employees on low hours contracts who consistently work more hours each week than contracted, will be entitled to be placed in a "band" of hours that better reflects that reality, and will have a minimum number of guaranteed hours inside that bandThe prohibition of zero hours contractsMeasures to combat the penalisation of employees revoking their rights
Results so far:	The legislation has not yet been enacted.

